**AGENDA**
**REGULAR MEETING**

**City Council of the Town of Colma**
**Colma Community Center**
**1520 Hillside Boulevard**
**Colma, CA 94014**

**Wednesday, July 27, 2016**
**PRESENTATION – 5:00 PM**
**CLOSED SESSION – 6:00 PM**
**REGULAR SESSION – 7:00 PM**

## PRESENTATIONS – 5:00 PM

- Colma Police Department Appreciation

## CLOSED SESSION – 6:00 PM

1. **In Closed Session Pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators**

| | |
|---|---|
| Agency Negotiators: | Sean Rabé, City Manager |
| | Austris Rungis, IEDA |
| Employee Organizations: | Colma Peace Officers Association |
| | Colma Communications/Records Association |
| Unrepresented Employees: | All |

## PLEDGE OF ALLEGIANCE AND ROLL CALL – 7:00 PM

## ADOPTION OF AGENDA

## PUBLIC COMMENTS

Comments on the Consent Calendar and Non-Agenda Items will be heard at this time. Comments on Agenda Items will be heard when the item is called.

## CONSENT CALENDAR

2. Motion to Accept the Minutes from the July 13, 2016 Regular Meeting.

3. Motion to Adopt a Resolution Awarding Construction Contract to Concord Iron Works, Inc. and Authorizing the City Manager to Execute the Agreement for the Fabrication and Installation of the Structural Steel Frame for the Colma Town Hall Renovation and Addition Project Pursuant to CEQA Guidelines 15303, 15331 and 15332.

4. Motion to Adopt a Resolution Authorizing the City Manager to Execute a Second Amendment to the Contract with Ratcliff for Design and Construction Services in the Amount of $253,340 for the Town Hall Renovation Project, Pending Receipt of Backup Documentation.

5. Motion to Adopt a Resolution Authorizing the City Manager to Execute an Agreement with US Bank for Purchase Card Services (CAL-Card).

## NEW BUSINESS

### 6. FOUNDATION, UTILITY AND MASS GRADING WORK FOR TOWN HALL PROJECT

*Consider*: Motion to Adopt Resolution Confirming Rejection of all Bids Received for Town Hall Renovation Project and Electing, by a Four-Fifths Vote of the Council, to Perform the Foundation, Mass Grading and Utility Work on the Project by Force Account, All Pursuant to CEQA Guidelines 15303,15331 and 15332.

### 7. GRAND JURY RESPONSE

*Consider:* Motion Approving the Town's Response to the 2015/16 Grand Jury Report Re: Body Worn Cameras for Police Officers.

## COUNCIL CALENDARING

## REPORTS

Mayor/City Council

City Manager

## ADJOURNMENT

The City Council Meeting Agenda Packet and supporting documents are available for review at the Colma Town Hall, 1188 El Camino Real, Colma, CA during normal business hours (Mon – Fri 8am-5pm). Persons interested in obtaining an agenda via e-mail should call Caitlin Corley at 650-997-8300 or email a request to ccorley@colma.ca.gov.

Reasonable Accommodation
Upon request, this publication will be made available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act of 1990. Any person with a disability, who requires a modification or accommodation to view the agenda, should direct such a request to Brian Dossey, ADA Coordinator, at 650-997-8300 or brian.dossey@colma.ca.gov. Please allow two business days for your request to be processed.

**1. In Closed Session Pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators**

| | |
|---|---|
| Agency Negotiators: | Sean Rabé, City Manager |
| | Austris Rungis, IEDA |
| Employee Organizations: | Colma Peace Officers Association |
| Unrepresented Employees: | All |

*There is no staff report for this item.*

TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

**MINUTES**
**REGULAR MEETING**
City Council of the Town of Colma
Colma Community Center, 1520 Hillside Boulevard
Colma, CA 94014
**Wednesday, July 13, 2016**
Closed Session – 6:00 p.m.
Regular Session – 7:00 p.m.

## CALL TO ORDER

Mayor Diana Colvin called the Regular Meeting of the City Council to order at 7:09 p.m.

Council Present – Mayor Diana Colvin, Vice Mayor Helen Fisicaro, Council Members Raquel "Rae" Gonzalez, Joseph Silva and Joanne F. del Rosario were all present.

Staff Present – City Manager Sean Rabé, City Attorney Christopher Diaz, Chief of Police Kirk Stratton, Recreation Services Director Brian Dossey, City Engineer Cyrus Kianpour, Director of Public Works Brad Donohue, and City Clerk Caitlin Corley were in attendance.

## REPORT FROM CLOSED SESSION

Mayor Colvin stated, "No action was taken at the Closed Session this evening."

## ADOPTION OF THE AGENDA

Mayor Colvin asked if there were any changes to the agenda. None were requested. The Mayor asked for a motion to adopt the agenda.

**Action:** Council Member del Rosario moved to adopt the agenda; the motion was seconded by Council Member Silva and carried by the following vote:

| Name | Voting | | Present, Not Voting | | Absent |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Not Participating | |
| Diana Colvin, Mayor | ✓ | | | | |
| Helen Fisicaro | ✓ | | | | |
| Raquel "Rae" Gonzalez | ✓ | | | | |
| Joseph Silva | ✓ | | | | |
| Joanne F. del Rosario | ✓ | | | | |
| | 5 | 0 | | | |

## PRESENTATIONS

Administrative Services Director Brian Dossey introduced new Facility Attendant Lucas Montalvo.

Council recognized the 80th Birthday of Mary Brodzin with a certificate and a compass.

Council recognized the 95th Birthday of Dorothy Hillman with a certificate and a bird feeder.

City Manager Sean Rabé Swore in new Administrative Services Director Brian Dossey.

## PUBLIC COMMENTS

Mayor Colvin opened the public comment period at 7:25 p.m. and seeing no one come forward to speak, she closed the public comment period.

## CONSENT CALENDAR

2. Motion to Accept the Minutes from the June 22, 2016 Regular Meeting.
3. Motion to Approve Report of Checks Paid for June 2016.
4. Motion to Adopt an Ordinance Amending Subchapter 3.04 of the Colma Municipal Code, Relating to Sewer Rates and Charges (second reading).
5. Motion to Accept Informational Report on Recreation Department Programs, Activities, Events, and Trips for the Second Quarter of 2016.
6. Motion to Adopt a Resolution Adopting FY 2015-16 Budget Change and Directing Staff to Implement the Fleet Replacement Fund #61 in the Town Financial Records as of June 30, 2016.

**Action:** Vice Mayor Fisicaro moved to approve the Consent Calendar items #2-6; the motion was seconded by Council Member Gonzalez and carried by the following vote:

| Name | Voting | | Present, Not Voting | | Absent |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Not Participating | |
| Diana Colvin, Mayor | ✓ | | | | |
| Helen Fisicaro | ✓ | | | | |
| Raquel "Rae" Gonzalez | ✓ | | | | |
| Joseph Silva | ✓ | | | | |
| Joanne F. del Rosario | ✓ | | | | |
| | 5 | 0 | | | |

## PUBLIC HEARING

7. **2016-2026 SOLID WASTE RATES**

Director of Public Works Brad Donohue and City Attorney Christopher Diaz presented the staff report. Mayor Colvin opened the public comment hearing at 7:37 p.m. and seeing no one come forward to speak, she closed the public hearing. The Mayor asked the City Clerk for the protest count; the Clerk informed her that there had been no protests submitted. Council discussion followed.

**Action:** Council Member del Rosario moved to adopt a Resolution Permitting Allied Waste Services of North America, LLC, DBA Republic Services of Daly City, to Charge Specified Rates for the Collection and Processing of Recyclables and Organics, and the Collection and Disposal of Garbage in the Town of Colma; the motion was seconded by Council Member Silva and carried by the following vote:

| Name | Voting | | Present, Not Voting | | Absent |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Not Participating | |
| Diana Colvin, Mayor | ✓ | | | | |
| Helen Fisicaro | ✓ | | | | |
| Raquel "Rae" Gonzalez | ✓ | | | | |
| Joseph Silva | ✓ | | | | |
| Joanne F. del Rosario | ✓ | | | | |
| | 5 | 0 | | | |

8. **APPROVAL OF THE ENGINEER'S REPORT FOR 2016-17**

City Engineer Cyrus Kianpour presented the staff report. Mayor Colvin opened the public hearing at 7:52 p.m. and seeing no one come forward to speak, she closed the public hearing. The Mayor asked the City Clerk for the protest count; the Clerk informed her that there had been no protests submitted. Council discussion followed.

**Action:** Vice Mayor Fisicaro moved to adopt a Resolution Overruling Protests to and Adopting Engineer's Report on Sewer Service Charges for Fiscal Year 2016-2017, Directing the City Engineer to File a Copy of the Engineer's Report with the San Mateo County Tax Collector, and Authorizing the County Tax Collector to Place the Charges on the Property Tax Roll, and authorize the City Attorney to eliminate the alternate provision in the proposed resolution; the motion was seconded by Council Member Silva and carried by the following vote:

| Name | Voting | | Present, Not Voting | | Absent |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Not Participating | |
| Diana Colvin, Mayor | ✓ | | | | |
| Helen Fisicaro | ✓ | | | | |
| Raquel "Rae" Gonzalez | ✓ | | | | |
| Joseph Silva | ✓ | | | | |
| Joanne F. del Rosario | ✓ | | | | |
| | 5 | 0 | | | |

**NEW BUSINESS**

9. **LEAGUE OF CALIFORNIA CITIES CONFERENCE DELEGATE**

City Manager Sean Rabé presented the staff report. Mayor Colvin opened the public comment period at 7:57 p.m. and seeing no one come forward to speak, she closed the public comment section Council discussion followed.

**Action:** Vice Mayor Fisicaro moved to Designate Sean Rabé as the Voting Delegate for the Annual League of California Cities Conference in October; the motion was seconded by Council Member del Rosario and carried by the following vote:

| Name | Voting | | Present, Not Voting | | Absent |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Not Participating | |
| Diana Colvin, Mayor | ✓ | | | | |
| Helen Fisicaro | ✓ | | | | |
| Raquel "Rae" Gonzalez | ✓ | | | | |
| Joseph Silva | ✓ | | | | |
| Joanne F. del Rosario | ✓ | | | | |
| | 5 | 0 | | | |

**COUNCIL CALENDARING**

The next Regular City Council Meeting will be Wednesday, July 27 2016 at 7:00 p.m. The Regular Meetings in August may be cancelled.

**REPORTS**

Helen Fisicaro

HIP Housing Luncheon, 6/3

Joseph Silva

Council of Cities Dinner, hosted by Half Moon Bay, 5/27

City Manager Sean Rabé reported on the following topics:

- The Town's Landscape Contractors Frank & Grossman won a California Landscape Contractors Association Award for their work at the Colma Community Center. Congrats!
- The Town Hall Renovation Project is still ongoing; the rebar installation has been completed and cement pouring is set to begin soon.

**ADJOURNMENT**

The meeting was adjourned by Mayor Colvin at 8:05 p.m. and closed in memory of Colma Fire Lieutenant Mark Goodman.

Respectfully submitted,

Caitlin Corley
City Clerk

# STAFF REPORT

| | |
|---|---|
| TO: | Mayor and Members of the City Council |
| FROM: | Brad Donohue, Director of Public Works |
| VIA: | Sean Rabé, City Manager |
| MEETING DATE: | July 27, 2016 |
| SUBJECT: | Award of Town Hall Structural Steel Contract |

## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

> RESOLUTION AWARDING CONSTRUCTION CONTRACT TO CONCORD IRON WORKS, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR THE FABRICATION AND INSTALLATION OF THE STRUCTURAL STEEL FRAME FOR THE COLMA TOWN HALL RENOVATION AND ADDITION PROJECT PURSUANT TO CEQA GUIDELINES 15303,15331 AND 15332

## EXECUTIVE SUMMARY

The proposed resolution would authorize a construction contract with Concord Iron Works, Inc. for the fabrication and installation of the structural steel frame along with other miscellaneous steel fabrication items for the Town Hall Renovation Project. This phase (Phase III) of work includes the fabrication and erection of the various structural plates, columns, girders and steel decking, for the Town Hall project. Also included in the proposed structural steel framing package is the fabrication of two steel stair cases and custom steel grates to protect the exterior mechanical equipment.

## FISCAL IMPACT

The proposed construction contract award is in the amount of $1,048,548. Staff is also recommending a 10 percent contingency in the amount of $104,855. The attached resolution will award the construction contract to Concord Iron Works, Inc. and authorizes the City Manager to approve change orders up to the amount of the contingency. The total cost of the structural steel contract plus contingencies is $1,153,403. The cost of this phase of construction is still within the budget parameters set for the construction of the New Town Hall facility.

## BACKGROUND

In March of 2015, staff recommended and City Council approved the architectural contract for Ratcliff to start and complete the design drawings for the New Town Hall Campus. Staff along

with the Architect determined that breaking the project into phases will assist us in moving the project forward.
For project expediency, the project has been broken down into several phases of work, as outlined below:

**Phase I**

The demolition of the existing 1986 addition and various site improvements to the existing Town Hall facility was approved in late November of 2015 and substantially completed in January of 2016.

**Phase II**

This phase of work included the minor demolition of previously-existing site conditions, dewatering, shoring, over excavation in the area of the previously-existing parking lot to depth of approximately 11 feet, placing and re-compacting the removed soil to the design elevations to accommodate the new addition, underpinning (installing foundation supports) to portions of the historical 1941 building, and installing foundation and retaining walls for the new addition. Change orders have been added to the contractor's scope of work to complete the rough grading and foundation work to a point where the structural steel frame can be installed. This phase of work is scheduled to be completed in the fall of 2016.

**Phase III** (Before City Council tonight)

The intent of this phase is to bring the building structure to a point of completion where the general construction contractor will then be able to complete the remainder of the building (Phase IV).

This phase of work includes the fabrication and erection of the steel frame for the new addition. Within the proposed structural steel building package is the fabrication of two steel stair cases and custom steel grates to protect the exterior mechanical equipment. Phase III bid documents were released on May 23, with a request for information cut-off date of June 8. The bid opening was held June 14. No bids were received by the required cutoff date and time. Pursuant to California Public Contract Code 22038, if no bids are received, the Town may proceed with the project without further following the competitive bidding requirements in the Public Contract Code.

Further, per Colma Municipal Code Section 1.06.220 (h);

> *"If no bids or proposals are received in response to a solicitation, the City Manager may negotiate a contract with any qualified individual or firm"*

Staff negotiated with three potential bidders offering all three of them a chance to submit the required forms for the project. The three potential bidders were Concord Iron Works, Inc., Livermore Ironworks and Fabrication, Inc. and MC Metal. After a significant effort to negotiate with all three potential bidders, only Concord Iron Works, Inc. submitted the required paperwork and comprehensive cost proposal that met the requirements stated within the plans and specifications.

The action before Council tonight is the award of the contract for the Phase III work. The scope of work outlined in the construction documents for Phase III estimates 60 working days to start and complete this phase of the project. Much of this work can occur concurrently with the concrete work since the majority of the time is spent doing shop drawings and fabrication offsite in their shop.

**Phase IV (Infill Project)**

The fourth phase includes all the remaining building elements for the addition and remodel, site improvements, all remaining utilities and finishes. This portion of the project is expected to be out to bid in late July. Furniture, fixtures and equipment will be included in Phase V.

**Phase V**

The fifth phase of the project includes furniture, fixtures and equipment (FF&E's). The majority of this phase involves the space planning of the new facility, the procurement of the office furniture and equipment, and the fabrication of the custom furniture, such as council dais, staff tables and chamber seating. Prior to going to Bid for Phase V, a scheduled study session with City Council will need to take place to review and approve the FF&E's, this portion of the project is anticipated to go to bid in late Fall.

**ANALYSIS**

Scope of Work

The Phase III contract (structural steel package) includes all the labor, materials and equipment required to purchase, fabricate and install the steel frame that will house the new 7,000 square feet of administrative office space and 3,300 square feet of conditioned basement space (that will contain record storage and office, Electrical, mechanical and IT rooms

Competitive Bidding

On May 23, 2016 staff advertised the project for bidding this phase of project with a local newspaper of general circulation and with several locally based Builders' Exchanges. The bid opening was held June 14th, 2016 with no bids received. Pursuant to Colma Municipal Code Section 1.06.220 (h), and California Public Contract Code 20166 since no bids were received, the City Manager is able to directly negotiate with individuals or firms that could perform the work, as outlined in the scope of work, without following competitive bidding requirements. Three potential bidders were contacted and interviewed regarding the project scope, cost analysis and availability.

Of the three contractors, only one was able to perform to the requirements set with in the bid documents. Concord Iron Works, Inc. has been determined by Staff to have submitted a proposal that is in the Town's best interest. Staff has reviewed Concord Iron Works, Inc. bid submittal and qualifications, called references, and found Concord Iron Works, Inc. qualifications to meet or exceed the requirements as stated in the project specifications and can meet the scheduling demands of the project. Staff now requests approval of the attached

resolution awarding the contract to Concord Iron Works, Inc. and authorizing the City Manager to execute the construction agreement.

## COUNCIL ADOPTED VALUES

The City Council has taken an **innovative** and **visionary** approach to seeing the construction and completion of the Town Hall Facility by phasing the construction of the Town Hall Renovation Project.

