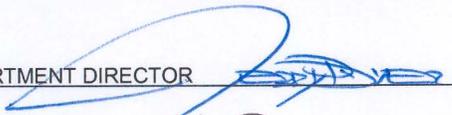
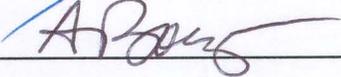


AGENDA ITEM NO.	IC
COUNCIL MEETING	10/21/08
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

October 21, 2008

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: BURKE FARRAH, LIEUTENANT
Crime View Bureau Commander

SUBJECT: APPROVE CONTRACT WITH THE HONORABLE BRETT DORIAN FOR VIDEO POLICING
PROJECT AUDITING SERVICES

KEY RESULT AREA

Public Safety

Presented to City Council
Date 10/21/08
Disposition Rec. Approved

RECOMMENDATIONS

It is recommended that the Council approve the Honorable Brett Dorian as the Video Policing Project Auditor, and approve the accompanying service contract, which has been "approved as to form" by the Fresno City Attorney's Office.

EXECUTIVE SUMMARY

Council approved the Video Policing Project Policy and Guidelines Manual, containing a number of safeguards and procedures designed to ensure the professional and legal implementation of the program. Chief among these is appointment of an auditor, approved by the Council and Police Department, responsible for an annual review of all facets of the project. The Police Department is requesting Council approval of the Honorable Brett Dorian, retired federal bankruptcy judge, as the Video Policing Project Auditor, consistent with the attached contract for his services.

KEY OBJECTIVE BALANCE

The acceptance of this appointment and contract balances the three Key Objectives of Customer Satisfaction, Employee Satisfaction and prudent Financial Management. It increases Customer Satisfaction by ensuring compliance with existing safeguards and increasing the confidence the community has in its Police Department. Employee Satisfaction is increased by ensuring appropriate policies and guidelines are clear, concise, and effective. Prudent Financial Management is achieved through the generous donation of time and service by Judge Dorian to reduce liability, manage risk, and ensure effective safeguards are followed in the Video Policing Project.

BACKGROUND

The Video Policing Project Policy and Guidelines adopted by Council in September 2006 states:

"Use of the system will be regularly audited annually by a mutually agreed upon person between the FPD and a majority of the Fresno City Council, preferably a retired Federal judge. The report will address

SUBJECT TO MAYOR'S VETO

compliance issues with this policy manual and any audits of operators and the subsequent findings. The report will be sent to the Fresno City Council, the Chief of Police and the Mayor's Office."

We are pleased to present the Honorable Brett Dorian to Council for your approval as the Video Policing Project Auditor. Judge Dorian was born in Syracuse, N.Y., in 1934, and relocated with his family to San Francisco in 1937. After graduating from high school, he enlisted in the U.S. Army in 1952 and was honorably discharged after three years of service, including a tour in Japan during the Korean War. In 1959, he graduated magna cum laude from San Francisco State University with a Bachelor's degree in International Relations, and in 1962 graduated in the top 5% of his class at Berkeley Law. He has been a member of the California State Bar since 1963, clerked with the California Court of Appeal in San Francisco, served as a Madera County Deputy District Attorney, and was the first Executive Director of Fresno County Legal Services where he served for nine years. Judge Dorian served in private practice for 13 years before his appointment to the Federal bench in 1988. He "retired" in 2001, but continued in active service as a recalled judge until February 2008.

On October 29, 2001, Congressman George Radanovich remarked in the Congressional Record:

"During Judge Dorian's tenure on the bench he has earned a reputation as a brilliant jurist committed to following the law and protecting the rights of the citizens and persons who appeared before him. Judge Dorian has done many things for our community, the courts and the nation."

Judge Dorian has been married to his wife, Ceceila, for 42 years, and has three children and five grandchildren. His daughter-in-law, Melanie Dorian, is in her first year of service as a Fresno Police Officer.

Judge Dorian has thoroughly reviewed the Video Policing Project Policy and Guidelines Manual, has met key members of the Video Policing Team, and is looking forward to assuming the responsibilities as Project Auditor. To improve his personal understanding of the project, he has received a short demonstration of our existing equipment and monitoring system, and requested enrollment in operator training. We are confident Judge Dorian possesses the background, knowledge, interest and character necessary to faithfully serve the community as the Video Policing Project Auditor.

