

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: November 6, 2017
From: Yuki Lei Sugimura, Chair
Policy, Economic Development, and Agriculture Committee

2017 NOV -7 PM 3:35

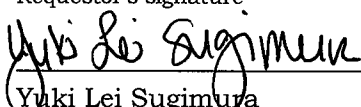
TRANSMITTAL
Memo to:

DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jerrie L. Sheppard, Esq.

Subject: AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL (PEA-45)

Background Data: Please review revisions to the proposed bill based on the Committee's discussion, including incorporated nonsubstantive revisions, and approve as to form and legality. Please also include the signed hard copy in your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Yuki Lei Sugimura	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: 7134)
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RECEIVED
OFFICE OF THE
COUNTY COUNCIL
2017 NOV -7 PM 4:26

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)
 SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

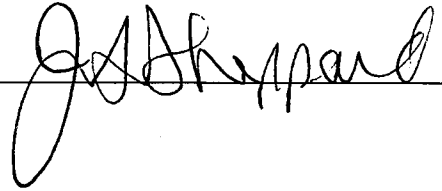
ASSIGNED TO: <u>JLS</u>	ASSIGNMENT NO. <u>2017-0098</u>	BY: <u>JS</u>
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date 11/7/2017

By  (Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE
COUNTY OF MAUI THROUGH THE CHIEF OF POLICE TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII,
DEPARTMENT OF THE ATTORNEY GENERAL

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The Secretary of Defense (“Secretary”) is authorized by 10 USC §2576a to transfer excess Department of Defense (“DOD”) personal property to law enforcement agencies (“LEAs”) through the Law Enforcement Support Office (“LESO”) Program, also known as the 1033 Program, administered by the Defense Logistics Agency (“DLA”) for the Secretary. The Governor of Hawaii designated the Attorney General as the State of Hawaii’s (“State’s”) Coordinator for the LESO Program, as reflected in the Governor’s designation letter dated January 11, 2017, and the Attorney General’s designation letter dated January 16, 2017, attached hereto as Exhibits “1” and “2,” respectively.

The County of Maui (“County”), through its Department of Police (“MPD”), would like to receive excess DOD personal property under the LESO Program, and is willing to fulfill the duties as a recipient LEA as long as the program may be authorized and administered by the Attorney General, or the Governor’s designated State Coordinator.

The State Plan of Operations (“SPO”), attached hereto as Exhibit “3,” sets forth the duties and responsibilities of the State and MPD to comply with the LESO Program. MPD’s duties include ongoing accounting for excess DOD personal property provided under the LESO Program, and administrative duties for tracking, reporting, transferring, and disposing of such property, which will impose some financial obligation on MPD. The financial obligation

considered is far outweighed by the benefit and fiscal value of the excess DOD property to be received under the LESO Program. The SPO is periodically amended to reflect DLA policy and other operational changes in State and County participation in the LESO Program.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Council Authorization. The Council hereby authorizes the Mayor, on behalf of the County, through MPD and by its Chief Law Enforcement Official, the Chief of Police, to enter into the SPO between the State and MPD, including all updates and amendments thereto.

SECTION 3. Council Review. The Council shall review the agreement every five years, along with lists of DOD property received by MPD under the LESO Program, which shall be transmitted to the Council annually.

SECTION 4. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui

pea:misc:045abill01



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

January 11, 2017

Mr. Carlos S. Torres
Program Manager
Law Enforcement Support Office, DLA
Disposition Services J-413 (LESO)
74 North Washington Avenue
Battle Creek, Michigan 49037-3092

Dear Mr. Torres:

Re: Hawaii's participation in the Defense Logistics Agency 1033 Program

This letter is to designate Douglas S. Chin, Attorney General for the State of Hawaii, as the 1033 Program State Coordinator for the State of Hawaii. Attorney General Chin's information is as follows:

Address: Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Telephone: (808) 586-1282

Facsimile: (808) 586-1239

E-Mail: douglas.s.chin@hawaii.gov

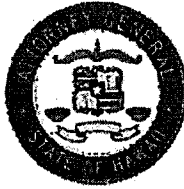
Mr. Chin will designate a State Point of Contact to conduct the day-to-day operations of the 1033 Program for the State of Hawaii.

Thank you for your assistance to the law enforcement agencies of the State of Hawaii.