## SUSTAINABILITY IMPACT

The Town Hall Renovation Project will meet or exceed the latest standards of the California Building Code (Green Code) while striving to meet the mandates and recommendations of the Town of Colma's Climate Action Plan.

## ALTERNATIVES

The City Council could choose to not approve the resolution awarding the bid to Concord Iron Works, Inc. Doing so, however, is not recommended because Concord Iron Works, Inc. was the only potential bidder to submit the required paperwork and comprehensive cost proposal that met the requirements stated within the plans and specifications.

## CONCLUSION

Staff recommends the City Council approve the attached resolution awarding a construction contract to Concord Iron Works, Inc. in the amount of $1,048,548 with a construction contingency of $104,855 and authorizing the City Manager to execute a construction agreement for the fabrication and installation of the structural steel for the Colma Town Hall Renovation Project in an amount not to exceed $1,153,403.

## ATTACHMENTS

A. Resolution

**RESOLUTION NO. 2016-__**
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION AWARDING CONSTRUCTION CONTRACT TO CONCORD IRON WORK, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR THE FABRICATION AND INSTALLATION OF THE STRUCTURAL STEEL FOR THE COLMA TOWN HALL RENOVATION PROJECT, PURSUANT TO CEQA GUIDELINES 15303,15331 AND 15332**

The City Council of the Town of Colma does hereby resolve:

## 1. Background.

(a) On May 23, 2016, the Town advertised in a local newspaper of general circulation, and with several locally based Builders' Exchanges, Phase III of the Town Hall Renovation Project, consisting of fabrication and installation of the steel frame that will house the new 7,000 square feet of administrative office space and 3,300 square feet of conditioned basement space. No bids were received.

(b) Pursuant to California Public Contract Code 22038 because no bids were received, the Town can proceed with the project without further engaging in competitive bidding under the Public Contract Code. Further, pursuant to Colma Municipal Code Section 1.06.220(h), "[i]f no bids or proposals are received in response to a solicitation, the City Manager may negotiate a contract with any qualified individual or firm."

(c) Interviews were conducted with three steel fabricating firms, Concord Iron Works demonstrated that they were best qualified to perform the various tasks as stated within the plans and specifications.

(d) Town staff reviewed the costs breakdowns from two of the three contractors and determined that Concord Iron Works submitted a proposal that serves the Town's best interest. The City Council is authorized to award the contract to Concord Iron Works Inc. after directly negotiating per Public Contract Code 22038 and Colma Municipal Code Section 1.06.220(h).

## 2. Findings.

The City Council finds that the construction contract for the fabrication and installation of the structural steel for the Colma Town Hall Renovation Project should be awarded to Concord Iron Works Inc. because, after directly negotiating, the Town finds that Concord Iron Works, Inc. and its proposal would serve the Town's best interest.

## 3. Order.

(a) The City Council hereby awards a construction contract to Concord Iron Works, Inc. for the fabrication and installation of the structural steel for the Colma Town Hall Renovation Project in the amount of $ 1,048,548.00 subject to the City Manager's successful negotiation and execution of the contract.

(b) If the City Manager determines, in his sole discretion, that the contract cannot be successfully negotiated, this Resolution shall not preclude the Town from taking any other action necessary to perform the work as authorized by state or local law.

(c) The City Manager is hereby authorized to negotiate and execute a contract on behalf of the Town of Colma.

(d) Notwithstanding the limitations provided for in the Town's Purchasing Ordinance, the City Manager is also authorized to execute and approve any change orders, not required by state law, in an amount up to 10% of the total value of the contract or 10% of $1,048,548 for a total potential change order amount of up to $104,855.

## Certification of Adoption

I certify that the foregoing Resolution No. 2016-__ was duly adopted at a regular meeting of said City Council held on July 27, 2016 by the following vote:

| Name | Counted toward Quorum | | | Not Counted toward Quorum | |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Present, Recused | Absent |
| Diana Colvin, Mayor | | | | | |
| Helen Fisicaro | | | | | |
| Raquel Gonzalez | | | | | |
| Joseph Silva | | | | | |
| Joanne del Rosario | | | | | |
| Voting Tally | | | | | |

Dated _____

_____
Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk

# STAFF REPORT

| | |
|---|---|
| TO: | Mayor and Members of the City Council |
| FROM: | Sean Rabé, City Manager |
| MEETING DATE: | July 27, 2016 |
| SUBJECT: | Second Amendment to Ratcliff Agreement for Architectural Services |

## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

> RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO THE CONTRACT WITH RATCLIFF FOR DESIGN AND CONSTRUCTION SERVICES IN THE AMOUNT OF $253,340 FOR THE TOWN HALL RENOVATION PROJECT, PENDING RECEIPT OF BACKUP DOCUMENTATION

## EXECUTIVE SUMMARY

The proposed second contract amendment totals $253,340 and is the result of several months of negotiation between the City Manager and Ratcliff. The amendment covers work already performed as a result of the various value engineering efforts required to keep the Town Hall Renovation Project within budget.

## FISCAL IMPACT

The negotiated contract amendment is for $253,340. The Town Hall Renovation Project budget has adequate contingency to cover the contract amendment.

## BACKGROUND

The Town entered into a contract with Ratcliff in February 2014 for Phase I of the Town Hall Renovation project. The end result of that Phase I work was presented to the Council in the form of a report, which included a proposed site plan and building elevations, at the November 12, 2014 Council meeting. The Council approved the report at that meeting and directed staff to explore options for architectural and construction services for the Phase II work.

As a result of that direction, staff brought forward to Council a contract amendment for the second phase of the project which included design of the project, preparation of construction documents, construction bidding management and construction administration. That amendment, which was approved at the March 11, 2015 Council meeting, is structured as a

lump sum, not-to-exceed contract for $881,390. This amount includes $448,347 for Ratcliff's work, $393,675 for sub-consultant work and a $39,368 markup for out-of-office expenses.

The Town's project team – City Manager Sean Rabé, Public Works Director Brad Donohue, City Engineer Cyrus Kianpour and Assistant Engineer Dave Bishop – have been working with Ratcliff on a number of issues associated with the project, including breaking the project up into several discrete phases (which has brought significant savings on both the demolition and site/foundation work), seeking additional peer review of engineering and redesigning the originally-planned building to fit the Town's budget (removal of the parking garage, etc.).

However, those efforts have created additional work for Ratcliff and its consultants, to an approximate cost of $335,718. The City Manager has been able to negotiate with Ratcliff, in good faith, to reduce the amount of the contract amendment to $253,340, which is before you tonight.

## ANALYSIS

The proposed contract amendment fully pays Ratcliff's sub-consultants for work already performed through the value engineering processes, with the exception of two disputed amounts that Ratcliff has agreed to drop. The total amount paid to sub-consultants is $174,040. The amendment pays Ratcliff $79,300 for work already performed during the value engineering processes. Council should note that this amount is heavily discounted from Ratcliff's original estimated loss of $285,364 (see Attachment C). Ratcliff agreed to the discount in order to keep the project moving forward and on track.

## COUNCIL ADOPTED VALUES

Approval of the contract amendment is consistent with the Council adopted value of ***Responsibility*** because the amendment makes the architect and sub-consultants on the job whole for work already performed while still remaining within the project's overall budget. Approval of the amendment is also consistent with the Council adopted value of ***Vision*** because the City Manager negotiated the settlement in order to create the least amount of impact to the overall project budget.

## ALTERNATIVES

Council could choose to not approve the negotiated contract amendment, or to direct staff to further negotiate the amendment. Doing so is not recommended, however, as the sub-consultants could file claims against the Town and Ratcliff has already heavily discounted its fees.

## CONCLUSION

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute a second amendment to agreement with Ratcliff for architectural services in the amount of $253,340, pending receipt of required backup and upon review of the City Attorney.

## ATTACHMENTS

A. Resolution
B. Ratcliff Additional Fee Request Dated July 20, 2016
C. Colma Town Hall Campus Renovation and Addition ADD Service Request (May 5, 2016)

TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

**RESOLUTION NO. 2016-__**
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO THE CONTRACT WITH RATCLIFF FOR DESIGN AND CONSTRUCTION SERVICES IN THE AMOUNT OF $253,340 FOR THE TOWN HALL RENOVATION PROJECT, PENDING RECEIPT OF BACKUP DOCUMENTATION**

The City Council of the Town of Colma does hereby resolve:

**1. Background**.

(a) The original contract was competitively bid in accordance with the Town's Purchasing Ordinance. The City Council directed staff to issue a Request for Proposals (RFP) to solicit proposals from qualifying architectural firms for the Colma Town Hall renovation project. The scope of the RFP included both a Phase I and Phase II, with Phase I including pre-design services and Phase II including design and construction services.

(b) On March 11, 2015, the City Council approved a First Amendment to the Agreement to proceed with Phase II of the project.

(c) Due to additional work for architectural services provided by Ratcliff and its consultants for the management, documentation, and coordination necessary to provide architectural, structural, and specialty consultants, the Town now seeks to enter into a Second Amendment ("Second Amendment") to further compensate Ratcliff.

(d) Ratcliff has indicated that this Second Amendment will fully compensate Ratcliff and all sub-consultants for the work detailed in the proposal for additional services, attached hereto as Exhibit "A."

**2. Order.**

(a) The City Council hereby authorizes the City Manager to negotiate and execute a Second Amendment to the original agreement in the amount of $253,340, based on the proposal for additional services, attached hereto as Exhibit "A."

(b) The City Manager shall not execute this Second Amendment until such time that Ratcliff submits back-up documentation to the Town supporting the cost estimates in the proposal for additional services, attached hereto as Exhibit "A", to the satisfaction of the City Manager and City Attorney.

## Certification of Adoption

I certify that the foregoing Resolution No. 2016-__ was duly adopted at a regular meeting of said City Council held on July 27, 2016 by the following vote:

| Name | Counted toward Quorum | | | Not Counted toward Quorum | |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Present, Recused | Absent |
| Diana Colvin, Mayor | | | | | |
| Helen Fisicaro | | | | | |
| Raquel Gonzalez | | | | | |
| Joseph Silva | | | | | |
| Joanne del Rosario | | | | | |
| Voting Tally | | | | | |

Dated _____

_____
Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk

RATCLIFF

5856 Doyle Street
Emeryville CA 94608
Tel 510 899 6400
www.ratcliffarch.com

July 20, 2016

Mr. Brad Donahue
Director of Public Works
Town of Colma
1198 El Camino Real
Colma, California 94014

Subject: **Proposal for Additional Services #1**
***COLMA TOWN HALL RENOVATION***
Ratcliff Project No. 34003.11

Dear Mr. Donahue:

We are requesting additional services for architectural services provided by Ratcliff and its consultants for the management, documentation, and coordination necessary to provide architectural, structural, and specialty consultants for the expanded scope of work as described below. With this expansion of the work Ratcliff is requesting an increase to our original contract.

**Reference Contracts:**
Programming Phase: Feasibility Study/Programming/Agreement for Architectural Services
Dated: Feb. 26, 2014
Preliminary Design – Construction Administration: Amendment No.1
Dated: Mar 11, 2015

The scope of Additional Services includes:
**Architectural Services**

Ratcliff and its consultants provided additional architectural and engineering services for:

| | | |
|---|---|---|
| • Revised Project & Foundation Design (VE #1 efforts) (Soils Report Impacts) | 15,000 | |
| • Revised Project & Foundation Design (VE #2 efforts) (Cost Estimating due to Market Conditions) | 45,000 | |
| • Mass Grading Package | 19,300 | |
| RATCLIFF Fees: | | $79,300 |

**Consultant Fees for VE #1 and VE #2 Services**

Ratcliff's consultants provided additional engineering services for VE#1 and #2 efforts:

| | | |
|---|---|---|
| • MCS | $1,840 | |
| • BKF | $15,500 | |
| • Degenkolb | $112,500 | |
| • OMM | $12,900 | |
| • McCraken-Woodman | $31,300 | |
| Consultant Subtotal | | $174,040 |
| Consultant Markup 10%: | | $0 |
| **Total:** | ~ | **$253,340** |

Please see attached spreadsheet and consultant proposals for more detailed scope information.

Ratcliff proposes to be compensated for these services, T+M basis, Two Hundred and Fifty-Three Thousand and Three Hundred and Forty Dollars ($253,340) without written authorization by the Owner.

Please feel free to call me should you have any questions regarding our proposal. We look forward to continuing to work with you on this project.

Sincerely,
RATCLIFF

Wm. Blessing

William Blessing
Principal

cc: Diana Mizuhara, Ratcliff Accounting
Dan Wetherell, CEO Ratcliff

# Colma Town Hall Campus
# Renovation and Addition
Ratcliff

**ADD Service Request** 05-May-16

| ITEM | CONTRACT SECTION | REQUEST | FROM | Ratcliff | DESCRIPTION |
|---|---|---|---|---|---|
| **REQUESTED ADD SERVICES for Completed Work** | | | | actual | |
| 1 | OWNER SUPPLIED DATA - (Soils Report updated 1 yr after initial request) | | | | |
| | *quote not requested, so detailed fee request was submitted after new scope was approved, fee request was not approved or denied, T+M applies* | | | | |
| | Attachment 2, page 1, page 4 | 15000 | Ratcliff | 26440 | redesign of Lower Level, Site Plan, extensive VE #1 effort, A+E coordination |
| | | 20,000 | Degenkolb | | studies on three foundation concepts, redesign of foundation system, |
| | Exhibit A, page 2 - revises scope listed | 11900 | WM | | redesign of Lower Level, Site Plan, extensive VE #1 effort, A+E coordination |
| | (PD Phase authorized based on approved Feas. Study) | 6500 | OMM | | redesign of Lower Level, Site Plan, extensive VE #1 effort, A+E coordination |
| | (Feas. Study faulty due to out of date soils report) | 6500 | BKF | | redesign of Lower Level, Site Plan, extensive VE #1 effort, A+E coordination |
| | Revise foundation scheme, lower level | 5880 | SMC | | redesign of Lower Level, Site Plan, extensive VE #1 effort, A+E coordination |
| | | **65780** | | | |
| 2 | OWNER DIRECTIVE - (revise foundation approach at 90%CD) | | | | |
| | *quote not requested, T+M applies* | 45000 | Ratcliff | 167235 | redesign of Lower Level, parts of Upper Level, Site Plan, extensive VE #2 effor |
| | Exhibit A, page 2 - revises scope listed | 70000 | Degenkolb | | redesign of foundation system |
| | (CD Phase authorized based on approved PD Phase - modified by VE#1) | 19400 | WM | | revise both floor plans for VE 2 resolutions |
| | Revise foundation scheme | 6500 | OMM | | revise both floor plans for VE 2 resolutions |
| | Revise scheme based on multiple VE concepts | NA | BKF | | see related Item #4 below. |
| | inorder to address faulty estimating, and 5% redraw clause. | NA | SMC | | |
| | | **140900** | | | |
| 3 | PEER Review - requested by Ratcliff due to faulty estimating | | | | |
| | *quote not requested, T+M applies* | 2365 | Forrel Elsessor | | structural peer review of Degenkolb |
| | Normally not part of basic services - not experessly stated as "excluded" | 0 | Cleary and Assoc. | | geotech peer review of Cornerstone |
| | Ratcliff coordinated reviews | 1200 | TBD | | cost peer review of SMC |
| | | 498 | Ratcliff | 498 | A+E coordination |
| | | **4063** | | | |
| 4 | ADDITIONAL BID PKGS - OWNER DIRECTIVES | | | | |
| | *quotes not requested, T+M applies* | | | | |
| | Attachment 2, page 1 | | | | |
| | Selective Demo Bid | 8000 | Ratcliff | 12000 | incl cost assist, additional meetings, new bid documents and coordination |
| | Selective Demo Bid | 6500 | Degenkolb | | incl cost assist, additional meetings, new bid documents and coordination |
| | Mass Grading Bid | 19300 | Ratcliff | 61,311 | incl cost assist, additional meetings, new bid documents and coordination |
| | Mass Grading Bid | 16000 | Degenkolb | | incl cost assist, additional meetings, new bid documents and coordination |
| | | NA | WM | | |
| | | NA | OMM | | |
| | Mass Grading Bid | 9000 | BKF | | |
| | | **58800** | | | |
| 5 | MISC. EXCLUSIONS - OWNER DIRECTIVES | | | | |
| | *quotes not requested, T+M applies* | | | | |
| | Attachment 2, page 1 | | | | |
| | Exhibit A, page 2 | | | | |
| | Renderings | 18000 | Ratcliff | 14880 | 12 @ 1500 (10hrs each at 150 ave) |
| | FF+E planning | 0 | Ratcliff | 3000 | 8 hrs BB, 8 hours AW (T+M) |
| | | **18000** | | | |
| | | A+E | | Ratcliff | |
| **TOTAL** | | **287543** | | **285364** | |
| **OWNER REQUESTED PROPOSALS** | | | | | |
| 6 | FF+E COORDINATION | | | | |
| | Owner's RFP review | | | | |
| | Coordination Meetings with selected vendor | | | | |
| | Orientation Meeting - design intent, layout, building finishes palette | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Vendor proposal review | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Detail Development assistance | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Installation Review assistance | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | | **12000** | | | |
| 7 | CUSTOM SIGNAGE DESIGN AND COORDINATION | | | | |
| | Custom design for Lobby sign/plaque | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Custom design for Council Chamber sign/plaque | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Custom design for exterior Plaza Entry sign/plaque | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Bid Package for Sign Vendor | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Bid Package review | **12000** | | | |
| 8 | CUSTOM CASEWORK BID PACKAGE AND BID | | | | |
| | Bid Package for Custom Casework Vendor (Design Scope is in Basic Services) | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | Bid Package review | 3000 | Ratcliff | (2 FTE days) | 8 hrs BB, 8 hours AW (T+M) |
| | | **6000** | | | |
| **SUB TOTAL** | | **30000** | | | |
| **TOTAL** | | **317543** | | | |
| Consultant Mark-up 10% | | 18175 | | | |
| **GRAND TOTAL** | | **335718** | | | |

TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

# STAFF REPORT

| | |
|---|---|
| TO: | Mayor and Members of the City Council |
| FROM: | Paul S. Rankin, Contract Finance Director |
| VIA: | Sean Rabé, City Manager |
| MEETING DATE: | July 27, 2016 |
| SUBJECT: | California CAL-Card Program |

## RECOMMENDATION

Staff recommends that the City Council adopt the following:

> RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH US BANK FOR PURCHASE CARD SERVICES (CAL-CARD)

## EXECUTIVE SUMMARY

The Town has been advised by the bank handling some of the current credit cards used by Staff that they will need to be replaced and the new cards will result in a change in the way the Town administers the use of the cards. The State of California allows local public agencies to take advantage of a purchase card program the State developed through a bidding process and US Bank is the vendor providing the services. The program offers purchase restrictions as well as electronic statements which can be imported to the Town finance system.