FISCAL IMPACT

Approval of the Honorable Brett Dorian, as the Video Policing Project Auditor, and the accompanying contract for his services, will result in minor expenditures currently budgeted to the Video Policing Project, for the reimbursement of mileage expenses. Judge Dorian is volunteering his time and services to provide accountability and recommendations for the Video Policing Project.

JD:BAF:pgh
10/07/08

Attachments: Contract for Services
 Video Policing Project Policy and Guidelines Manual

10
10/21/08

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
VIDEO POLICING AUDITOR SERVICES**

THIS AGREEMENT is made and entered into effective the DECEMBER 12th, 2008, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and BRETT DORIAN., an individual (hereinafter referred to as "AUDITOR").

RECITALS

WHEREAS, CITY desires to obtain auditing services for its Video Policing Project, hereinafter referred to as "Project;" and

WHEREAS, CITY has adopted a "Video Policing Project Policy and Guidelines Manual" ("Manual"), incorporated by reference as if set forth herein, for the usage of Project video policing cameras; and

WHEREAS, members of the FPD have met with AUDITOR and discussed the policy, guidelines, goals and scope of the Project; and

WHEREAS, AUDITOR is willing to perform the services called for by this Agreement; and

WHEREAS, AUDITOR is willing to perform the services without compensation, but with payment for certain expenses; and

WHEREAS, FPD approves and recommends selection of AUDITOR to perform the auditing services; and

WHEREAS, Council approves the selection of AUDITOR to perform the auditing services; and

WHEREAS, this Agreement will be administered for CITY by its Police Chief (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, acknowledged by the parties as good and valuable consideration, it is mutually agreed as follows:

1. Scope of Services. AUDITOR agrees to perform the services described in **Exhibit A**. AUDITOR acknowledges receipt of a copy of the Manual prior to execution of this Agreement.

2. Term of Agreement and Time for Performance. This Agreement shall be effective and the services of AUDITOR as described in **Exhibit A** shall commence as of the date first set forth above ("Effective Date") and shall cover an audit period that terminates on November 30, 2008, and subsequent audit periods ending November 30 of each year thereafter. An audit report shall be submitted no later than December 30 of each year.

3. No Compensation; Reimbursement of Actual Expenses.

(a) AUDITOR shall receive no compensation for services rendered pursuant to the Agreement. CITY shall reimburse AUDITOR solely for the following expenses incurred by AUDITOR in performance of the services:

Travel: personal auto at rate of \$0.59 per mile
Meal: \$15.00 per day.

In no event shall the total cost of all expenses reimbursed by CITY under this Agreement, related to an audit period, exceed \$500.00. Necessary office supplies will be provided by CITY.

(b) Statements may be rendered monthly for the above defined expenses incurred by AUDITOR in the preceding month and will be payable in the normal course of CITY business.

(c) The parties may modify this Agreement at any time. Any modification must be made by written amendment to the Agreement signed by an authorized representative for each party.

4. Termination.

This Agreement shall be subject to termination by either party without cause by written notice to other party in accordance with the Notice provision no. 9.

5. Confidential Information and Ownership of Documents.

(a) Unless otherwise ordered by a court of competent jurisdiction, any reports, information, or other data prepared or assembled by AUDITOR pursuant to this Agreement shall not be made available to any individual or organization by AUDITOR without the prior written approval of the Administrator, other than the Fresno City Council, the Chief of the Fresno Police Department, and the Mayor of the City of Fresno. During the term of this Agreement, and thereafter, AUDITOR shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to video images, locations of video surveillance cameras and any other information possessed by the Fresno Police Department, business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by AUDITOR pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. AUDITOR shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. AUDITOR shall be allowed to retain work product.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, AUDITOR shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit B**. During the term of this Agreement, AUDITOR shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by AUDITOR in such statement.

(b) AUDITOR represents and warrants that he has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(c) If AUDITOR should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, AUDITOR shall include the provisions of this Section 6 in each subcontract and require his subcontractors to comply therewith.

(d) This Section 6 shall survive expiration or termination of this Agreement.

7. General Terms.

Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

8. Independent Contractor.

(a) In the furnishing of the services provided for herein, AUDITOR is acting solely as an independent contractor. Neither AUDITOR, nor any of his officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which AUDITOR shall perform his work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that AUDITOR is performing his obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between AUDITOR and CITY. AUDITOR shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, AUDITOR shall bear his own costs and expenses in pursuit thereof.