With warmest regards,

David Y. Ige
Governor

DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
CIVIL RECOVERIES DIVISION
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1100; Fax - (808) 586-8116

January 16, 2017

Carlos S. Torres
Program Manager
Law Enforcement Support Office, DLA
Disposition Services J-413 (LESO)
74 North Washington Avenue
Battle Creek, MI 49037-3092

Dear Mr. Torres:

This letter is to designate Michael S. Vincent as the 1033 Program State Point of Contact for the State of Hawaii with full signature authority. Mr. Vincent can be contacted at:

Address: Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Telephone: (808) 586-1100
(808) 586-1107 (direct office)
(808) 620-5418 (Cell)

Facsimile: (808) 586-8116

E-Mail: michael.s.vincent@hawaii.gov

Thank you for your assistance to the law enforcement agencies of the State of Hawaii.

Very truly yours

A handwritten signature in black ink, appearing to read "D. Chin".

Douglas S. Chin
Attorney General
1033 Program State Coordinator

EXHIBIT " 2 "

STATE PLAN OF OPERATIONS
BETWEEN THE STATE OF
HAWAII
AND THE
MAUI COUNTY POLICE DEPARTMENT

I. PURPOSE

This State Plan of Operation (SPO) is entered into between the State of HAWAII and the MAUI COUNTY POLICE DEPARTMENT (PARTICIPATING LEA), to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DOD) personal property transferred pursuant to 10 USC § 2576a in order to promote the efficient and expeditious transfer of property and to ensure accountability of the same.

II. AUTHORITY

The Secretary of Defense is authorized by 10 USC § 2576a to transfer to State Law Enforcement Agencies, personal property that is excess to the needs of the DOD and that the Secretary determines is suitable to be used by such agencies in law enforcement activities, with preferences for counter-drug / counter-terrorism or border security activities, under such terms prescribed by the Secretary. The authorities granted to the Secretary of Defense have been delegated to the Defense Logistics Agency (DLA) in determining whether property is suitable for use by agencies in Law Enforcement Activities. DLA defines law enforcement activities as activities performed by governmental agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension (Law Enforcement Agencies or "LEAs" including the PARTICIPATING LEA). This program is also known as the "1033 Program" or the "LESO Program" and is administered by DLA Disposition Services, Law Enforcement Support Office (LESO).

III. GENERAL TERMS AND CONDITIONS

A. OPERATIONAL AUTHORITY

The Governor of the State of Hawaii has designated in writing with an effective date of January 11, 2017 the Hawaii Attorney General to implement this program statewide as well as conduct management and oversight of this program.

Funding / Budgeting to administer this program is provided by the State of Hawaii, Department of the Attorney General.

The provided funding is used to support assistance to the LEAs with customer service to include computer / telephone assistance and physical visits to the LEAs to assist with acquiring access to the LESO Program. However, PARTICIPATING LEA agrees that any funds required for interisland travel expenses incurred by the Department of the Attorney General in order to comply with the requirements of this Agreement for annual inventory, inventory accountability, program compliance reviews, or any other requirement of this Agreement or participation in the 1033 Program will be the responsibility of the PARTICIPATING LEA. Notwithstanding, the State of Hawaii will attempt to coordinate such travel with other official business to reduce, minimize, or eliminate additional financial obligations on PARTICIPATING LEA.

The staffing to provide the support to the LEAs within the State of Hawaii is as follows:

State Coordinator (SC): Hawaii Attorney General	Douglas S. Chin
State Point of Contact (SPOC): Deputy Attorney General	Michael S. Vincent

The following is the facility / physical location and business hours to provide customer service to those LEAs currently enrolled, as well as interested participants of the LESO Program:

Agency Address / Location:	425 Queen Street Honolulu, Hawaii, 96817
EMAIL / Contact Phone Numbers:	michael.s.vincent@hawaii.gov 808-586-1100
Fax Number:	808-586-8116
Hours of Operation:	7:45-4:30 M-F (excluding holidays)

As a condition to participating in the 1033 Program with the State of Hawaii ("STATE"), the PARTICIPATING LEA agrees to all terms and conditions of this Agreement.

B. The DLA LESO has final authority to determine the type, quantity, and location of excess DOD personal property suitable for law enforcement activities, if any, which will be transferred to the PARTICIPATING LEA.

C. This agreement creates no entitlement to the PARTICIPATING LEA to receive excess DOD personal property.

D. The PARTICIPATING LEA understands that property made available under this agreement is for the use of authorized program participants only. Property may not be obtained for any individual, organization, or agency that has not been approved as a participant in the LESO Program. All requests for property must be based on bona fide law enforcement requirements.

Property will not be obtained by any authorized participant for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan.