## FISCAL IMPACT

The program will give the Town the opportunity to earn rebates based on timely payment and the volume of transactions. The program does not levy any per card charge nor is there a minimum dollar volume of purchases required. The purchase cards are designed to be paid each month and will not incur any interest costs.

## BACKGROUND

In the course of conducting Town business, Staff is required to purchase various supplies. In some cases these are relatively small transactions which would be most efficiently obtained from a local retailer. Use of a credit card can be an efficient way for the vendor to obtain prompt payment and also for the Town to consolidate purchases on a single bank card payment. A Purchase Card includes certain control features that facilitate the payment process.

## ANALYSIS

The State of California allows local agencies to utilize the State's Master Agreement with US Bank to obtain purchase card services, known as CAL-Cards. Many local agencies have adopted the program as an efficient means to make small purchases needed for Town operations. The CAL-Card is a VISA purchase card which means that merchants who accept Visa will accept the CAL-Card.

If the CAL-Card program is adopted, the Town will appoint one staff member as the Agency Program Administrator. The Agency Program Administrator will serve as the primary contact point between the Town and US Bank and be responsible for management and oversight of the Town's CAL-Card Program.

The CAL-Card differs from a traditional Bank Card by allowing purchase controls based on the cardholder. The CAL-Card Program establishes Merchant Category Codes which the Agency Program Administrator may use to limit the purchases by certain Town user groups. For example, it may be appropriate to restrict travel and lodging purchases for a user that would typically only obtain supplies with the CAL-Card. The program also allows the agency to set maximum dollar limits for each card holder. Separate limits can be set for each transaction, day, month, quarter, or year. The Agency Program Administrator will also be able to establish transaction limits per day or month. If the program is approved, these controls will be established as part of the program implementation and defined in internal Administrative Procedures.

Each CAL-Card would be issued for use by an individually named cardholder. A monthly statement is produced for each cardholder and the documentation and expense coding will be submitted to Finance. One invoice is generated for all activity during a billing period. The program requires payment within 45 days of the invoice. This processing time is more flexible than the approximately 20 day grace period with the current provider of these services.

The CAL-Card Program also offers at no additional cost access to an on-line records system. This system allows organizations to further automate their accounts payable business processes by helping to diminish paper use, increase controls, and reduce risk. This streamlines processes associated with authorizing, tracking, purchasing and reconciling the Town's purchases. It also offers the opportunity to electronically post transaction data to the general ledger using a data import file.

The CAL-Card Program also gives the Town the opportunity to earn rebates based on timely payment and the Town's volume of transactions.

In addition to the small purchases made under the current Bank Card program, Staff would propose that Town related business travel expenditures also be an allowed component of the program. The current credit cards are used to make arrangements for meetings and conferences and the CAL-Card could also be used for this activity. The administrative procedures developed as part of the implementation will comply with the purchasing requirements established by the Town Purchasing policies.

In order to implement the CAL-Card Program, the Town will need to submit an agreement to US Bank along with agency financial information. A proposed Resolution (Attachment 1) would authorize the City Manager to execute the agreement on behalf of the Town. In addition to developing written procedures, there will need to be coordination of card limits, merchant access, and training. Once the Cal-Card program is implemented Staff will proceed with cancelling the existing Business Cards.

### Reasons For the Recommended Action

The current cards offer fewer safeguards to monitor and control spending and this will improve the ability to automate statement payments.

## COUNCIL ADOPTED VALUES

The Staff recommendation is consistent with the Council adopted values of:

- *Responsibility*: Making decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.

## CONCLUSION

The implementation of the Purchase Card will enhance the payment process while maintaining appropriate control of public monies. Staff recommends that the City Council adopt the resolution.

## ATTACHMENTS

A. Resolution
B. Agreement

TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

**RESOLUTION NO. 2016-##**
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH US BANK FOR PURCHASE CARD SERVICES (CAL-CARD)**

The City Council of the Town of Colma does resolve as follows.

## 1. Background

(a) The Town desires to annually utilize purchase cards for certain purchases related to Town business in a controlled and efficient manner.

(b) The State of California Department of General Services has selected US Bank through a competitive process to administer a statewide program to offer purchase cards to local governmental agencies.

(c) The ability to obtain purchase cards under the terms and conditions of the State CAL-Card program offers certain advantages to the Town as part of a larger program.

(d) The use of the purchase cards will be in accordance with internal administrative procedures to be implemented by the City Manager to insure conformance with Town purchasing policies and to protect against the inappropriate use of the purchase card.

## 2. Findings

(a) In order to participate in the program the Town must submit an executed agreement that that has been approved as to form by the City Attorney.

(b) In order to proceed with implementation certain documents will be required by US Bank related to the application process.

## 3. Order

(a) The City Manager is authorized to execute the State of California Participating Addendum No 7-14-99-22 Local Agency Subscription Agreement with US Bank, to provide Purchase Card services under the State CAL-Card program, with such technical amendments as may be deemed appropriate by the City Attorney.

(b) The City Manager shall direct Staff to deliver any additional information required by US Bank, and to develop and implement administrative procedures following best practices to insure an effective use of the CAL-Card program.

## Certification of Adoption

I certify that the foregoing Resolution No. 2016-__ was duly adopted at a regular meeting of said City Council held on July 27, 2016 by the following vote:

| Name | Counted toward Quorum | | | Not Counted toward Quorum | |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Present, Recused | Absent |
| Diana Colvin, Mayor | | | | | |
| Helen Fisicaro | | | | | |
| Raquel Gonzalez | | | | | |
| Joseph Silva | | | | | |
| Joanne del Rosario | | | | | |
| Voting Tally | | | | | |

Dated _____

_____
Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk

# State of California Participating Addendum No. 7-14-99-22
# Local Agency Subscription Agreement

This Local Agency Subscription Agreement (**"Local Agency Subscription Agreement"**) constitutes an agreement to participate under the terms and conditions of the Purchase Card Services Participating Addendum No. 7-14-99-22 (**"Participating Addendum"**) signed September 29, 2014 and entered into by U.S. Bank National Association (**"U.S. Bank"**) and the State of California, Department of General Services (**"State"**). This Local Agency Subscription Agreement is entered into by U.S. Bank and the **"Local Governmental Agency"** identified herein, and shall become effective upon signing by U.S. Bank (**"Effective Date"**).

**RECITALS**

**A.** The State has entered into the Participating Addendum for the purpose of making available a Purchase Card Program as described in the Participating Addendum for use by State of California state agencies and local governmental agencies;

**B.** The State is willing to permit Local Governmental Agency to participate in the Purchase Card Program provided that Local Governmental Agency assumes all responsibility and liability for Local Governmental Agency's performance of the terms and conditions of the Participating Addendum as if Local Governmental Agency was the entity signing the Participating Addendum, but Local Governmental Agency shall not be liable for the acts and omissions of the State under the Participating Addendum or this Local Agency Subscription Agreement. The State shall not bear liability or responsibility for Local Governmental Agency under the Participating Addendum or this Local Agency Subscription Agreement; and

**C.** Local Governmental Agency has received a copy of the Participating Addendum from the State, and after a thorough review of the Participating Addendum, desires to participate as a Local Governmental Agency under the Participating Addendum. Participating Addendum No. 7-14-99-22 is incorporated into this Local Agency Subscription Agreement in its entirety and all terms and conditions of the Participating Addendum apply to the Local Governmental Agency.

**AGREEMENT**

Now therefore, in consideration of the foregoing Recitals, the mutual premises and covenants set forth in the Participating Addendum, which are incorporated herein by reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all parties agree as follows:

**1.** **Local Governmental Agency Responsibility.** Local Governmental Agency agrees to accept and perform all duties, responsibilities and obligations required of Participating Agencies as set forth in the Participating Addendum.

**2.** **Authority.** The representations, warranties and recitals of Local Governmental Agency set forth in this Local Agency Subscription Agreement and the Participating Addendum constitute valid, binding and enforceable agreements of Local Governmental Agency. All extensions of credit made to Local Governmental Agency pursuant to this Local Agency Subscription Agreement and the Participating Addendum will be valid and enforceable obligations of Local Governmental Agency and Local Governmental Agency shall pay to U.S. Bank all Debts incurred by Local Governmental Agency in accordance with the terms of the Participating Addendum and this Local Agency Subscription Agreement. The execution of this Local Agency Subscription Agreement and the performance of the obligations hereunder and under the Participating Addendum are within the power of Local Governmental Agency, have been authorized by all necessary action and do not constitute a breach of any contract to which Local Governmental Agency is a party or is bound.

**3.** **Purpose of Card Use.** Local Governmental Agency declares that cards shall be used for official Local Governmental Agency purchases only, and shall not be used for individual consumer purchases or to incur consumer debt. Local Governmental Agency warrants that it possesses the financial capacity to perform all of its obligations under the Participating Addendum and this Local Agency Subscription Agreement.

**4.** The notice address for Local Governmental Agency is:

TOWN OF COLMA
1198 El Camino Avenue
Colma, California 94014
Attn: Sean Rabe, City Manager

**5.** **Billing Statements.** Local Governmental Agency may choose to have Statements for all Accounts with Central Billing (1) delivered by U.S. mail ("**Paper Statements**"); (2) made available electronically ("**Electronic Statement(s)**") for Local Governmental Agency to access on its own through the account management system or (3) both delivered as Paper Statements and made available as Electronic Statements. If Local Governmental Agency chooses Electronic Statements only, that is, option (2) herein, U.S. Bank will suppress delivery of Paper Statements.

**6.** **Authorization.** Local Governmental Agency certifies to U.S. Bank that the person executing this Local Agency Subscription Agreement is authorized by Local Governmental Agency in accordance with its organization rules and applicable law to bind


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Local Governmental Agency to the terms and conditions of this Local Agency Subscription Agreement, including the authority to incur Debt in the name of Local Governmental Agency.

7. **Execution.** By signing below, the individual(s) signing this Local Agency Subscription Agreement is/are acting in his or her capacity as an authorized signing officer of Local Governmental Agency and not in his or her personal capacity, and certifies and warrants that (1) all action required by Local Governmental Agency organizational documents to authorize the signer(s) to act on behalf of Local Governmental Agency in all actions taken under this Local Agency Subscription Agreement, including but not limited to, the authority to incur Debt on behalf of Local Governmental Agency, has been taken, (2) each signer is empowered in the name of and on behalf of Local Governmental Agency to enter into all transactions contemplated in this Local Agency Subscription Agreement, and (3) the signatures appearing on all supporting documents of authority, if any, are authentic.

8. **Reliance.** Local Governmental Agency has read, understands and agrees to all terms and conditions in this Local Agency Subscription Agreement and the Participating Addendum, and U.S. Bank is entitled to act in reliance upon the authorizations and certifications set forth herein.

IN WITNESS WHEREOF, the parties have, by their authorized representatives, executed this Local Agency Subscription Agreement.

| | |
|---|---|
| Dated this _____ day of _____, 20___ | Dated this _____ day of _____, 20___ |
| **By Local Governmental Agency:** | **By U.S. Bank:** |
| TOWN OF COLMA<br>(Name) | U.S. Bank National Association |
| (Signature of Authorized Signer) | (Signature of Authorized Signer) |
| Sean Rabe<br>(Printed Name of Authorized Signer) | Michael C. Leppones<br>(Printed Name of Authorized Signer) |
| City Manager<br>(Printed Title of Authorized Signer) | Vice President<br>(Printed Title of Authorized Signer) |

**Approved as to form:**

(Signature of Attorney for Local Governmental Agency)

Christopher Diaz, City Attorney
(Printed Name of Attorney)


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**Vendor Number:** To be completed by U.S. Bank

## Section 1: W-9 information

U.S. Bank requires your taxpayer identification number (TIN) and filing information for all payments that we process. If required, we also use this information to report to the IRS any income paid to you. Please complete Section 1 in its entirety. A Legal Structure type *must* be selected. If exemptions from backup withholding (exempt payee codes) or FATCA reporting (FATCA reporting codes) apply to you, please ensure that the exemption code is entered. The FATCA reporting code is only for payments outside the U.S.

| **Exempt payee codes:** | **Exemption from FATCA reporting code:** |
|---|---|
| 1 – An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)<br>2 – The United States or any of its agencies or instrumentalities<br>3 – A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities<br>4 – A foreign government or any of its political subdivisions, agencies or instrumentalities<br>5 – A corporation<br>6 – A dealer in securities or commodities required to register in the United States, District of Columbia, or a possession of the United States<br>7 – A futures in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States<br>8 – A real estate investment trust<br>9 – An entity registered at all times during the tax year under the investment Company Act of 1940<br>10 – A common trust operated by a bank under section 584(a)<br>11 – A financial institution<br>12 – A middleman known in the investment community as a nominee or custodian<br>13 – A trust exempt from tax under section 664 or described in section 4947 | A – An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)<br>B – The United States or any of its agencies or instrumentalities<br>C – A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities<br>D – A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)<br>E – A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)<br>F – A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state<br>G – A real estate investment trust<br>H – A regulated investment company as defined in section 851 or an entity registered at all times during the ta year under the Investment Company Act of 1940<br>I – A common trust fund as defined in section 584(a)<br>J – A bank as defined in section 581<br>K – A broker<br>L – A trust exempt from tax under section 664 or described in section 4947(a)(1)<br>M – A tax exempt trust under a section 403(b) plan or section 457(g) plan |

## Section 2: Automated Clearing House (ACH)

ACH is U.S. Bank's preferred payment method. Signing up for ACH eliminates postal delays and allows U.S. Bank to pay you (vendor) through an automated electronic deposit into your preferred checking account. Funds are credited within 1-2 business days of the payment date for U.S. Bank account holders and 3-5 business days for non-U.S. Bank account holders. A remittance advice detailing the invoice number(s), date and dollar amount will be sent to you via e-mail if an e-mail address is provided or by mail when the payment has been sent electronically to your account. *Please acquire your routing number and account number from a check (not from a deposit slip).*

## Section 3: MWBEs & DVBEs

*Minority and Women Owned Business Enterprises (MWBEs)* - U. S. Bank is committed to building relationships with certified MWBEs, defined as companies that are at least 51 percent owned, controlled and managed by one or more of the following categories - African American, Hispanic American, Asian Pacific American, Asian Indian American, Native American, Woman. Please include a copy of certification. *Disabled Veteran Businesses (DVBE)* - The law defines a disabled veteran as a United States military, naval or air service veteran with a service related disability of at least 10 percent. Please include a copy of certification.

## Foreign and Sole Proprietor

If you are a sole proprietor, please complete and submit a W-9 form or Form 8233 from the IRS. For all other legal structures for foreign vendors, please complete a W-8BEN form or W-8ECI form

## Submission

U.S. Bank will not process payments without a properly completed W-9 form on file. Send the signed and completed W-9 form to U.S. Bank with your completed contracts or other legal document (rebate addenda, etc.).


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Return completed form to U.S. Bank with completed contracts or other legal documents (rebate addenda, etc.)

**Section I: W-9**

**Vendor Number:**(to be completed by U.S. Bank)
*Must be completed and returned for payments to be processed.*

Legal Name

Trade Name

Address | City | State | ZIP

Phone | Fax | Federal Taxpayer Identification Number (TIN)*

TIN Type (Check one)
☐ Social Security Number ☐ Employer Identification Number
***MUST** match the person/entity listed above

*Legal Structure*
☐ Sole Proprietorship
☐ Corporation
☐ Partnership
☐ Tax Exempt Organization
☒ Government Agency
☐ Other, please specify _____

*If LLC, please select one of the following:*
☐ LLC C Corporation
☐ LLC Partnership
☐ LLC Sole Proprietor ship (Legal Name/SSN Required)
Legal Name_____
SSN_____

***Exemptions:***
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____

**Section 2: Automated Clearing House** *(Direct Deposit)* U.S. Bank's preferred payment method.

☐Authorization Agreement for Automatic Deposits (ACH Credits)

I (We) hereby authorize U.S. Bank, on behalf of any affiliate for which it processes payments, hereinafter called COMPANY, to initiate credit entries to my (our) account indicated below and the depository/financial institution named below, hereinafter called BANK, to credit the same to such account.