(c) Because of his status as an independent contractor, AUDITOR and his agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. AUDITOR shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, his employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with his other obligations under this Agreement, AUDITOR shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of AUDITOR'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common

law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, AUDITOR may be providing services to others unrelated to CITY or to this Agreement. The foregoing is subject to understanding of all parties that it is not anticipated AUDITOR will employ any other party to perform the services of this Agreement.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

10. Assignment.

(a) This Agreement is personal to AUDITOR and there shall be no assignment by AUDITOR of his rights or obligations under this Agreement without the prior written approval of the City Manager or his designee. Any attempted assignment by AUDITOR, his successors or assigns, shall be null and void unless approved in writing by the City Manager or his designee.

(b) AUDITOR hereby agrees not to assign the payment of any monies due AUDITOR from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due AUDITOR directly to AUDITOR.

11. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

12. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

13. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

14. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

15. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this

Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

16. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

17. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and AUDITOR.

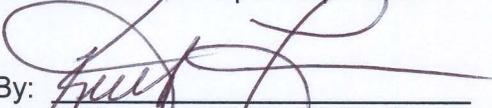
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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: 
Deputy Chief Keith Foster
Fresno Police Department

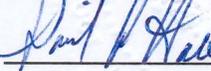
BRETT DORIAN,
an individual

By: 
Brett Dorian

ATTEST:
REBECCA E. KLISCH
City Clerk

By: 
Deputy (12/16/08)

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By:  9-03-08
David P. Hale Date
Chief Assistant

Addresses:

CITY:
City of Fresno
Attention: Deputy Chief Keith Foster
Fresno Police Department
2323 Mariposa Mall 2302 KE
Fresno, CA 93721
Phone: (559) 621-2200-
FAX: (559) 498-5168

AUDITOR:
Brett Dorian
1643 W. Stuart Avenue
Fresno, CA 93711
Phone: (559) 439-5569
brett_dorian@yahoo.com

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Conflict of Interest Disclosure Form

[Dorian-Video Policing Auditor ...] -rev. 9/17/08

Exhibit A

SCOPE OF SERVICES
Video Policing Auditor Service Agreement between City of Fresno ("CITY")
and Brett Dorian ("AUDITOR")
Video Policing Auditor Services
PROJECT TITLE

Video Surveillance Audit

AUDITOR will conduct ongoing, periodic audits of the Fresno Police Department Video Policing Program and prepare a report of his findings. The report will address compliance issues with the Video Policing Project Policy and Guidelines Manual and any audits of operators and the subsequent findings.

The audit shall be conducted annually and will reflect the audit findings for the preceding 12-month period. A report of findings made by AUDITOR shall be submitted to the FRESNO CITY COUNCIL, the CHIEF OF POLICE, and the MAYOR no later than 30 days from the end of the audit period. The audit period shall conclude on November 30th of each year.

Audit Process

The audit process and audit report will include the following elements:

1. A random, unannounced sampling of retained video files, as selected by the AUDITOR. These dates shall vary from year to year.
 - (A) AUDITOR will select up to three hours of video footage to review for each date.
 - (B) Video images captured from the system have been automatically downloaded onto a secure digital storage system where they will be stored for a minimum of 7 days before being overwritten by new data.
 - (C) Adherence to purging dates: To accomplish this, AUDITOR will look at the video system to determine that no video is kept beyond the 30-day limit established by this policy. Videos determined to have evidentiary value will be copied onto a CD or DVD and booked into evidence.
 - (D) In his review of the video system for the selected date, AUDITOR will look for any violations of the Video Policing Policy as contained in the following "Prohibited Use of Video Surveillance Technologies" table.

Prohibited Use of Video Surveillance Technologies

Policy Violation (Y/N)	Targeted viewing of specific citizens.
Policy Violation (Y/N)	Viewing activities where a reasonable expectation of privacy may exist, even though conducted in a public place.
Policy Violation (Y/N)	Traffic enforcement.
Policy Violation (Y/N)	Observation of citizens in public places in a public setting or situation, without reasonable suspicion of unlawful activity.
Policy Violation (Y/N)	Capture of images from areas where there would be a reasonable expectation of privacy, while either in a public place or in any structure.
Policy Violation (Y/N)	No operator shall select any person in view of this camera system based solely on their race, ethnicity, or sex for observation or tracking.
	<p>There will be no active monitoring of locations such as, but not limited to:</p> <ul style="list-style-type: none"> A non-emergency medical facility. Any social services facility (welfare office, Social Security office). A place of worship (i.e., a church or religious-based organization). A place (i.e., HIV or abortion clinic) or circumstances, although publicly located, where there exists a reasonable expectation of privacy (i.e., a conversation on a cell phone, writings or readings in a person's possession.) <p>EXCEPTION: These types of locations may be monitored only if criminal activity is suspected of occurring.</p>
	The system employed shall use digital watermarks to ensure the authenticity of transferred images from the system.
	The incorporation of any device that uses technology commonly referred to as "biometrics" or thermal imaging has not been implemented without first having the proposed system brought before the Fresno City Council.
	Demonstrations or rallies of any kind have been actively monitored only for potential criminal activities or crowd management. Any video of such activities shall be purged after 24 hours.
	PTZ camera operators are adhering to policy and have not been looking at non-public areas and areas in which there is a reasonable expectation of privacy.

2. Identifying Monitored Zones. AUDITOR may use cameras views, and/or physically visit a random sampling of camera locations to determine compliance with signage requirements and the appropriate placement of cameras in public areas.

Exception: In the event the placement of signage may hamper the Fresno Police Department's ability to make an apprehension, signage will not be posted.

3. User Access. AUDITOR will review applicable documentation and random sampling of video files to determine and report on the Fresno Police Department compliance with each of the following:
 - (A) All persons designated by the Fresno Police Department Video Policing Project Manager ("Project Manager") as system users have received training and a unique user identification in order to access the system.
 - (B) Images stored on servers have only been accessed and retrieved by the Project Manager or other authorized ISD technician, and only in response to public safety emergencies or authorized internal or criminal investigations.
 - (C) User accounts are limited to those police employees with a specific, ongoing need to access the system for the purpose of prevention, detection, identification, or apprehension considerations related to public safety emergency response or authorized internal or criminal investigations.
 - (D) All user accounts have been approved by the Chief of Police or his/her designee.
 - (E) PTZ camera operator activity has been logged by user ID and password.
 - (F) With the assistance of Information Services Division staff, AUDITOR shall review network security, and confirm the secure digital storage system is connected to CITY's network and is protected by multiple layers of security including password protected user accounts.

Exhibit B

DISCLOSURE OF CONFLICT OF INTEREST

Video Policing Auditor Services
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: DAUGHTER-IN-LAW
MELANIE DORIAN IS
A MEMBER OF THE
FRESNO POLICE DEPT

Brett Dorian
Signature
Brett Dorian
(name)

(company)
1643 W. Stuart Avenue
(address)
Fresno, CA 93711
(city state zip)

Additional page(s) attached.

Video Policing Project

Policy and Guidelines Manual



Fresno Police Department
July 2006

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Introduction

The Fresno Police Department's Video Policing Project is intended to contribute to public safety by employing a system that incorporates modern technology into the investigative process. This is available through active or passive video monitoring, storage and retrieval capabilities. Our system will be designed to improve the Department's ability to prevent and detect public safety emergencies, deter criminal conduct, identify crime participants and serve as an aid to the successful prosecution of those responsible.

I would also like to offer our sincere gratitude to the legal scholars who compiled a very persuasive publication called the *Guidelines for Public Video Surveillance* for their permission in allowing us to adopt many of their suggestions and recommendations directly into our policy. I feel there is a growing need for standardization for law enforcement that should be followed with the increasing popularity of this technology in our field

According to the American Bar Association, "technology-assisted physical surveillance can be an important law enforcement tool. It can facilitate the detection, investigation, prevention and deterrence of crime, for the safety of citizens and officers, the apprehension and prosecution of criminals and the protection of the innocent."¹

I also agree with the *Guidelines'* position that other simultaneous public safety enhancements—such as improved street lighting and other effective crime-reduction methods, and in my opinion, greater involvement by citizens in bearing witness to crimes in their neighborhoods—should not be forsaken in the name of camera installations.

I believe that this "smart policing" technology, combined with the confidence and trust of our citizens, can provide a safer community, a more efficiently run police agency, and greatly enhance our investigative abilities.