*E-mail address1 (to receive electronic remittance advices)*

**cps.rebates@usbank.com**
*E-mail address2*

**Checking Account Information** (Please attach a voided check or copy of a check with MICR coding)

*Routing/ABA Number* | *Account Number* | *Bank Name* | *Branch*

*City* | *State* | *ZIP* | *Phone*

This authority is to remain in full force and effect until COMPANY has received written notification from me (us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonably opportunity to act on it.

**Section 3: MWBE & DVBE**

Is your company certified as a minority/ woman owned business?
☐ No ☐Yes (if yes, a copy of your minority/woman owned certification MUST BE INCLUDED)
MWBE Business Status (check all that apply):
☐ African American
☐ Hispanic American
☐ Asian Pacific American
☐ Asian Indian American
☐ Native American
☐ Woman

Is your company certified as a Disabled Veteran Business Enterprise?
☐ No ☐Yes (if yes, a copy of your DVBE certification MUST BE INCLUDED)

This will certify to U.S. Bank that I have read the requirements cited on this form, and the company classification(s) I have selected above are true and correct. I will advise U.S. Bank if our classification should change.

Section 4: Signature (required)

Name (Print):_____Title**:** _____

Signature_____Date_____

For Internal Use Only: DUNs# _____


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# CERTIFICATE OF AUTHORITY
# ***INSTRUCTIONS***

**Before completing the Certificate of Authority, please read:**

- If the Local Agency Subscription Agreement being signed was "**approved as to form**" by an attorney, it is not necessary to complete the attached Certificate of Authority (C of A).
- If the Local Agency Subscription Agreement was not "approved as to form" by an attorney, please complete the attached C of A (page 7).
- Be sure to date all documents upon signing. Undated documents cannot be accepted and will be returned for dating.

**Signing Instructions for**
**Certificate of Authority**

Note that three (3) different individuals must sign and date the C of A. If the Local Governmental Agency does not have three individuals who are authorized to sign on behalf of the Local Governmental Agency, please refer to page 6.

**Section 1** **Organizational Information**- Enter the legal Local Governmental Agency name and the tax ID number on the C of A. Note: The legal name of the Local Governmental Agency name is required. The legal name is usually the name on the Local Governmental Agency's financial statements.

**Section 2** **Authorized Persons** - The individual who signed the Local Agency Subscription Agreement must complete and sign in Section 2.

**Section 3** **Execution Requirement** - Check only one box in Section 3 to indicate how many individuals (either 1 or 2) that the Local Governmental Agency requires to sign legal documents on behalf of the Local Governmental Agency.

**Section 4** **Execution** - No action required.

**Section 5** **Certification** - Two (2) individuals must sign and date Section 5 as well as insert their names and titles. Note: The individual(s) who signed in Section 2 ***cannot*** sign in Section 5 or this document is invalid.

- An officer of the Local Governmental Agency ("**Officer One**") is required to sign the top area of Section 5 attesting to the signatures in Section 2.
- One other officer of the Local Governmental Agency ("**Officer Two**") must sign the bottom area of Section 5 attesting to the signature of Officer One.

Please see examples below:

**5.** **Certification**. I certify that I am the Secretary and I am acting in my official capacity as an authorized officer who has been given the authority by the Local Governmental Agency to certify that the Authorized Person(s) has/have the full power and authority under applicable law and the governance rules relating to the Local Governmental Agency to execute and deliver to U.S. Bank, on behalf of the Local Governmental Agency, and to bind the Local Governmental Agency under, the Documents for the purpose of establishing and extending the Services. I also certify that the name(s) and title(s) of the Authorized Person(s) set forth above are correct and that the signature appearing beside each name is a true and genuine specimen of his/her signature.

**JOHN DOE**

**⇑ PRINTED NAME OF THE SECRETARY OF THE LOCAL GOVERNMENTAL AGENCY ⇑ (CANNOT BE AN AUTHORIZED PERSON LISTED IN SECTION 2)**

⇑ Signature of the Secretary of the Local Governmental Agency ⇑ **DATE**

I certify that I am an officer of the Local Governmental Agency, and as such, I certify that the above-named Secretary is acting in such capacity on behalf of the Local Governmental Agency, the signature below is my genuine signature and the signature above is the genuine signature of such Secretary.

**JANE SMITH, TREASURER**

**⇑ PRINTED NAME & TITLE OF INDIVIDUAL SIGNING BELOW ⇑ (CANNOT BE AN AUTHORIZED PERSON LISTED IN SECTION 2)**

⇑ Signature ⇑ Attested by One (1) Other Individual of the Local Governmental Agency **DATE**


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## EXAMPLES TO Signing Instructions
## for
## Certificate of Authority (C Of A)

**EXAMPLE 1:**

1. One (1) person is required to sign legal documents, and
2. Local Governmental Agency has more than two (2) authorized signatories who can attest to signatures of other signatories.

Local Agency Subscription Agreement: Person A signs.
C of A Section 2: Person A completes and signs.
C of A Section 3: First box is checked.
C of A Section 5: Person B (preferably the Secretary) signs attesting to the signature of Person A
**AND**
Person C signs attesting to Person B's authority and signature.

**EXAMPLE 2:**

1. Two (2) people are required to sign legal documents, and
2. Local Governmental Agency has more than two (2) authorized signatories who can attest to signatures of other signatories.

Local Agency Subscription Agreement: Persons A and B sign.
C of A Section 2: Persons A and B complete and sign.
C of A Section 3: Second box is checked.
C of A Section 5: Person C (preferably the Secretary) signs attesting to the signatures of Persons A and B
**AND**
Person D signs attesting to Person C's authority and signature.

**EXAMPLE 3:**

1. One (1) person is required to sign legal documents, and
2. Local Governmental Agency has only one (1) other authorized signatory who can attest to signatures of other signatories.

Local Agency Subscription Agreement: Person A signs.
C of A Section 2: Person A completes and signs.
C of A Section 3: First box is checked.
C of A Section 5: Person B (preferably the Secretary) signs attesting to the signature of Person A.
**NOTE**: If the Secretary can sign the C of A, than they cannot be Person A; they must be Person B.
**AND**
Person A signs attesting to Person B's authority and signature.

**EXAMPLE 4:**

1. Two (2) people are required to sign legal documents, and
2. Local Governmental Agency has only one (1) other authorized signatory who can attest to signatures of other signatories.

Local Agency Subscription Agreement: Persons A and B sign.
C of A Section 2: Persons A and B complete and sign.
C of A Section 3: Second box is checked.
C of A Section 5: Either Person A or B (preferably the Secretary) signs attesting to the signature of Persons A and B.
NOTE: If the Secretary can sign the C of A, than they must sign in Section 4 and the other person must sign in Section 5 AND the Person who did not sign Section 4 signs attesting to the signing authority and signature of the person who did sign in Section 4, subject to the note above.


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# CERTIFICATE OF AUTHORITY

1. **Organizational Information.** This Certificate of Authority has been completed on behalf of the following Local Governmental Agency (the "Local Governmental Agency"):

   Local Governmental Agency Legal Name: _____

   Federal Tax Identification Number: _____

2. **Authorized Persons.** In accordance with the governance rules relating to the Local Governmental Agency, the following individuals (the "Authorized Person(s)") are authorized, on behalf of the Local Governmental Agency, to execute and deliver to U.S. Bank National Association ("U.S. Bank") and/or its affiliates the applicable contract(s), any applicable addenda and/or amendments thereto and any other documents or writings required by U.S. Bank (collectively, the "Documents") for the purpose of establishing one (1) or more card programs, extending credit and providing related services to the Local Governmental Agency with U.S. Bank in the United States (collectively, the "Services"):

| Name | Title | Signature |
|---|---|---|
| | | |
| | | |

3. **Execution Requirements.** The governance rules relating to the Local Governmental Agency require the following number of Authorized Persons to sign the Documents for the Services (choose only one box):

   ☐ One (1) Authorized Person
   ☐ Two (2) Authorized Persons

4. **Execution**. By signing the Documents, each individual signing in his or her capacity as an authorized signing officer of the Local Governmental Agency and not in his or her personal capacity, certifies and warrants that (a) all action required by Local Governmental Agency's organizational documents to authorize the signer(s) to act on behalf of the Local Governmental Agency in all actions taken under the Documents, including but not limited to, the authority to incur debt on behalf of the Local Governmental Agency, has been taken, (b) each signer is empowered in the name of and on behalf of the Local Governmental Agency to enter into all transactions and Services contemplated in the Documents, and (c) the signatures appearing on all supporting documents of authority are authentic.

5. **Certification**. I certify that I am the and I am acting in my official capacity as an authorized officer who has been given the authority by the Local Governmental Agency to certify that the Authorized Person(s) has/have the full power and authority under applicable law and the governance rules relating to the Local Governmental Agency to execute and deliver to U.S. Bank, on behalf of the Local Governmental Agency, and to bind the Local Governmental Agency under, the Documents for the purpose of establishing and extending the Services. I also certify that the name(s) and title(s) of the Authorized Person(s) set forth above are correct and that the signature appearing beside each name is a true and genuine specimen of his/her signature.

_____
⇑ Printed Name of the of the Local Governmental Agency⇑ (Cannot be an Authorized Person listed in Section 2)

_____
⇑ Signature of the of the Local Governmental Agency⇑ **Date**

I certify that I am an officer of the Local Governmental Agency, and as such, I certify that the above-named is acting in such capacity on behalf of the Local Governmental Agency, the signature below is my genuine signature and the signature above is the genuine signature of such .

_____
⇑ Printed Name & Title of Individual Signing Below ⇑ (Cannot be an Authorized Person listed in Section 2)

_____
⇑ Signature ⇑ Attested by One (1) Other Individual of the Local Governmental Agency **Date**


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TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

# STAFF REPORT

| | |
|---|---|
| TO: | Mayor and Members of the City Council |
| FROM: | Brad Donohue, Director of Public Works |
| VIA: | Sean Rabé, City Manager |
| MEETING DATE: | July 27, 2016 |
| SUBJECT: | Negotiate and Award the Remainder of the Foundation, Utility and Mass Grading Work for the Town Hall Renovation Project. |

---

## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

> RESOLUTION CONFIRMING REJECTION OF ALL BIDS RECEIVED FOR TOWN HALL RENOVATION PROJECT AND ELECTING, BY A FOUR-FIFTHS VOTE OF THE COUNCIL, TO PERFORM THE FOUNDATION, MASS GRADING AND UTILITY WORK ON THE PROJECT BY FORCE ACCOUNT, ALL PURSUANT TO CEQA GUIDELINES 15303,15331 AND 15332

## EXECUTIVE SUMMARY

The proposed resolution would confirm the previous decision by the City Council to reject all bids received and authorize the City Manager to negotiate, award and execute a contract to complete the foundations, concrete slabs, under slab utilities and exterior underground utility work for the Town Hall Renovation Project.

## FISCAL IMPACT

Staff has estimated cost for the foundation, utility and mass grading work plus contingencies is $1,100,000. The cost of this phase of construction is still within the budget parameters set for the construction of the New Town Hall facility.

## BACKGROUND

The remainder of the Town Hall Renovation Project ("Project") was sent out to bid on February 22, 2016 with a bid opening date of March 31, 2016. This portion of the Project included site grading, remaining foundation work, and the remainder of the build out of the Town Hall Facility. The Town held a mandatory pre-bid meeting on March 11, 2016 and seven prime contractors attended the meeting. Of the seven contractors who attended the pre-bid meeting only three submitted timely bids.

Staff reviewed the submitted bids and after further analysis, came before City Council at the May 11, 2016 Regular City Council meeting and recommended the City Council reject all bids that were submitted to the Town for what was classified as the remaining phase of construction for the Project. The recommendation was based on the fact that one bid was not responsive and the two other bids though responsive clearly exceeded the Town's proposed construction budget for the Project.

Staff has questioned several of the contractors who attended the pre-bid meeting and inquired why they did not submit a bid. We were told the bidding climate is such that the larger construction firms are busy and are not bidding aggressively and many of the mid-sized contractors appeared to be ready and willing to bid projects within their bonding capacity, this project just fell a little bit beyond their bonding capabilities. In an attempt to attract those mid-sized contractors, which Staff believes will keep the pricing in line with the budgets established. Staff has broken the construction project into distinct phases. Doing so reduces the scope of work in the various phases and allows more contractors to bid on the specialized phases of work.

## ANALYSIS

On March 31, 2016 staff received bids from general contractors to build out the remainder of the Project which included the remainder of the foundation, mass grading and site utility work. On May 11, 2016, the City Council rejected the three submitted bids, and instructed Staff to be resourceful and repackage the Project and rebid it in order to obtain more competitive pricing.

In reevaluating the bids received, staff has determined that the foundation, utility and mass grading work can be more economically performed by force account in accordance with California Public Contract Code section 22038. In accordance with California Public Contract Code section 22038, the Town furnished written notice to the apparent low bidder submitting a responsive bid, Alpha Bay Builders, Inc., confirming the City Council's previous decision to reject all bids on the Project and of its intention to have a portion of the Project (the foundation, utility and mass grading work) performed by force account.

Staff is requesting that the City Council: (i) confirm rejection of all bids on the Project; (ii) find that the foundation, utility and mass grading work on the Project can be more economically done by force account and elect, by four-fifths vote, to perform the foundation, utility and mass grading work on the Project by force account in accordance with California Public Contract Code section 22038; and (iii) authorize the City Manager to negotiate, award and execute a contract to complete the foundation, utility and mass grading work on the Project.

## COUNCIL ADOPTED VALUES

The Project was sent out to bid, all bids were rejected. The City Council has taken a ***responsible*** approach to seeing the construction and completion of the Town Hall Facility by negotiating the foundation, utility and mass grading work on the Project.

## ALTERNATIVES

The City Council could choose to not approve the resolution allowing the City Manager to negotiate and award a contract for the remainder of the grading, foundation and utility work. Doing so, however, is not recommended because the work was previously bid out, the responses were not favorable and it is anticipated that new bids will not yield better results.

## CONCLUSION

Staff recommends the City Council approve the attached resolution confirming rejection of all bids on the Project, finding that the foundation, utility and mass grading work on the Project can be more economically done by Force Account and authorizing the City Manager to negotiate, award and execute a contract not exceeding a budget amount of $1,100,000 with a qualified contractor to complete the foundation, utility and mass grading work on the Project.

## ATTACHMENTS:

A. Resolution

TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

**RESOLUTION NO. 2016-__**
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION CONFIRMING REJECTION OF ALL BIDS RECEIVED FOR TOWN HALL RENOVATION PROJECT AND ELECTING, BY A FOUR-FIFTHS VOTE OF THE COUNCIL, TO PERFORM THE FOUNDATION, MASS GRADING AND UTILITY WORK BY FORCE ACCOUNT PURSUANT TO CEQA GUIDELINES 15303,15331 AND 15332**

The City Council of the Town of Colma does hereby resolve:

## 1. Background.

(a) The Town of Colma ("Town") advertised for bids for the Town Hall Renovation Project ("Project") on February 22, 2016, and received three bids.

(b) The lowest bid was non-responsive and the remaining bids from Alpha Bay Builders, Inc. and USS Cal Builders, Inc., were in the amount of $10,345,449 and $12,484,810, respectively.

(c) These bids far exceeded the Engineer's Estimate for the Project, which the Town reevaluated and determined to be a reasonable estimate of the Project cost.

(d) The City Council previously rejected all bids received on the Project at its meeting held on May 11, 2016, and directed staff to rebid the Project.

(e) The Town has re-reviewed the bids from the two responsive bidders and determined that a portion of the Project can be more economically performed by force account in accordance with California Public Contract Code section 22038.

(f) In accordance with California Public Contract Code section 22038, the Town furnished written notice to the apparent low bidder submitting a responsive bid, Alpha Bay Builders, Inc., confirming the rejection of all bids on the Project and of its intention to have a portion of the Project performed by force account.

(g) The Town now desires to confirm rejection of all bids and to have the foundation, utility and mass grading work on the Project done by force account, authorizing staff to negotiate a contract for the same.

## 2. Order.

(a) The City Council hereby finds that the forgoing recitals are true and correct.

(b) Upon reevaluation, the City Council hereby finds that the Engineer's Estimate for the Project is a reasonable estimate of the Project cost.

(c) After re-reviewing the bids received on this Project, the City Council hereby finds that a portion of the Project can be more economically performed by force account. Accordingly, the Town has furnished written notice to Alpha Bay Builders, Inc., confirming the rejection of all

bids on the Project and of the Town's intention to have a portion of the Project performed by force account.

(d) The City Council hereby reconfirms rejection of all bids received on this Project.

(e) The City Council hereby declares that the foundation, utility and mass grading work on the Project can be performed more economically by force account and elects, by four-fifths vote, to have that portion of work on the Project done by force account in accordance with California Public Contract Code section 22038.

(f) The City Council hereby authorizes the City Manager to negotiate, award and execute a contract for the foundation, utility and mass grading work on the Project in an amount not to exceed $1,100,000, with such contract subject to review and approval by the City Attorney.

**Certification of Adoption**

I certify that the foregoing Resolution No. 2016-__ was duly adopted at a regular meeting of said City Council held on July 27, 2016 by the following vote:

| Name | Counted toward Quorum | | | Not Counted toward Quorum | |
|---|---|---|---|---|---|
| | Aye | No | Abstain | Present, Recused | Absent |
| Diana Colvin, Mayor | | | | | |
| Joanne del Rosario | | | | | |
| Helen Fisicaro | | | | | |
| Raquel Gonzalez | | | | | |
| Joseph Silva | | | | | |
| Voting Tally | | | | | |

Dated _____

_____
Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk

# STAFF REPORT

| | |
|---|---|
| TO: | Mayor and Members of the City Council |
| FROM: | Sean Rabé, City Manager |
| MEETING DATE: | July 27, 2016 |
| SUBJECT: | 2015/16 Grand Jury Response |

## RECOMMENDATION

Staff recommends that the City Council approve:

> MOTION APPROVING THE TOWN'S RESPONSE TO THE 2015/16 GRAND JURY REPORT RE: BODY WORN CAMERAS FOR POLICE OFFICERS

## EXECUTIVE SUMMARY

The City Council is required under Penal code section 933.05 to respond to the Grand Jury Report. The draft response is detailed in the Analysis section of this staff report and a draft of the proposed response letter is attached as Attachment B.

## FISCAL IMPACT

There are no fiscal implications associated with the approval of the Town's response to the Grand Jury Report.

## BACKGROUND

The County Grand Jury is a volunteer body of 19 citizens, selected at random from a pool of nominees, to investigate local governmental agencies and make recommendations to improve the efficiency of local government. The 2015/16 Final Report contains findings and recommendations on a number of subjects, including one topic that is applicable to the Town of Colma. The Presiding Judge of the County Superior Court has formally requested that the Town review the report and file a written response indicating the following:

- That the Town agrees or disagrees, in whole or in part, with the finding;
- That the recommendation has been implemented, will be implemented, requires further analysis, or will not be implemented; and
- An explanation of the reasons for any disagreement with findings or recommendations.

## ANALYSIS

### Grand Jury Findings

The proposed 2015/16 Grand Jury response, which includes the Grand Jury's findings and recommendations, is attached as Attachment B.

## CONCLUSION

Staff recommends that the City Council approve the Town's proposed response to the 2015/16 Grand Jury report regarding Body Worn Cameras by Police Officers.

## ATTACHMENTS

A. Excerpts from Grand Jury Report
B. Draft response letter for 2015/16 Grand Jury Report section entitled, “Body Cameras – The Reel Truth.”

# BODY CAMERAS—THE REEL TRUTH

**Issue** | **Summary** | **Background** | **Discussion** | **Findings** | **Recommendations**
**Requests for Responses** | **Methodology** | **Bibliography** | **Appendixes** | **Responses**

## ISSUE

What is the status of local law enforcement's use of officer body-worn cameras?

## SUMMARY

Recent officer-involved shootings around the country, including the 2014 shooting in Menlo Park,[1] have focused public attention on the use of body-worn cameras by law enforcement agencies. The 2015-2016 San Mateo County Civil Grand Jury investigated the use of body-worn cameras by local law enforcement and discovered the following:

- Sixteen independent police departments and the Sheriff's Office provide local law enforcement in San Mateo County. The Grand Jury surveyed all of these agencies regarding use of body-worn cameras.
- Five police departments are currently using body-worn cameras.
- The Grand Jury interviewed representatives from the Sheriff's Office and five of the 11 police departments not using body-worn cameras. All six of these agencies have considered or are considering the use of body-worn cameras.
- Among those agencies that have not currently deployed body-worn cameras, the Grand Jury discovered common concerns regarding the cost, policy development (including civil rights concerns), impact of future camera technology, and unknown future legal mandates.
- Each local law enforcement agency utilizing body-worn cameras weighed these concerns. Some found innovative cost-reduction strategies and all developed policies and practices for their use.

After reviewing the literature on the advantages and disadvantages of police use of body-worn cameras and conducting over 25 interviews with local law enforcement commanders, line officers, police union representatives, and other interested parties, the Grand Jury has concluded that there are several excellent reasons for law enforcement to employ body-worn cameras. The costs associated with the acquisition and operation of body-worn cameras have decreased over the past several years, making this technology much more affordable. Standardized policies for use have been developed by professional police organizations. These guidelines have been modified and adopted by the local police departments using body-worn cameras. These existing policies may well serve as templates for other local law enforcement agencies.

[1] CBS SF Bay Area, *Menlo Park Police Shoot, Kill Armed Burglary Suspect; Officer Injured during Foot Chase*, November 11, 2014. http://sanfrancisco.cbslocal.com/2014/11/11/menlo-park-police-shoot-officer-injured-during-foot-chase/.

After weighing the advantages and disadvantages of body-worn cameras, the Grand Jury recommends that:

- All law enforcement agencies in San Mateo County adopt body-worn cameras.
- The Board of Police Commissioners of the Broadmoor Police Protection District and the city councils of those communities that have not adopted body-worn cameras review use with their respective chief of police to determine an appropriate body-worn camera implementation plan and advise the public of their plan by November 30, 2016.
- All law enforcement agencies in the County implement body-worn camera systems with the assistance of city/county administration by October 31, 2017.

## BACKGROUND

According to the American Civil Liberties Union (ACLU), "the August 2014 shooting of Michael Brown in Ferguson, Missouri, and the subsequent protests and civil unrest focused new public attention on the problem of alleged police violence—and on the possibility that body-worn cameras might be part of the solution."[2]

The above incident, as well as other recent officer-involved shootings in the news, has created a lack of confidence in law enforcement by some of the public. The *perception* that law enforcement is not accountable to citizens for its actions is a dangerous development and is troublesome for police professionals and concerned citizens alike. The existence and media replays of bystander videos and police car dashboard and body-worn cameras have contributed to a heightened awareness regarding the use of force by members of law enforcement.

Through interviews of local law enforcement, the Grand Jury learned of incidents where the use of video evidence by law enforcement was of significant assistance in determining whether allegations of excessive use of force or improper behavior by police officers were valid. In such cases, video evidence may be beneficial, but in addition, it can also be valuable in cases where complaints against a police officer for being rude or unprofessional need to be resolved. In one example, a city police chief recounted to the Grand Jury a story of a young man's father calling to complain about the treatment his son received from a police officer when issuing a traffic citation. When invited in to review the video, both father and son saw that the officer acted appropriately. The Grand Jury's investigation further revealed that this is not an isolated case. Several law enforcement officials interviewed by the Grand Jury recounted situations where filmed encounters with police officers reviewed with complainants resulted in formal complaints being withdrawn or not pursued in addition to rare cases that resulted in officers being disciplined.[3]

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[2] Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All v.2*, American Civil Liberties Union, March 2015. https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all.
[3] Local law enforcement: multiple interviews by the Grand Jury.

According to a 2012 nationwide survey conducted by Taser,[4] a majority of police officers believe that there is a need for body-worn cameras.[5] The survey included 785 federal, state, and local law enforcement professionals. According to Doug Wyllie, PoliceOne Editor in Chief, "perhaps the most important single piece of data was that more than 85% of respondents believe that body-worn cameras reduce false claims of police misconduct, and reduce the likelihood of litigation against the agency."[6] A surprising statistic in the survey relates to the perceived effectiveness of body-worn cameras versus in-car systems, with 77% of officers saying they think the body-worn solution is more effective.[7] A 2015 study conducted by the University of South Florida with the Orlando Police Department reported that "most officers felt that their agency should adopt body-worn cameras for all front-line officers and reported that they would feel comfortable wearing a body-worn camera.[8]

A commonly cited indicator of body cameras' potential to reduce instances of officer-civilian conflict is the "Rialto Study." In Rialto, a small city outside of Los Angeles, the police department outfitted all 70 of their uniformed officers with body-worn cameras, theorizing that use of the cameras would reduce complaints and lawsuits, and accordingly also reduce expensive litigation costs, as well as settlements and payouts.[9]

The introduction of body-worn cameras in Rialto as standard equipment in 2012 led to an 88% reduction in public complaints against officers, and a 60% decline in officers' use of force. This dramatic reduction in the use of force indicates that body-worn cameras may have had a moderating effect on officers' behavior, as the presence of a camera appeared to drastically lower the frequency with which officers "resorted to the use of physical force—including the use of OC spray ('pepper spray'), batons, Tasers, firearms, or canine bites."[10]

Showing citizen interactions from the officer's perspective to the community at large has resulted in a reduced rate of public complaints.[11] Based on its investigation, including its

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[4] Taser is a manufacturer of body-worn cameras and related law enforcement equipment. See https://www.taser.com/.

[5] Doug Wyllie, *Survey: Police Officers Want Body-Worn Cameras*, October 23, 2012. PoliceOne. http://www.policeone.com/police-products/body-cameras/articles/6017774-Survey-Police-officers-want-body-worn-cameras/.

[6] Ibid.

[7] Ibid.

[8] Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs): The Orlando Police Department (OPD) Experience. http://media.cmgdigital.com/shared/news/documents/2015/10/09/OPD-Final-Report-Executive-Summary-10-6-15.pdf.

[9] The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints against the Police: A Randomized Controlled Trial Original Paper, *Journal of Quantitative Criminology*, September 2015, Volume 31, Issue 3, pp. 509-535.

[10] PoliceOne Staff, *5 Ways Body-Worn Cameras Have Helped Police Officers: How Video from the Officer's Perspective Is Making Their Jobs Easier*, September 30, 2014. PoliceOne. https://www.policeone.com/police-products/body-cameras/articles/7522310-5-ways-body-worn-cameras-have-helped-police-officers.

[11] "Considering Police Body Cameras," *Harvard Law Review* 128.6 (April 10, 2015): 1794-802. http://harvardlawreview.org/2015/04/considering-police-body-cameras/.

interviews with law enforcement personnel, the Grand Jury concludes that body-worn cameras are a net positive in law enforcement.

Local law enforcement officials informed the Grand Jury of the following perceived advantages and disadvantages to the utilization of body-worn cameras by their officers:

### Advantages of Body-Worn Cameras[12]

- Reducing complaints:
  - Police behavior is improved and the use of force is reduced.
  - Resident behavior is improved.

- Providing unedited video evidence of decisions made by officers in high-intensity situations

- Increasing transparency and accountability of police officers' activities and improving community perception of law enforcement

- Providing valuable evidence in court proceedings and/or in obtaining witness and victim statements

### Disadvantages of Body-Worn Cameras[13]

- Officers must manually activate/deactivate the camera in most systems in use today.

- Policy development has potential for risk (e.g., privacy issues, chain of custody, and officer activation of camera) due to lack of clarity as to applicable federal and/or state law.

- Technology is changing rapidly, which may limit product support after a few years' use. Replacement equipment may be costly. Future local, state, and/or federal legal and policy mandates could add to overall costs.

- Increased Public Records Act requests could add to administrative costs such as locating a video segment, redacting or blurring images of individuals not relevant to the incident, documenting changes, and copying the specific video segment.

The San Mateo County Sheriff's Office and other local law enforcement agencies use many forms of modern technology including audio recorders worn on police officers, automobile dashboard cameras ("dash cams"), and gunshot detection systems,[14] as well as surveillance technologies such as license plate readers and closed-circuit TV. All of these technologies have

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[12] Officials from San Mateo County law enforcement: interviews by the Grand Jury. Adapted from Atherton Police Department document.

[13] Ibid.

[14] A gunfire locator, or gunshot detection system, is a system that detects and conveys the location of gunfire or other weapon fire using acoustic, optical, potentially other types of sensors, as well as a combination of such sensors.

advantages and disadvantages. Police command staff, elected officials and city administrators, as well as concerned and informed citizens must determine which of today's technologies and those in development are appropriate to ensure their community's safety and security. Equally important is the concern for the civil rights and privacy of citizens and police officers.

## DISCUSSION

Body-worn cameras are in limited use today among the County's 15 independent city/town police departments, the Broadmoor Police Protection District, and the Sheriff's Office (whose jurisdiction includes unincorporated areas of the County and the communities of Half Moon Bay, Millbrae, Portola Valley, San Carlos, and Woodside).

The Grand Jury found that five local police departments are currently using body-worn cameras. They are:

- Atherton PD deployed in 2006
- Belmont PD deployed in 2014
- Foster City PD deployed in 2012
- Hillsborough PD deployed in 2014
- Menlo Park PD deployed in 2013

The Grand Jury interviewed representatives from five of the remaining 11 police departments. All five indicated varying levels of interest in adopting body-worn cameras but have decided to wait. These departments are:

- Daly City PD
- East Palo Alto PD
- Redwood City PD
- San Mateo PD
- South San Francisco PD

The Grand Jury interviewed representatives from the San Mateo County Sheriff's Office, which has also considered use of body-worn cameras and has decided to wait.

The police departments using body-worn cameras describe their experience of deploying, maintaining, and managing body-worn cameras as ranging from “positive” to “extremely positive.” Training for the use of these systems generally takes less than two hours. Department representatives also reported that the most difficult task involved in implementing a body-worn camera system is deciding which of the many available systems is the best fit for the agency’s needs and budget. With a large and growing number of manufacturers, there is a wide variety of features and options available on individual cameras and systems including:

- Camera mounting options
- Selectable camera resolution
- Expanded field-of-view capability
- Zoom capability
- Enhanced low-light capabilities
- Improved image stabilization

- Expandable internal storage capacity
- Extended battery life
- Software management platform
- Software compatibility options
- Data storage medium
- Integration compatibility with other law enforcement tools (i.e., dash cams, on-board computers, light bar/siren activation, etc.)
- Available technical support

Three of the five local police departments using body-worn cameras (Atherton PD, Foster City PD, Menlo Park PD) have opted for cameras typically mounted on the officer's torso. They are approximately 2" x 3.25" x 0.75", clipped to the shirt/blouse, and are activated by a button on the front of the camera. A disadvantage of this camera style is that when mounted mid-chest on the officer, it does not automatically move in the same direction with the officer's head. In addition, the camera tends to be directly behind an officer's standard two-handed pistol grip stance, thus somewhat restricting the camera's view when confronting a suspect. However, this system is generally less expensive.

Both the Hillsborough and Belmont Police Departments have deployed a camera—the Taser Axon Flex— that is mountable on an officer's shoulder epaulette, collar, glasses, or helmet (see Figure 1). This camera, including its integrated storage module, is slightly larger than one AA battery and attached to its battery pack by a thin cable. It is also one of the more expensive cameras currently in use but it allows considerable mounting flexibility.

**Figure 1. Taser Axon Flex Mounted to an Officer's Glasses**
Photo: TASER International[15]

Other options currently available on the Axon Flex include high-definition (HD) resolution, expanded on-camera storage capacity, image stabilization, and extended battery life. According to law enforcement commanders interviewed by the Grand Jury, a low-light camera is optimal as

[15] Source: http://www.fastcompany.com/1817960/tasers-new-police-glasses-cam-lets-citizens-see-what-cops-see.

long as it *only* mimics what the human eye can see. For example, an officer might see a weapon in low light, but it is revealed as a newspaper in enhanced light. This disparity could create evidentiary issues when used at trial.[16]

Experience among local law enforcement indicates body-worn cameras have had a beneficial effect on the police officers as well as the public they encounter. In interviews, local police department representatives described the reaction of officers to body-worn cameras as overwhelmingly positive.[17] Initial concerns on the part of a few officers about learning a new technology were overcome by training.[18] Interviewees also noted that the body-worn camera recordings have been valuable when training new recruits on proper procedures and operations. In addition, according to both command staff and line officers, law enforcement as well as the public seem to be on better behavior when they know they are being recorded. According to Sean Whent, Chief of Police, Oakland (CA) Police Department, "we have about 450 body-worn cameras actively deployed, and in the overwhelming majority of the cases, the footage demonstrates that the officer's actions were appropriate."[19]

This anecdotal evidence from several local law enforcement personnel at command and patrol levels supports findings in a recent research report from the University of South Florida:

> Following completion of the 12-month University of South Florida Orlando Police Department BWC Evaluation, which was based on a randomized experiment where 46 officers were randomly assigned to wear BMCs and 43 officers were randomly assigned not to wear BWCs, the results suggest that BWCs are an effective tool to reduce response-to-resistance (R2R) incidents and serious complaints. . . . Interestingly, although nearly all of the officers were skeptical about the (positive) impact that BWCs would have on their behavior . . . wearing a BWC did positively influence their behavior and lead to significant reductions in R2R and serious external complaints.
>
> Finally, the majority of the officers want to keep their body-worn cameras, believe the agency should implement a full-scale adoption, and are willing to train their peers in BWC implementation and operation.[20]

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[16] Official from the Hillsborough Police Department: interview by the Grand Jury.

[17] Officials from city police departments using body-worn cameras: interviews by the Grand Jury.

[18] According to law-enforcement officials interviewed, training patrol personnel on procedures and operational use of the body-worn camera system was typically a two-hour exercise.

[19] "Editorial: Sheriff's Department to Further Test Body Cameras," *The Press Enterprise*, November 7, 2014. http://www.pe.com/articles/cameras-753724-body-police.html.

[20] Wesley G. Jennings, Mathew D. Lynch, and Lorie A. Fridell, "Executive Summary—Evaluating the Impact of Police Officer Body-Worn Cameras (BWCS): The Orlando Police Department (OPD) Experience," Tampa, FL: University of South Florida, 2015, p. 2.