Sincerely,

Jerry P. Dyer
Chief of Police

¹ ABA Standards for Criminal Justice, electronic Surveillance, Section B, 3rd ed. 1999, at 2

Statement of Purpose

The purpose of our camera system is to supplement our agency's efforts to provide a safe public environment to conduct business, transit our public spaces, and enjoy our neighborhoods with minimal fear of crime. The intent of the system is to lead to the rapid identification of those responsible for crimes in view of a camera; the deterrence of those who, but for the presence of a camera, might seize an opportunity to prey upon one another, and the successful prosecution of criminals whose activity is captured. This system is not a panacea for crime; it will not prevent the actions of those who are determined to violate the rights or freedoms of others.

The system will not be used for

- Arbitrary viewing of citizens.
- Viewing activities where a reasonable expectation of privacy may exist, even though conducted in a public place.
- Traffic enforcement.

There may exist other examples that are too numerous to expound upon in this document that will limit the use of video information obtained by this system.

This policy and guidelines will specify rules of acceptable Fresno Police Department use of the Video Policing system and designate specifications in order to achieve program goals without compromising the public's right to privacy. This document must also be flexible to adjust for unanticipated incidents, occurrences or applications for future improvements.

Video Policing Design Specifications

The system used by the Fresno Police Department will utilize multiple fixed and adjustable cameras focused on predetermined public areas in public places. Cameras shall be situated in a manner and located in public places that will maximize the field of view of public areas for public safety purposes only. This system will be used primarily to address serious threats to public safety and applications delineated in this document.²

- It is not intended to serve as a mechanism for the casual observation of citizens in public places conducting lawful activities in a public setting or situation.

² Guidelines for Public Video Surveillance, pg 16

- Camera placement will minimize the potential inadvertent capture of images from areas where there would be a reasonable expectation of privacy, while either in a public place or in any structure.

In any location where the view of any camera may compromise a citizen's privacy expectation, the Project Manager or his/her designee shall review the camera's location and either make a recommendation to relocate the unit or to employ window-blanking technology to minimize, if not eliminate, the potential for video intrusion.

The cameras may be equipped with Pan, Tilt, and Zoom (PTZ) capabilities that allow operators to manipulate the framing or focal length of a video image only for the specific purpose of monitoring potential suspicious persons, activities or as the result of a CFS.

Images that are captured of persons who are either irrelevant or incidental to an investigation shall be digitally masked prior to any public release of such footage.³

Racial Profiling/Nondiscrimination

No operator shall select any person in view of this camera system based solely on their race, ethnicity, or sex for observation or tracking. The system shall only be used for purposes directly related to public safety or authorized internal or criminal investigations. The system shall not be used to track individuals arbitrarily or based on race, gender, ethnicity, sexual orientation, disability or other classifications protected by law.

Operators shall make specific observations of individuals based only on articulable reasonable suspicion that the person may be or may have been involved in criminal activity of a serious nature, or as the result of a call for service to law enforcement of criminal activity in the area of the camera's viewing parameters.

Tracking and Identification of Persons

"Tracking" refers to the use of public video surveillance systems to follow an individual or his/her vehicle, regardless of whether that individual's identity is known, so as to create a seamless record of his/her activity during a specific period.⁴

"Identification" refers to the use of the system to ascertain or confirm the identity of an

³ Ibid, pg 31

⁴The limitations in this section do not apply law enforcement's ability to *manually* track an individual within a camera view (using pan and tilt functions) or between separate cameras by manual means.

individual captured on video footage.⁵ Tracking and identification can occur in real time or by using stored video footage, although an individual may be identified without being tracked, or vice versa.

The use of identification and tracking technologies raises specialized concerns regarding constitutional rights and values. Even in public, most people expect to remain anonymous unless they are seen, recognized, and remembered by another individual present at that location. Even tracking alone can create a far more thorough record of activity than observation and recording. Identification, moreover, creates a record that is personally identifiable and traceable back to a specific person, which raises data privacy concerns far less present with other types of surveillance.⁶

The Fresno Police Department will adopt the practice of tracking an unknown person only when an operator makes specific observations of the individual(s) based on articulable reasonable suspicion that the person may be or may have been involved in criminal activity of a serious nature, or as the result of a call for service to law enforcement of criminal activity in the area of the camera's viewing parameters.

Storage/Retrieval of Images

Video images captured from the system will be automatically downloaded onto a secure digital storage system where they will be stored for a minimum of seven (7) days before being overwritten by new data. The secure digital storage system will be connected to the City's network and is protected by multiple layers of security including password protected user accounts.