## Reasons for County Law Enforcement Not Implementing Body-Worn Cameras

Even law enforcement leaders in San Mateo County whose agencies have *not* adopted body-worn cameras agree that body-worn cameras will likely be beneficial.[21] A representative from one local law enforcement agency commented, "Not only are they [body-worn cameras] expected, it's almost required by our citizens."[22]

They also concede it is highly probable that body-worn cameras will be adopted either voluntarily or by statute. These agencies that have not implemented body-worn cameras, however, have cited similar reasons for waiting. These reasons include:

- Cost of system hardware
- Cost of data storage
- Development of standard use policies
- Limited case law affecting policies regarding the use of body-worn cameras such as data retention time and privacy and civil rights concerns among other issues
- Concern that technology developments will render existing equipment obsolete within a few years
- Concern that state or federal law may dictate use of body-worn cameras with specific features or technology

Each of the five law enforcement agencies in San Mateo County currently using body-worn cameras has addressed these six issues. While the Grand Jury acknowledges that there are several concerns raised by those agencies that have not yet adopted body-worn cameras, the critical question is whether these concerns are sufficient to delay implementing a body-worn camera system.

## Cost and Technology of Body-Worn Camera Systems

Five San Mateo County law enforcement agencies have deployed three different manufacturer's systems with varying features including mounting options. A commercially available off-the-shelf system used by one department is by far the most economical. The specified functionality of this camera system indicates it offers an exceptional value when compared to other brands and models.

[21] Officials from local law enforcement agencies: interviews by the Grand Jury.
[22] Local city police chief: interview by the Grand Jury.

**Figure 2. Low-Cost, Off-the-Shelf Muvi™ HD Body-Worn Camera**
Photo: Veho World[23]

The cost of data storage can vary widely as well. However, the Grand Jury found that the actual cost of implementing even the most expensive system is significantly less than the *perception* of the many agencies that have not adopted body-worn cameras.[24] Several police departments informed the Grand Jury that the cost of data storage is on a downward trajectory. These departments expect it will be a small percentage of the cost of the body-worn camera system over time.

[23] Source: http://www.veho-muvi.com/law-enforcement/.
[24] Officials from local law enforcement agencies: interviews by the Grand Jury.

The following table summarizes the systems and some key features of the body-worn cameras adopted by local law enforcement:

**Table 1. Comparison of Body-Worn Camera Systems in Use in San Mateo County**

| City | Atherton | Belmont | Foster City | Hillsborough | Menlo Park |
|---|---|---|---|---|---|
| **Manufacturer/ Model** | VIEVU LE3[i] | Taser Axon Flex[ii] | Veho[iii] MUVI™ HD (off-the-shelf)[iii] | Taser Axon Flex[iv] | VIEVU LE3[v] |
| **Deployed** | 2006 | 2014 | 2012 | 2014 | 2013 |
| **Officers Equipped** | 23 | 28 | 39 | 26 | 50 |
| **Per-Unit Camera Cost** | $1,200 | $900 | $115 | $614 | $900 |
| **Data Software** | VIEVU Proprietary | Taser Proprietary | Non-proprietary | Taser Proprietary | VIEVU Proprietary |
| **Storage Site** | In-house | Cloud | In-house | Cloud | In-house |
| **Annual Storage Cost** | Minimal cost | ~ $20,000 | ~ $1,000 | ~ $4,400 | ~$10,000 for initial 10 TB[vi] |
| **Annual Data Usage** | ~1 TB | No Information | ~535 GB | ~2 TB | ~6-7 TB[vii] |
| **Training** | No Information | Two hours | Two hours | Minimal training required | < One hour |

Table Notes:

i. VIEVU—http://www.vievu.com/vievu-products/hardware.
ii. Taser Axon Flex— www.axon.io/products.
iii. Veho™ MUVI— Veho-VCC-005-MUVI-HD10-Handsfree-Wireless Mounting.
iv. Taser Axon Flex—www.axon.io/products/flex.
v. VIEVU— www.vievu.com/vievu-products/hardware.
vi. In-house storage is shared by several City of Menlo Park departments.
vii. Annual usage is for all City of Menlo Park departments.

N.B. The links above may not show the specific model used by the police departments.

The good news for law enforcement agencies is that strong competition between the two most prominent vendors of the devices—VIEVU LLC and Taser International—as well as additional prominent companies entering this market means lower cost and more feature-rich products will likely be available in the near future.[25]

[25] Christopher Mims, "Competing Body Cam Companies Drive Down Prices for Cops," *Wall Street Journal*, August 25, 2014. https://www.policeone.com/police-products/body-cameras/articles/7498274-Competing-body-cam-companies-drive-down-prices-for-cops/.

## Policies for Body-Worn Camera Systems

Developing agency policies regarding body-worn camera use has not been a significant problem for local law enforcement agencies. Four of the five city police departments have developed written operational policies that average less than five pages and are similar in content. In all cases, the agencies used a standard policy version from Lexipol's Policy 450[26] and modified it for their agency's application. The fifth department, Hillsborough, is in the process of revising its existing policy, which it is also basing on modifications of Lexipol's Policy 450. Menlo Park Police Department's policy is available online and all others are available on request to the public from the police departments. These policies are included in Appendixes A through E.

Three commonly discussed operational policy issues have been addressed by these five agencies, including:

- When does activation of the camera occur?
- Can the officer review the video when writing his/her report?
- How long is data retained?

The following is a brief overview of the policies and practices adopted by the five local law enforcement agencies that are currently using body-worn cameras:

Atherton

- Officer activated—turned on prior to actual contact or as soon as safely possible
- Officer may review video while writing his/her report
- Data is retained until the criminal proceeding, pending litigation, or personnel complaint is resolved and/or in accordance with the law

Belmont

- Officer activated—whenever contacting a citizen in official capacity
- Officer may review video while writing his/her report
- Recordings shall be retained for a period consistent with the organization's records retention schedule

Foster City

- Officer activated—required during traffic stops or whenever officer deems appropriate
- Officer may review video while writing his/her report
- Data retention is for a period consistent with the requirements of the organization's records retention schedule but in no event less than 180 days

[26] Lexipol LLC is a private company providing state-specific policies and verifiable policy training for public safety organizations. Many local law enforcement agencies subscribe to this service.

Hillsborough[27]

- Officer activated whenever unit emergency lights are activated
- Officer may review video while writing his/her report subject to approval of Watch Commander
- Data retention is minimum of one year

Menlo Park

- Officer activated prior to arrival to any in-progress or serious or high-priority call for service
- Officer may review video while writing his/her report
- Data retention is 2.5 years for all citizen contacts. Recordings classified as evidence will be retained for a period of time determined by applicable laws and the City of Menlo Park's retention guidelines.

The command staff interviewed by the Grand Jury acknowledged that some policies may require modification as more experience with body-worn cameras is obtained, as case law on body-worn cameras develops, and as applicable state or federal law evolves.

### Privacy and Civil Rights Issues

Not surprisingly, civil rights issues are of concern to local law enforcement agencies when generating policies regarding use of body-worn cameras. Protection of the privacy and civil rights of all individuals encountered by law enforcement is a topic of discussion throughout the country. In the case of body-worn cameras, privacy concerns apply to the public's right to privacy and the police officer's rights as well. According to several police chiefs interviewed by the Grand Jury, there are occasions when it is inadvisable or prohibited by written policy to turn on a body-worn camera. For example:

- Discussions among police officers not related to encounters with the public (i.e., administrative, procedural, tactical, and training)

- Officer personal time such as break time, private conversations with colleagues, or non-police-call related conversations among others

- During certain extremely sensitive investigations such as interviews with sexual assault victims and some family disputes especially when minors may be involved

- Officer interactions with confidential informants, undercover agents, federal agents, issuing K-9 commands to police dogs, or when discussing confidential tactical information such as SWAT team deployments

- When there are no encounters with the public or when writing shift reports

[27] Until the Hillsborough Police Department completes its Body-Worn Camera Policy, it is using the policy written for Mobile Audio Video (i.e., dash cams) as modified by Chief's Departmental Directive 14-01, September 2, 2014.

The Menlo Park Chief of Police appointed a Citizens Advisory Committee to review and comment on proposed policies and procedures for use of body-worn cameras that met the department's needs but did not infringe on citizens' civil rights. This committee included an individual active in both the ACLU and the Electronic Frontier Foundation, two organizations active in protecting citizens' privacy and civil rights.[28] The committee recommended acceptance of the Menlo Park policy. (See Appendix E for *Body-Worn Camera Policy—Menlo Park Police Department* and Appendix F for *Body Cameras—Menlo Park Police Department Citizens Advisory Committee Report.)*

According to the ACLU, "the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks."[29]

The Grand Jury acknowledges that further developments are likely, such as new statutes and court decisions interpreting existing privacy and other civil rights laws related to the use of body-worn cameras in the coming years. However, this process is not uncommon in the field of law enforcement generally and there was no indication to the Grand Jury that the evolution of policies regarding body-worn cameras cannot be effectively managed by the local law enforcement community. Further, the Grand Jury suggests that policies such as those developed by Atherton, Belmont, Foster City, Hillsborough, and Menlo Park can serve as templates for other law enforcement agencies.

### Chain of Custody Concerns

Local police policies and the inherent design of the body-worn camera hardware and software severely limit officers' access to body-camera footage so as to protect the chain of custody for its potential use in future legal proceedings. For example, officers have no capability to edit the video except to tag a segment with a case number or an arrest report number, or to assign a criticality status to it. Once the video has been stored, access is typically limited to a select few senior command personnel who are assigned special access codes. An electronic trail is created that tracks who, when, and what was done. Exceptions are typically only allowed when pre-determined non-critical data is scheduled to be purged from system storage after reaching the retention period defined in the department's policies. However, video data that involves legal proceedings, citizen complaints, or which is otherwise retained upon request are often stored indefinitely.

The district attorney's office, defense attorneys, and other law enforcement and criminal justice agencies often request copies, which are provided on a separate medium such as a CD-ROM.

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[28] Officials from the Menlo Park Police Department: interview by the Grand Jury. http://www.menlopark.org/DocumentCenter/View/7240.

[29] Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All v.2*, American Civil Liberties Union, March 2015. https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all.

## Limitations

Body-worn cameras are not a panacea for all disputed encounters between citizens and law enforcement. They occasionally malfunction, the batteries discharge, or the internal storage capacity limits recording an encounter. Chest-mounted camera views may be partially obscured by the standard two-handed pistol grip used by many police officers. Cameras can be dislodged in physical altercations or the attachment clip may slip, rendering the camera an audio device only. Video images may be confusing or inconclusive when the wearer is in a physical altercation or in pursuit of a suspect or when used in very low-light situations. The camera shows only what is within its viewing angle and does not turn with the officer's eyes unless mounted on an officer's hat, helmet, or glasses. It only captures two out of the five senses—sight and sound. For example, the smell of alcohol or gunpowder is not detected. Notwithstanding these limitations, the information provided to the Grand Jury confirms that body-worn cameras often provide far more evidence of an incident than an audio device and certainly more than no recording device at all.

## Conclusions

Based on its investigation, the Grand Jury concludes that body-worn cameras would be advantageous for all San Mateo County law enforcement agencies as well as the individuals they encounter.

Although some local law enforcement agencies have expressed various concerns regarding the utilization of such body-worn devices, five police departments within San Mateo County have implemented body-worn camera systems and their experience provides tangible evidence that:

- Costs are containable.
- Many hardware, software, and storage options are available to accommodate individual agency requirements.
- Workable operational policies are readily available and easily modifiable to accommodate specific agency requirements.
- Training needs are minimal.
- Patrol staff rapidly accepted body-worn cameras.
- The behavior of *both* residents and police officers improves when their actions are being recorded on video.

As with all new technology, best practices are in the process of being developed as each of these five departments gains experience with its body-worn camera system. These departments can serve as role models for other police agencies as they implement their own camera systems, which many acknowledge as inevitable.

Finally and most importantly, body-worn cameras clearly state to the public that its police force has nothing to hide, that their encounters with the public are transparent, and that these encounters are subject to internal and, when appropriate, external scrutiny.

## FINDINGS

F1. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have deployed body-worn camera systems.

F2. The Sheriff's Office and five of the city police departments that have not deployed body-worn cameras all expressed similar concerns regarding the implementation of these systems, the cost of equipment, the cost of data retention, and policy development.

F3. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have budgeted sufficient funds to manage the cost of equipment, data retention, and training.

F4. The Atherton, Belmont, Foster City, and Menlo Park Police Departments have developed written policies regarding the operation and data retention of body-worn camera systems as well as the protection of the rights of the community and police officers. Hillsborough is in the process of developing a similar policy.

F5. Many local law enforcement agencies that currently do not employ body-worn cameras acknowledge that these systems are beneficial and will likely be implemented in the future either voluntarily or by mandate.

## RECOMMENDATIONS

R1. The Grand Jury recommends that the councils of those cities/towns that have not adopted body-worn cameras direct their respective chiefs of police to develop an appropriate body-worn camera implementation plan and advise the public of their plan by November 30, 2016.

R2. The Grand Jury recommends that the San Mateo County Sheriff develop a plan to implement body-worn cameras and advise the public of his plan by November 30, 2016.

R3. The Grand Jury recommends that the police departments of those cities, towns, and the Broadmoor Police Protection District that have not adopted body-worn cameras implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.

R4. The Grand Jury recommends that the San Mateo County Sheriff's Office implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows from the following governing bodies:

- R1 and R3—The City Councils of the following 10 cities and towns:
    - Brisbane
    - Burlingame
    - Colma
    - Daly City
    - East Palo Alto
    - Pacifica
    - Redwood City
    - San Bruno
    - San Mateo
    - South San Francisco

- R1 and R3---The Board of Police Commissioners of the Broadmoor Police Protection District

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows from the following elected official:

- R2 and R4—San Mateo County Sheriff

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

## METHODOLOGY

### Interviews

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

The Grand Jury interviewed command staff at these law enforcement agencies:

- San Mateo County Sheriff's Office
- The Police Departments of:
    - Atherton
    - Belmont
    - Daly City
    - East Palo Alto
    - Foster City
    - Hillsborough
    - Menlo Park
    - Redwood City
    - San Mateo
    - South San Francisco

The Grand Jury interviewed representatives of the following local law enforcement associations:

- Hillsborough Police Officer Association
- Menlo Park Police Officers' Association
- San Mateo County Deputy Sheriff's Association
- San Mateo County Organization of Sheriff's Sergeants
- Redwood City Police Officers' Association
- Redwood City Police Sergeants' Association

The Grand Jury interviewed a senior official of Northern California Regional Intelligence Center (NCRIC).

The Grand Jury interviewed a member of the American Civil Liberties Union and Electronic Frontier who served on a citizens' committee to review and recommend body-worn camera use policies at the request of their city's police chief.

The Grand Jury interviewed senior members of the San Mateo County District Attorney's Office.

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APPENDIX A BODY-WORN CAMERA POLICY—ATHERTON POLICE DEPARTMENT

Policy
450

Atherton Police Department
Policy Manual

# Portable Audio/Video Recorders

**450.1 PURPOSE AND SCOPE**

This Department procedure establishes guidelines for Department members using body worn cameras and procedures for preserving the digital media. This procedure applies to all Department members.

**450.2 BACKGROUND**

Law enforcement's use of in-car cameras and body worn cameras has proven effective in reducing violent confrontations and complaints against officers. Cameras provide additional documentation of police/public encounters and may be an important tool for collecting evidence and maintaining public trust. There is also a learning curve that comes with using body-worn cameras. Video cannot always show the full story nor does it capture an entire scene. The use of cameras does not reduce the requirement to provide thorough written documentation. Persons reviewing recordings must also be cautious before conclusions are reached about what the video shows.

**450.3 DEFINITIONS**

(a) Body Worn Camera (BWC) - A camera worn on an individual officer's person that records and stores audio and video.

(b) BWC Program Administrator - Police Department program administrator for BWC camera system with full access to user rights and sets user access and parameters.

(c) Digital Evidence - BWC files, including photographs, audio recordings and video footage, captured by a BWC and stored digitally.

(d) Metadata - Case numbers, Incident numbers, and other descriptors used to identify digital evidence.

**450.4 PROCEDURE**

450.4.1 OFFICER SAFETY

Officer Safety takes Precedence over Recording Events. Officers should follow existing officer safety policies when conducting enforcement stops as outlined in Department policies and procedures. Officer safety should be the primary consideration when contacting citizens or conducting vehicle stops, not the ability to record an event.

450.4.2 GENERAL

(a) Only authorized personnel should use or be in possession of a BWC device.

(b) BWC equipment is for official use only and shall not be utilized for personal use.

(c) Officers shall not tamper with or dismantle any hardware or software component of any BWC device.



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***DRAFT***

(d) The use of any other personal recording device for the same purpose is not authorized without permission of the Chief of Police or designee.

(e) All digital evidence collected using the BWC is considered a record of the Atherton Police Department and is for official use only.

(f) Accessing, copying, forwarding or releasing any digital evidence for other than official law enforcement use and contrary to this procedure is strictly prohibited. Public release of digital evidence is prohibited unless approved by the Chief of Police or their designee.

450.4.3 BWC MODES OF OPERATION

(a) The BWC system operates on rechargeable battery power. The user can view the recordings and add metadata to videos using a department provided software application. Viewing or adding metadata will not alter the video recording.

(b) Recording Mode is when the switch is activated and the camera is recording both audio and video.

450.4.4 STORAGE

(a) When not in use, the BWC devices shall be properly stored.

450.4.5 PRE-SHIFT INSPECTION

(a) Officers should inspect their assigned BWC devices daily to ensure there is no visual damage and the device is in working order.

(b) Visual damage shall be reported to a supervisor.

(c) Inoperable equipment shall be tagged and returned to the BWC Administrator as soon as possible.

450.4.6 CAMERA POSITION

(a) Officers should wear the BWC above the midline of their torso and in a position that provides for effective recording.

450.4.7 REPAIR, REPLACEMENT, AND MAINTENANCE

(a) When a BWC malfunctions, the officer will notify his or her supervisor.

(b) The inoperable equipment will be taken to the BWC Administrator for repair as soon as possible.

(c) If the BWC Administrator cannot repair the unit, the manufacturer will be contacted to facilitate the repair. Repair and replacement of damaged or nonfunctional BWC equipment is coordinated through the BWC Administrator and performed through the manufacturer.

(d) This procedure will be followed for all BWC related equipment and accessories.

450.4.8 ADVISEMENTS ABOUT RECORDING

(a) Private citizens do not have a reasonable expectation of privacy when talking with police officers during the scope of an officer's official duties, even when the contact is in a private



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residence. Therefore, officers are not required to give notice they are recording. However, if asked, officers should advise citizens they are being recorded.

(b) Officers are not required to initiate or cease recording an event, situation or circumstance solely at the demand of a citizen.

(c) Officers and supervisors involved in the investigation of a complaint against a member of the police department must inform complainants and witnesses they are being recorded.

450.4.9 SURREPTITIOUS USE OF THE BWC

(a) Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code § 633).

(b) Members shall not surreptitiously record another department member without a court order or unless lawfully authorized by the Chief of Police or the authorized designee.

## 450.5 WHEN AND WHERE TO RECORD

450.5.1 ENFORCEMENT RELATED CONTACTS

(a) Officers should record enforcement related contacts. The camera should be activated prior to actual contact with the citizen, or as soon as safely possible thereafter, and continue recording until the contact is concluded.

(b) Enforcement related contacts include the following: Traffic stops, field interviews, detentions, arrests, persons present at radio calls who are accused of crimes, and consensual encounters in which the officer is attempting to develop reasonable suspicion on the subject of the encounter.

(c) Covering another city employee or law enforcement officer during an enforcement contact.

(d) Officers working plain clothes assignments are exempt from this policy.

450.5.2 ARRESTS

(a) Officers may stop recording when the arrestee is cooperative and safely secured inside a police car or law enforcement facility. If an arrestee becomes uncooperative, or if there is some evidentiary purpose, officers should resume recording in the event mode.

(b) If an officer resumes recording, the camera should remain recording until the officer no longer has contact with the subject.

450.5.3 SUSPECT INTERVIEWS

(a) Officers are encouraged to fully record suspect interviews. Officers should not stop and start the recording during a suspect interview.

(b) When recording interviews, officers should ensure they record any admonishments prior to the start of an interview.



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450.5.4 PRIVATE RESIDENCES

(a) Private Citizens have a reasonable expectation of privacy in their homes. However, when officers are lawfully present in a home (warrant, consent, or exigent circumstances) in the course of official duties, there is no reasonable expectation of privacy.

450.5.5 SEARCHES

(a) During the execution of a search warrant, an arrest warrant, a Fourth Amendment waiver search, or a consent search in which the officer is looking for evidence or contraband.

450.5.6 SPECIAL EVENTS

(a) Officer's use of BWCs at special events is at the discretion of the Lieutenant.

450.5.7 VICTIM AND WITNESS INTERVIEWS

(a) Victim and witness interviews will generally be recorded.

(b) Domestic violence victims often recant their statements as early as the following morning after a crime. Victims may also make their children unavailable for investigators or court to avoid their providing statements. For these reasons, domestic violence victims should be recorded if the victim is willing. Officers should also record the statements of children of domestic violence victims who are witnesses in these types of cases if the children are willing.

(c) BWCs should be used during Sex Crimes or Child Abuse investigations to include statements of victims, witnesses, and interactions with parents of victims.

450.5.8 DEMONSTRATIONS

(a) As a general policy, Department personnel should video record or photograph peaceful demonstrations.

(b) When there is reason to believe that a planned event has the potential for unlawful activity, Commanding Officers should make the determination whether visual recording or photographing is appropriate.

(c) During demonstrations, if officers witness crimes occurring among the demonstrators and/ or believe an arrest is likely, they should begin recording.

**450.6 WHEN AND WHERE NOT TO RECORD**

(a) BWCs shall not be used to record non-work related activity.

(b) BWCs shall not be used to record in areas or activities such as pre-shift conferences, Department locker rooms, break rooms, or other activities not related to a criminal investigation.

(c) BWCs shall not intentionally be activated in places where persons have a reasonable expectation of privacy, such as locker rooms, dressing rooms, or restrooms.

(d) BWCs shall not be used during Department administrative investigations.



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(e) When possible, officers should avoid recording exposed areas of the body that could cause embarrassment or humiliation, such as exposed breast, groin, etc.

450.6.1 GENERAL RULE

(a) Generally, officers should not record informal or casual encounters with members of the public. Officers should consider that recording people in some circumstances may inhibit sharing neighborhood information or developing strong ties between members of the community and officers.

**450.7 DOCUMENTATION OF RECORDED EVENTS**

(a) All recordings shall be documented in the incident / crime report.

**450.8 ENTERING METADATA**

(a) If needed, metadata should be added at the conclusion of the event when the BWC is uploaded to the server.

**450.9 CHARGING PROCEDURES**

(a) Officers should charge the BWC at the end of their shift. This will allow adequate time for the battery to recharge.

**450.10 ACCESSING UPLOADED DIGITAL EVIDENCE**

(a) All those given permission associated with the BWC may review digital evidence.

(b) Using a Department computer, go to the Atherton Police Department Intranet site.

(c) Enter assigned user name and password. For help with problems, contact the BWC Administrator.

(d) Digital evidence can be viewed and / or copied from this location.

**450.11 RETENTION OF DIGITAL EVIDENCE**

(a) All recordings related to any criminal proceeding, claim filed, pending litigation, or a personnel complaint, shall be preserved until that matter is resolved and/or in accordance with the law.

**450.12 REVIEWING IMPOUNDED DIGITAL EVIDENCE**

(a) Officers may review their own recordings.

(b) Detectives are responsible for reviewing, updating and tracking digital evidence associated with their assigned cases.



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(c) Digital evidence captured by the BWC is not all inclusive. The system captures a less broad and less detailed image than the totality of the human senses. An officer's recollection of specific details may be different than what is captured in digital evidence. Officers should review digital evidence prior to completing reports when necessary to ensure accuracy. Officers should review digital evidence prior to providing testimony at hearings, trial, or depositions.

(d) It is NOT the intent of the Department to review digital evidence for the purpose of general performance review, for routine preparation of performance reports, or to discover policy violations.

(e) Digital evidence may be viewed for administrative purposes limited to the following:

- Any incident in which a member of the Department is injured or killed during the performance of their duties.
- Any incident involving the use of force by a member of the Department, including canines, which results in injury or death.
- Any in-custody death.
- Any police pursuit.
- When any member of the Department intentionally or unintentionally discharges a firearm at a person regardless whether an individual is struck.
- When any member of the Department not involved in training intentionally or unintentionally discharges a Conductive Energy Weapon at a person, including the application of a drive stun.
- Officer involved traffic collisions.
- Prior to the release of recordings in response to a proper legal request (e.g., in response to a subpoena or other court order).
- In preparation for a civil deposition or responding to an interrogatory where the incident arises from the employee's official duties.
- When preparing to testify in a criminal, civil, or administrative proceeding arising from the employee's official duties.
- For investigations undertaken by the Department, for the purpose of proving or disproving specific allegations of misconduct.
- For administrative proceedings, when digital evidence is used by the Department for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope should be viewed and retained by investigators. Information relevant to the recordings viewed and seized as evidence by investigators should be documented as part of the chronological summary of any investigation undertaken by the Department.

450.12.1 LIEUTENANT APPROVAL

In situations where there is a need to review digital evidence not covered by this procedure, the Lieutenant must approve the request. Each situation will be evaluated on a case by case basis.



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### 450.13 DISCOVERY OF MISCONDUCT

(a) Employees reviewing event recordings should remain focused on the incident or incidents in question and review only those recordings relevant to their investigative scope. If improper conduct is discovered during any review of digital evidence, the person who discovered the conduct in question should notify a supervisor. Nothing in this procedure prohibits addressing policy violations.

### 450.14 COPYING AND RELEASING DIGITAL EVIDENCE

(a) Digital evidence captured by the BWC shall be treated as official records and handled pursuant to existing Department policies and procedures. The digital evidence will be reviewed by the Lieutenant or his / her designee before release.

### 450.15 DIGITAL EVIDENCE FOR TRAINING

(a) Officers and supervisors may find it useful, and are encouraged, to review recordings of incidents of which they were involved when beneficial for the purpose of conducting a tactical debrief. When an incident is recorded which may be of value as a training aid for a broad section of the Department, the recording officer or that officer's supervisor should contact the Lieutenant who will review the digital evidence to determine the value of the incident for training.

### 450.16 BWC ADMINISTRATOR RESPONSIBILITIES

BWC Program Administrators should be sworn members. BWC Program Administrators are responsible for performing the following duties:

(a) Maintain and troubleshoot the BWC units and server application.

(b) Maintain a record of assigned BWC units and related equipment.

(c) Be proactive and able to complete minor repairs.

(d) Arrange for the warranty and non-warranty repair of the BWC units.

(e) Repair or replace BWC components (cameras, docking stations, etc).

(f) Maintain BWC equipment repair and maintenance records.

(g) Update software and system settings as necessary.

(h) Train officers on current policy and the proper use of BWC units.



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APPENDIX B BODY-WORN CAMERA POLICY— BELMONT POLICE DEPARTMENT

Policy
450

Belmont Police Department
Policy Manual

# Portable Audio/Video Recorders

**450.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation and Prosecution and Mobile Audio/Video policies).

**450.2 POLICY**

The Belmont Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

**450.3 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

**450.4 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, BPD identification number and the current date and time at the beginning and the end of the period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.



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Members shall download their portable recorders at the end of the period of use, or sooner if necessary. The members will make two copies of all recordings related to cases being sent to the District Attorney's office for prosecution. One copy will be booked into evidence and the other forwarded along with the report to the District Attorney's office.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder was not activated, malfunctioned or the member deactivated the recording. Members shall include the reason for deactivation.

450.4.1 SUPERVISOR RESPONSIBILITIES
Supervisors should take custody of a portable audio/video recording as soon as practical when the device may have captured an incident involving an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

**450.5 ACTIVATION OF THE PORTABLE RECORDER**
This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member is contacting a citizen in an official capacity.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder. However, the recorder should be activated in situations described above as soon as practicable.

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER
Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

450.5.2 CESSATION OF RECORDING
Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.



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Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

450.5.2 EXPLOSIVE DEVICE
Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

**450.6 PROHIBITED USE OF PORTABLE RECORDERS**
Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

**450.7 RETENTION OF RECORDINGS**
Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

450.7.1 RETENTION REQUIREMENTS
All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule.



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### 450.8 REVIEW OF RECORDINGS

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.

(b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

(c) By media personnel with permission of the Chief of Police or the authorized designee.

(d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

### 450.9 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

(a) Establishing a system for downloading, storing and security of recordings.

(b) Designating persons responsible for downloading recorded data.

(c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.

(d) Establishing a system for tagging and categorizing data according to the type of incident captured.

(e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.

(f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.

(g) Maintaining logs of access and deletions of recordings.



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APPENDIX C BODY-WORN CAMERA POLICY—FOSTER CITY POLICE DEPARTMENT

Policy
450

Foster City Police Department
Policy Manual

# Use of Audio/Video Recorders

## 450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes or to mobile audio video recordings (see the Mobile Audio Video Policy).

## 450.2 POLICY

The Foster City Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

## 450.3 PRIVACY

All recordings made by personnel acting in their official capacity as members of this department shall remain the property of the Department and should not be considered private, regardless of whether those recordings were made with department-issued or personally owned recorders.

## 450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder, issued by the Department, and that the recorder is in good working order. Uniformed members should wear the recorder in a conspicuous manner.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful.

When using a recorder, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

## 450.5 ACTIVATION OF THE AUDIO RECORDER

Members should consider activating the recorder during enforcement stops and field interrogation situations and any other time the member reasonably believes that a recording of an on-duty contact may be useful. Once started, recordings should continue without interruption until the contact ends, if feasible.

At no time is a member expected to jeopardize his/her safety in order to activate a recorder or change the recording media. However, the recorder should be activated in required situations as soon as practicable.



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### 450.5.1 SURREPTITIOUS USE OF THE AUDIO RECORDER

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order or unless lawfully authorized by the Chief of Police or the authorized designee.

## 450.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment or ridicule.

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

## 450.7 RETENTION OF RECORDINGS

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and download the file in accordance with the Computers and Digital Evidence Policy and document the existence of the recording in the related case report.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

Members should upload the file, in accordance with current procedure for storing digital files, at the end of their shift and any time the storage capacity is nearing its limit.

### 450.7.1 RETENTION REQUIREMENTS

All downloaded recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

## 450.8 RELEASE OF RECORDINGS

Recordings made using portable recording devices pursuant to this policy are department records and may only be released as provided in the Release of Records and Information Policy or for other authorized legitimate department business purposes.



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## 450.9 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource. However, members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.

(b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

(c) By media personnel with permission of the Chief of Police or the authorized designee.

(d) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy.



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APPENDIX D BODY-WORN CAMERA POLICY—HILLSBOROUGH POLICE DEPARTMENT

Policy
**446**

Hillsborough Police Department
Policy Manual

# Mobile Audio Video Procedure

## 446.1 PURPOSE AND SCOPE

The Hillsborough Police Department has equipped each marked patrol car with a Mobile Audio & Video (MAV) recording system. The MAV is designed to assist and compliment patrol officers in the performance of his/her duties. The MAV is used to record certain activities by providing a visual and/or audio record. Video recordings are intended to provide an unbiased visual/audio record of the incident and to supplement the officer's report.

## 446.2 ACTIVATION OF THE MAV

The MAV system is designed to turn on whenever the unit emergency lights are activated. The system remains on until turned off manually. The audio portion must be activated manually by each officer and is independent of the video; however when audio is being recorded the video will also record.

### 446.2.1 REQUIRED ACTIVATION OF MAV

This policy is not intended to describe every possible situation where the system may be used however here are many situations where the use of the MAV system is appropriate. In addition to the required situations, officers may activate the system any time he/she believes its use would be appropriate and/or valuable to document an incident. In some circumstances it is not possible to capture images if the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements as the MAV. The activation of the MAV system is required in any of the following situations:

(a) All field contacts involving actual or potential criminal conduct, within video or audio range, which includes:
   1. Vehicular pursuits
   2. Suspicious vehicles
   3. Arrests
   4. Pedestrian checks
   5. DUI investigations including field sobriety tests
   6. Consensual encounters
   7. Responding to an in-progress call

(b) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

(c) Any other circumstances where the officer believes that a recording of an incident would be appropriate

Once the MAV system is activated, it shall remain on and shall not be turned off until the incident has concluded. For purposes of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported, and all witnesses, victims, etc. have been interviewed. Recording may cease if an officer is simply waiting for a tow truck or a family member to arrive or other similar situations.



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### 446.2.2 WHEN ACTIVATION NOT REQUIRED

Activation of the MAV system is not required when exchanging information with other officers or during breaks, lunch periods, when not in service, or actively on patrol.

Absent legal cause or lawful order, no member of this department may surreptitiously record any other member of this department without the expressed knowledge and consent of all parties.

## 446.3 REVIEW OF MAV RECORDINGS

Recordings may be reviewed in any of the following situations:

(a) By a supervisor investigating a specific act of officer conduct

(b) By a department detective after approval of a supervisor who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation

(c) By department personnel who request to review their own recordings

(d) By court personnel through proper process or with permission of the Chief of Police or his/her designee

(e) By media personnel with permission of the Chief of Police or his/her designee

(f) Recordings may be shown for the purposes of training value. If an involved officer objects to the showing of recording, his/her objection will be submitted to staff to determine if the training value outweighs the officer's objection for not showing the recording.

Employees desiring to view any MAV recording shall submit a request in writing to the Watch Commander.

In no event shall any recording be used or shown for the purpose of ridicule or embarrassing any employee.

## 446.4 DOCUMENTING MAV USE

Any incident that was recorded with either the video or audio system shall be documented in the officer's report. If a citation was issued, a notation shall be placed on the back of the records copy of the citation that the incident was recorded.

## 446.5 VIDEO MEDIA STORAGE & INTEGRITY

Once checked in, all video media will be labeled and placed in a designated secure storage area. All video media that is not booked in as evidence will be retained for a minimum of one year after which time they will be erased, destroyed, or recycled.

### 446.5.1 COPIES OF VIDEO RECORDINGS

Original video recording media shall not be used for any purpose other than for initial review by a supervisor. A copy of the original video recording will be made upon proper request for any person authorized in Policy Manual § 446.4.