The system employed shall use digital watermarks to ensure the authenticity of transferred images from the system.⁷

Requests for a review of stored images shall be made through to the Project Manager or his/her designee. The review and retrieval of images may be for the purpose of criminal or administrative investigations only.⁸

⁵Identification includes manually appending personally identifiable information, such as name, address, or criminal history, to recorded images of those individuals, or automatically identifying an individual captured on video footage, in real time or using stored data, using biometric or other identification algorithms. These guidelines do not attempt to place specific limitations on identification of individuals in video footage based on visual recognition by law enforcement personnel or other individuals. Should that identification be entered into a database for later searching, however, the identification would be considered automatic and within the scope of the *Guidelines*.

⁶ Guidelines for Public Video Surveillance, pg 27

⁷ Guidelines for Public Video Surveillance, pg 31

⁸ Guidelines for Public Video Surveillance, pg 29

New Technology

Any changes to the scope, capabilities and the uses of the system should not pose significantly greater threats to constitutional rights and values than existing ones.

However, the incorporation of any device that uses technology commonly referred to as “biometrics” shall not be implemented without first having the proposed system brought before the Fresno City Council. The approval process will include a complete disclosure of the capabilities of such a system and legal necessity of its addition to any existing camera system.

Other technological advances that could be incorporated into the existing video camera system (i.e., thermal imagery) shall also be first publicly proposed by the information being presented to the Fresno City Council for their approval.

Legitimate Law Enforcement Purposes

The Fresno Police Department may collect data that would be relevant to other legitimate law enforcement uses. Subject to certain restrictions (discussed below), law enforcement may use the system for these new purposes.

For clarification purposes, it should be distinguished between the two types of extra-purpose use of this video system—“secondary” and “incidental.”⁹

- Secondary use is an intentional, planned use of a system, a component of it, or the collected data, for a purpose other than the original one. For instance, if an officer has reason to believe that stored footage collected for traffic control purposes would show evidence of drug shipments and seeks to review the footage for this purpose, the use would be secondary.

The written permission of the system administrator is required for any “secondary use” of the Fresno Police Department Video Surveillance System.

- Incidental use describes a situation in which law enforcement is using the system for its intended purpose and incidentally notices something useful for a different purpose. For instance, if an officer monitoring a surveillance system deployed to

⁹ Guidelines for Public Video Surveillance, page 29

prevent a terrorist attack incidentally witnesses a non-terrorism serious criminal offense, the information would be useful for the purpose of investigating that crime.

No additional approval is required for “incidental use” of the system.

A public video surveillance system may be used incidentally for other legitimate law enforcement purposes. Similar to the “plain view” exception in Fourth Amendment law, a police officer properly observing public scenes through a visual surveillance system may act upon evidence of criminal behavior as if he/she had witnessed it in person. This is true whether the officer is viewing the footage in real time or via a recording.¹⁰

Identifying Monitored Zones

Whenever practical, signage notifying the public that the Video Policing system is being used and recorded will be posted in conspicuous locations proximate to each camera indicating that the camera may be monitored and/or recorded. In the event the placement of signage may hamper the Police Department’s ability to make an apprehension, signage will not be posted.

When signs are placed, they will be clearly and conspicuously placed and shall clearly display at least a camera icon indicating the presence of a video camera.

Monitoring of Employee Access

The Video Policing system shall be equipped with capabilities that provide an audit trail of system use and user access. This information shall include the user ID, password and the ability to review all activities concerning the use of the PTZ features of that particular operator.

Authorized Users

User accounts will be limited to those City of Fresno employees with a specific, ongoing need to access the system for the purpose of prevention, detection, identification, or apprehension considerations related to public safety, emergency response, or authorized internal or criminal investigations. All user accounts require approval by the Chief of Police or designee before establishment.

¹⁰ Guidelines for Public Video Surveillance, page 30

User Access

All persons designated by the Project Manager as system users shall receive training and a unique user identification in order to access the system. Images stored on servers shall only be accessed and retrieved by the Video Policing Project Manager or other authorized ISD technician, and only in response to public safety emergencies or authorized internal or criminal investigations.

Unused/Purging Video Data

Video data that has not been retained for evidentiary purposes shall not be reproduced, nor shall it be distributed, provided, or shown to other persons, without the approval of the Chief of Police, or pursuant to a court order. In the event that persons are captured whose images are incidental to any legitimate law enforcement purpose, the following guidelines shall be followed:

- Recorded images lacking evidentiary or other documented value shall be overwritten as a matter of course after 30 days.¹¹
- Prior to any public release of images, the Department shall employ the use of “digital masking” or other technologies to remove identifying features of individuals who are incidentally captured on camera or whose identities are otherwise irrelevant to the purposes for which the data is stored.¹²

Video Data as Evidence

Video data retained for evidentiary purposes shall only be reproduced for the purpose of prosecution efforts. All copies shall be accounted for by the investigator responsible for maintaining case records related to the video data.

Audits

Use of the system will be regularly audited annually by a mutually agreed upon person between the FPD and a majority of the Fresno City Council, preferably a retired Federal judge. The report will address compliance issues with this policy manual and any audits of operators and the subsequent findings. The report will be sent to the Fresno City Council, the Chief of Police and the Mayor’s Office.

¹¹ Guidelines for Public Video Surveillance, pg 26

¹² Guidelines for Public Video Surveillance, pg 31

Privacy and Anonymity

It is the intent of these policies and guidelines to ensure that all citizens, who may be conducting their activities in a place generally described as “public,” be assured that their Constitutional right to privacy is respected and acknowledged.

Freedom of Expression and Association

The Fresno Police Department also shares its deep commitment to preserving the right of individuals to freely express themselves and to associate freely in all public settings.

It is with the above perspective the Fresno Police Department adopts the following policies on the use of its Video Policing System:

There will be no active monitoring of locations such as, but not limited to:

- Political rallies or demonstrations
- A non-emergency medical facility.
- Any social services facility (welfare office, Social Security office).
- A place of worship (i.e., a church or religious-based organization).
- A place (i.e., HIV or abortion clinic) or circumstances, although publicly located, where there exists a reasonable expectation of privacy (i.e., a conversation on a cell phone, writings or readings in a person’s possession.)

EXCEPTION: These types of locations may be monitored only if criminal activity is suspected of occurring.

Rallies may be actively monitored only for potential criminal activities or crowd management. Any video of such activities shall be purged after 24 hours.

Pan, Tilt & Zoom (PTZ) Camera Usage

1. Any active, continual observation of an individual, employing PTZ cameras, shall be done as the result of reasonable suspicion of their involvement in criminal activity.
2. PTZ camera operators are responsible for protecting the public’s right to privacy as delineated by the Department values.
3. PTZ camera operators are forbidden from looking at non-public areas and areas in which there is a reasonable expectation of privacy.

4. PTZ camera operations will be randomly audited for misuse violations.
5. PTZ camera images and operators are subject to the same restrictions detailed under "User Access."

Authorized Camera Applications

The primary use of the cameras will be in conjunction with calls for service of a potentially life-threatening or serious nature. These types of calls are, but may not be limited to:

- Robbery
- Assaults
- Violent crimes
- Narcotics enforcement
- Property crimes
- Surveillance activities for crime series
- When permitted by business owners
- Internal investigations

Sharing of Images

Requests for images in the possession of the Fresno Police Department shall be made with the authorization of the Chief of Police only. The request shall be in writing on the requesting agency's letterhead and signed by that agency's Chief of Police or appropriate counterpart.

Complaints Regarding Cameras

See Fresno Police Department Manual, Section 2.4.11.

Provision of Images to Members of the Public

Images obtained by the Fresno Police Department cameras shall not be generally releasable to members of the general public, including information sought between civil litigants. Images will be withheld consistent with the Public Records Act. These include data involving an ongoing law enforcement investigations or data which constitutes an unwarranted invasion of personal privacy. This is based on the Freedom of Information Act's privacy exception. The most notable exception is where images are released to assist in the identification or apprehension of a person or persons wanted in an investigation.

Policy Violations

Unauthorized access to the system, misuse of the system, unauthorized reproduction of images, or unauthorized distribution of images may result in disciplinary action up to and including termination.

October 22, 2008

Council Adoption: 10/21/08

TO: MAYOR ALAN AUTRY

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC
City Clerk

Mayor Veto:

Override Request:

REK

RECEIVED

2008 OCT 31 AM 10:14

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 10/21/08, Council took legislative action entitled **Appv contract with Honorable Brett Dorian for video policing project auditing services**, Item No. 1C, by the following vote:

Ayes	:	Calhoun, Caprioglio, Dages, Duncan, Perea, Sterling, Xiong
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before November 3, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Alan Autry, Mayor

Date: 10/31/08

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:

RECEIVED