Original video recording media may only be released in response to a valid court order or upon approval by the Chief of Police or his/her designee. In the event that an original recording is released to court, a copy shall be made and placed in storage until the original is returned.



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**446.5.2 MAV RECORDINGS AS EVIDENCE**

Only in exceptional circumstances will original video media be booked into evidence. The exceptions would include a major event such as a homicide or as directed by the Watch Commander or a member of staff. If a video media is booked into evidence, it shall be booked in the same manner as other property and referenced in the case report.



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APPENDIX E BODY-WORN CAMERA POLICY—MENLO PARK POLICE DEPARTMENT

Policy
**450**

Menlo Park Police Department
Policy Manual

# Use of Audio/Video Recorders

### 450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes (see the Investigation and Prosecution policy).

### 450.2 POLICY

The Menlo Park Police Department shall provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### 450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### 450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable video recorder, issued by the Department, and that the recorder is in good working order. Uniformed members shall wear the recorders in such a way as to have easy access to the function buttons and in a manner that renders the recorder secure.

Any member assigned to a non-uniformed position shall carry an approved portable recorder. The recorder shall be carried in a way that renders the recorder secure with the ability to record any contact with a citizen.

At the beginning of each shift, the member shall test the recorder to assure it is working properly.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or was not turned on for any portion of the contact. The member shall include the reason for not activating the recorder.

### 450.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER

Members shall activate the recorder during all on duty contacts with citizens other than a contact with another member, without their knowledge.

Members shall activate their recording devices prior to arriving to any in-progress or serious or high priority calls for service to preclude arriving on scene and being unable to activate the unit.



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Members will have discretion to keep recording devices off during conversations with crime witnesses and members of the community who wish to report or discuss criminal activity. When determining whether to record interviews with witnesses and members of the community who wish to share information, members should always consider both the evidentiary value of the recording and the subject's comfort with speaking on camera. To better capture evidence, it is recommended that members record statements made by witnesses and people sharing information. However, if a person will not talk unless the recording device is turned off, members may decide that obtaining information is more important than recording.

At no time is a member expected to place his/her safety in jeopardy in order to activate a recorder or change the recording media. However, the recorder should be activated in all situations as soon as practical.

450.5.1 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER
Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order or unless lawfully authorized by the Chief of Police or the authorized designee.

450.5.2 SURREPTITIOUS USE OF AUDIO/VIDEO RECORDER DURING INVESTIGATIONS OF PERSONNEL COMPLAINTS
Members are prohibited from surreptitiously recording any conversation in which a person is making a personnel complaint or allegation of such. In these situations, the member taking the complaint shall advise the complaintant that the conversation is being recorded. If the complaintant refuses to be recorded, the member shall discontinue recording, and will indicate this fact in the documentation created regarding the complaint or allegation. It is recommended that a witness member be utilized in cases which a complaintant refuses to be recorded.

450.5.3 CESSATION OF RECORDING
Once activated, the portable audio/video recorder should remain on continuously until the member's direct participation in the incident is complete. Recordings may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident, or when speaking to other members outside the presence of involved parties to the incident. Officers shall reactivate the recording device upon reinitiating contact or a new contact with any citizen.

**450.6 PROHIBITED USE OF PORTABLE RECORDERS**
Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned


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recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty.

Recordings shall not be used by any member for the purpose of embarrassment or ridicule.

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

**450.7 RETENTION OF RECORDINGS**

Members shall upload all digital recorded files in accordance with current procedures for storing digital files, at the end of their shift and anytime the storage capacity is nearing its limit.

Any time a member uploads a digital file that will or may be used as evidence in a criminal or non-criminal case, the member shall mark the file with all pertinent information required by the department's digital recording software, and will cause that file to be marked as "evidence" in the system.

**450.8 RETENTION OF RECORDS**

Citizen contact recordings shall be retained for a minimum of (2.5) years. All recordings which are classified as evidence will be retained for a period of time determined by applicable laws and the City of Menlo Park's retention guidelines.

**450.9 RELEASE OF RECORDINGS**

All recordings shall be reviewed by the Custodian of Records prior to public release (see the Records Release and Security Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure by law or order of the court.

**450.10 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource. However, members should not use the fact that a recording was made as a reason to write a less detailed report. Members shall not retain personal copies of recordings.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.

(b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.



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(c) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy.



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## APPENDIX F BODY CAMERAS—MENLO PARK POLICE DEPARTMENT CITIZENS ADVISORY COMMITTEE REPORT

**Body Cameras - MPPD Citizens Advisory Committee Report**

**2015/05/07**

The Citizens Advisory Committee (Committee) to the Menlo Park Police Department is comprised of residents of Menlo Park who have been invited by Chief Robert Jonsen to provide feedback to the Police Department about a range of issues concerning public safety, police department practices and proposals, and to bring issues of interest in the community to the attention of the Chief.

Over the course of its 18 months of existence, the Committee has reviewed the use of several surveillance technologies employed by the MPPD, such as license plate readers, fixed cameras, and both audio and video recorders worn by police officers among other issues.

*Policy 450, Use of Audio/Video Recorders* was reviewed by the Committee in January of 2015. Later that month, several members of the Menlo Park City Council expressed concerns about Policy 450, and asked Chief Jonsen to revisit Policy 450 with the Citizens Advisory Committee.

The Committee met on Tuesday, March 31, 2015. The sole topic of discussion was proposed revisions to *MPPD Policy 450, Use of Audio/Visual Recorders* (dated 2015/02/18). The proposed revisions were presented to the committee by Chief Robert Jonsen and Commander David Bertini.

The use of body cameras by law enforcement occurs within a rapidly changing legal and ethical landscape that includes such things as:

- a push from the highest levels of government to increase the use of body cameras by all U.S. police officers, due in part to the concern of alleged police brutality and the use of deadly force targeting minorities by white police officers,
- the illicit publication in social media of videos recorded by police officers,
- the increasing use of video recorders by the public of police activities and arrests,
- increased revelations of alleged government overreach in surveilling American citizens,
- the theft or illegal disclosures of private information thought to be secure in public and private computer networks,
- an evolving and highly nuanced set of opinions and guidelines regarding the use of body cameras from such as Lexipol, the Justice Department's Community Oriented Policing (COPS) office, the American Civil Liberties Union, and the Electronic Frontier Foundation,
- widely differing practices and policies between police jurisdictions and state laws across the country,
- concern regarding the widespread sharing of surveillance recordings between local, state, and federal agencies,
- new innovations within the camera technology from increased battery life and video quality to the introduction of new software features,

- the need for training officers in the use of this equipment in the field, the processing of the information it gathers, the supervision of the performance of the officers in using the equipment, and the updating of police procedures to reflect changes in law, policies and best practices.

*On the whole, the Committee agrees with the recommended changes to Policy 450 presented to us.*

During the Committee's discussion about the proposed changes to Policy 450 we focused on several questions:

1. When should the recorder be turned on?
2. Under what circumstances should the recorder be turned off?
3. What recordings should be retained?
4. How long should recordings be retained?
5. How can policies and procedures remain current in such a rapidly changing environment?
6. How will the MPPD be able to keep up with the pace of technological innovation, data storage needs, network security, and backup/redundancy requirements?

*It is important to note that some of the suggestions discussed within the Committee may more properly be addressed in the area of MPPD Procedures rather than Policy 450 itself.*

**1. When should the recorder be turned on?**
The Committee agrees with the proposed language in 450.5, that the device be activated "prior to arriving at any in-progress or serious or high priority calls for service."

To turn cameras on and leave them on during the entire shift of the police officers presents logistical challenges and also presents significant privacy concerns for the officers as employees of the MPPD. The Committee sees no compelling reason to require cameras to always be on. However, cameras should remain on until such time as the officer is no longer involved with the "involved parties" in the incident.

As a best practice, the Committee recommends that the officer provide a voice narration or verbal note upon activating the recorder.

**2. When should the recorder be turned off?**
Policy 450.3 states that the recorder can be turned off during "significant periods of inactivity such as report writing or other breaks from direct participation in the incident, or when speaking to other members [police officers] outside the presence of involved parties to the incident." This seems reasonable to us.

As a best practice, we recommend that the officer provide a voice narration or verbal note upon turning off the recorder, noting why the recorder is being turned off.

There was discussion about when an officer can choose to turn off a recorder at the request of an individual who may wish to not be recorded and/or will refuse to speak with an officer if the recorder is not turned off.

Even though a person speaking with a police officer may not have an expectation of privacy, in some instances such a person may express concerns for their personal welfare or safety if they provide information to the police. The use of a body camera may heighten that concern and lead someone to "clam up." We hope that such circumstances would be uncommon, and that officers should be provided with the discretion to turn off the recorder if, in their judgment, valuable information might otherwise not be forthcoming.

As a best practice, we recommend that the police officer record the request by the person being interviewed to "turn off the camera" to preclude any question as to why the device was turned off.

**3. What recordings should be retained?**

When recordings are uploaded to the MPPD servers, video segments [portions between the activation of *start recording* and the activation of *stop recording* on the device] can be "flagged" by officers. Ordinary conversations between officers with citizens they encounter during the course of the day about the weather or sports should not be flagged. Care must be exercised to not allow the flagging of every encounter out of an abundance of caution about possible but improbable actions.

Police officers must, of course, flag anything that might be of evidentiary value. They must also use their own judgment, subject to review by their supervisor, of any interactions which may lead to a citizen complaint.

**4. How long should recordings should be retained?**

State Law: California Government Code §34090.6[1] requires that all recordings be retained for one year, after which they *may* be destroyed.

Federal Law: The statute of limitations for bringing suit under a Federal Civil Rights complaint under §1983 is two years (in California), plus notifications.[2]

MPPD Policy: There is no statute of limitations within the policies of the MPPD for citizen complaints.

With various legal requirements and periods for citizens bringing suits or complaints ranging from one year to infinity, few people argue in favor of infinite storage of such records. So what is a reasonable compromise between a minimum of one year (as required by state law) and infinity?

The MPPD recommends a period of 2.5 years as a means of protecting both the City and individual police officers from significant financial liabilities should either or both be successfully sued. A clear majority of the Committee agrees with this recommendation. Experts in risk management would generally agree as well.[3]

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[1] 34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this section, "recordings of telephone and radio communications" means the routine daily recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.

(c) For purposes of this section, "routine video monitoring" means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems,
jail observation and monitoring systems, and building security recording systems.

(d) For purposes of this section, "department" includes a public safety communications center operated by the city or city and county.

[2] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[3] A minority of the Committee suggests that financial risk is not the only factor that should be considered in determining the length of data retention. The privacy rights of citizens, one could argue, are priceless. Sir William Blackstone famously wrote that "the law holds it better that ten guilty persons escape, than that one innocent party suffer." And while the amount of video data held by the MPPD on any individual citizen may be relatively small, the accumulated data held by other government bodies and corporations is huge. And it is the aggregate of such data that concerns many civil liberties advocates, and aggregation that can be completed surreptitiously without the knowledge or consent of the hundreds of entities that each hold a piece of it. The existence of such technology and parties willing to use it therefore argue that each piece of data be held for the absolute minimum of amount of time to mitigate against such risks.

While the statute of limitations for citizen complaints against a police officer is unlimited, the sole remedy available to citizens who make such complaints are limited to disciplinary action against an officer. Therefore, there is no financial risk to the City.

**5. How can policies and procedures remain current in such a rapidly changing environment?**

As stated in the outset of this document, the legal landscape, public opinion, and technology related to body cameras is rapidly evolving. The Committee believes that it is imperative that Policy 450 be subjected to regular review and scrutiny by the MPPD and the citizens for the foreseeable future.

The MPPD relies upon Lexipol for information concerning the changing legal landscape and best practices in many areas including Policy 450. We encourage them to continue this practice and to recommend policy and procedural changes as warranted.

Furthermore, the citizens of Menlo Park should be made aware of the information about Policy 450 that is available on the City's website and encouraged to voice their opinion through conversations with the MPPD and their elected officials.

**6. How will the MPPD be able to keep up with the pace of technological innovation, data storage needs, network security, and backup/redundancy requirements?**

Emerging technologies such as facial and voice recognition, background images, correlation of body camera data with other surveillance data sets, pressure to share data between jurisdictions, and cross mining practice (aka "big data") could create additional questions and dilemmas that will require deep conversation and consideration.

The MPPD will face an enormous challenge of storing all of this data, securing it internally and against outside threats, and protecting it from physical damage. Few systems can withstand an attack from determined hackers such as those that go by the name "anonymous." Criminals and government-based hacking programs are also able to penetrate most systems almost at will. Should a fire occur in the MPPD data center the results could be catastrophic. The department needs to take all practicable steps necessary in infrastructure and security systems to protect the data itself and, more importantly, the privacy and integrity of the information. The systems need to be future proofed so that evidence that is committed to a backup system in 2015 will still be readable by computers in 2040.

**Conclusion**

This is the first time the Committee has been asked by the City Council to weigh-in on issue of such public interest. The Committee is an unelected body and does not report to the Council. We are a non-political group, and we serve at the pleasure of the Chief of Police. We appreciate the opportunity to serve the Chief in the capacity of a citizen "sounding board" and to bring our own ideas to MPPD through our regular meetings. If the City Council concludes that there is a

need for a group focused on the MPPD an official Commission should be formed. We are not advocating for this but neither are we prepared to serve in a capacity beyond that for which we were originally formed.



Issued: May 24, 2016

TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA

(On Town Letterhead)

July 27, 2016

Hon. Joseph C. Scott
Judge of the Superior Court
c/o Charlene Kresevich
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Honorable Joseph C. Scott:

The Town of Colma is in receipt of the 2015-2016 Grand Jury report filed on May 24, 2016 entitled "Body Cameras – The Reel Truth." The Town's response to the Grand Jury report is detailed below, and was approved by the City Council of the Town of Colma at its regular City Council meeting held on July 27, 2016.

**FINDINGS**

F1. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have deployed body-worn camera systems.

> ***Town Response:*** *The Town agrees with this finding based on its review of the Grand Jury report entitled "Body Cameras – The Reel Truth." It should be noted, however, that the Town has no independent basis to confirm this finding other than the Grand Jury report.*

F2. The Sheriff's Office and five of the city police departments that have not deployed body-worn cameras all expressed similar concerns regarding the implementation of these systems, the cost of equipment, the cost of data retention, and policy development.

> ***Town Response:*** *The Town neither agrees nor disagrees with this finding, but agrees to the extent such information was provided for in the Grand Jury report entitled "Body Cameras – The Reel Truth." It should be noted that the Town has no independent basis to confirm this finding other than the Grand Jury report as it was not one of the police departments interviewed for the report.*

F3. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have budgeted sufficient funds to manage the cost of equipment, data retention, and policy development.

> ***Town Response:*** *The Town neither agrees nor disagrees with this finding, but agrees to the extent such information was provided for in the Grand Jury report entitled "Body Cameras – The Reel Truth." Although the Grand Jury report does not appear to*



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*address this finding directly, it alludes to the fact that these police departments have successfully implemented a body-worn camera system.*

F4. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have developed written policies regarding the operation and data retention of body-worn camera systems as well as the protection of the rights of the community and police officers. Hillsborough is in the process of developing a similar policy.

***Town Response:*** *The Town agrees with this finding based on its review of the Grand Jury report entitled "Body Cameras – The Reel Truth" which contains the written policies for Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments.*

F5. Many local law enforcement agencies that currently do not employ body-worn cameras acknowledge that these systems are beneficial and will likely be implemented in the future either voluntarily or by mandate.

***Town Response:*** *The Town neither agrees nor disagrees with this finding as it was not one of the local law enforcement agencies interviewed for the Grand Jury report entitled "Body Cameras – The Reel Truth." The Town agrees with this finding to the extent that it believes that body worn cameras can be beneficial.*

## RECOMMENDATIONS

R1. The Grand Jury recommends that the councils of those cities/towns that have not adopted body-worn cameras direct their respective chiefs of police to develop an appropriate body-worn camera implementation plan and advise the public of their plan by November 30, 2016.

***Town Response:*** *The recommendation has not yet been implemented, but an implementation plan will be initiated by November 30, 2016. It should be noted that any implementation plan may or may not yet be public by this date. The Town will work with the various policies provided in the Grand Jury report entitled "Body Cameras – The Reel Truth" and will work with the League of California Cities and the California Police Chief's Association to determine the best body-worn camera policy and plan for the Town.*

R2. The Grand Jury recommends that the San Mateo County Sheriff develop a plan to implement body-worn cameras and advise the public of this plan by November 30, 2016.

***Town Response:*** *The recommendation will not be implemented as this recommendation is not applicable to the Town of Colma.*

R3. The Grand Jury recommends that the police departments of those cities, towns, and the Broadmoor Police Protection District that have not adopted body-worn cameras implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.



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***Town Response:*** *The recommendation has not yet been implemented, but the Town will initiate implementation of a body-worn camera system by October 31, 2017 pending adequate funding, resource and policy development. The Town will work with the various policies provided in the Grand Jury report entitled "Body Cameras – The Reel Truth" and will work with the League of California Cities and the California Police Chief's Association to determine the best body-worn camera policy and plan for the Town.*

R4. The Grand Jury recommends that the San Mateo County Sheriff's Office implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.

***Town Response:*** *The recommendation will not be implemented as this recommendation is not applicable to the Town of Colma.*

Sincerely,

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TOWN OF COLMA
AUGUST 5, 1924
CALIFORNIA