E. Controlled property (equipment) includes any property that has a demilitarization (DEMIL) Code of B, C, D, F, G, and Q; and property, regardless of demilitarization code, that was specifically identified in the Law Enforcement Equipment Working Group Report from May 2015, created pursuant to Executive Order 13688 (EO). The Working Group Report mandates that the following items be treated as controlled property:

- 1) Manned Aircraft, fixed or rotary wing
- 2) Unmanned Aerial Vehicles
- 3) Wheeled Armored Vehicles
- 4) Wheeled Tactical Vehicles
- 5) Command and Control Vehicles
- 6) Specialized Firearms and Ammunition Under .50 Cal (excluded firearms and ammunition for service-issued weapons)
- 7) Explosives and Pyrotechnics
- 8) Breaching apparatus
- 9) Riot Batons
- 10) Riot Helmets
- 11) Riot Shields

F. LEAs that request items in Paragraph E above must provide all required information outlined in the Law Enforcement Equipment Working Group Report and all information on the LESO request form. Among other specific requirements identified in these documents, LEAs will be required to certify and submit:

- 1) A detailed written justification with a clear and persuasive explanation of the need for the property and the law enforcement purposes it will serve;
- 2) Evidence of approval or concurrence by the LEA's civilian governing body (city council, mayor, etc.);
- 3) The LEA's policies and protocols on deployment of this type of property;
- 4) Certifications on required training for use of this type of property; and
- 5) Information on whether the LEA has applied, or has pending an application, for this type of property from another Federal agency.

G. The PARTICIPATING LEA must maintain and enforce regulations designed to impose adequate security measures for controlled property to mitigate the risk of loss or theft.

H. Under no circumstances will controlled property be sold or otherwise transferred to non-U.S. persons, or exported. All transfers must be approved by the State and DLA Disposition Services LESO.

I. Cannibalization requests for controlled property must be submitted in writing to the

STATE, with final approval by the LESO. The LESO will consider cannibalization requests on a case-by-case basis.

J. The LESO conditionally transfers all excess DOD property to States / LEAs enrolled in the LESO Program. Title or ownership of controlled property will remain with the LESO in perpetuity and will not be relinquished to the PARTICIPATING LEA. When the PARTICIPATING LEA no longer has legitimate law enforcement uses for controlled property, the PARTICIPATING LEA must notify the STATE, who will then notify the LESO, and the controlled property must either be transferred to another enrolled LEA (via standard transfer process) or returned to DLA Disposition Services for disposal. The LESO reserves the right to recall controlled and non-controlled property issued through the LESO Program at any time.

K. Property with a DEMIL Code of "A" is also conditionally transferred to the PARTICIPATING LEA. However, after one year from the Ship Date, the LESO will relinquish ownership and title to the PARTICIPATING LEA. Prior to this date, the STATE and PARTICIPATING LEA remain responsible for the accountability and physical control of the item(s) and the LESO retains the right to recall the property. Title will not be relinquished to any property with DEMIL Code of "A" that is controlled property identified in Paragraph III E.

- 1) Property with DEMIL Code of "A" will automatically be placed in an archived status on the PARTICIPATING LEAs property book upon meeting the one year mark.
- 2) Once archived, the property is no longer subject to annual inventory requirements and will not be inventoried during a LESO Program Compliance Review (PCR).
- 3) Ownership and title of DEMIL "A" items that have been archived will pass automatically from the LESO to the PARTICIPATING LEA when they are archived at the one year mark (from Ship Date) without issuance of any further documentation.
- 4) PARTICIPATING LEAs receive title and ownership of DEMIL "A" items as governmental entities. Title and ownership of DEMIL "A" property does not pass from DOD to any private individual or PARTICIPATING LEA official in their private capacity. Accordingly, such property should be maintained and ultimately disposed of in accordance with provisions in State and local law that govern public property. Sales or gifting of DEMIL "A" property after the one year mark in a manner inconsistent with State or local law may constitute grounds to deny future participation in the LESO Program.

L. The PARTICIPATING LEA is not authorized to transfer controlled property or DEMIL Code "A" property carried on their inventory without LESO notification and approval. Property will not physically move until the STATE and LESO approval process is complete.

IV. ENROLLMENT

A. A PARTICIPATING LEA must have at least one full-time law enforcement officer in order to enroll and/or receive property via the LESO Program. Only full-time and part-time law enforcement officers are authorized to receive property. Reserve officers are not authorized to receive property.

B. The STATE shall:

- 1) Implement LESO Program eligibility criteria in accordance with 10 USC § 2576a, DLA Instructions and Manuals, and the DLA MOA the STATE signs.
- 2) Receive and process applications for participation from PARTICIPATING LEAs currently enrolled and those LEAs that wish to participate in the LESO Program.
- 3) Receive and recommend approval or disapprove LEA applications for participation in the LESO Program. The State Coordinators have sole discretion to disapprove LEA applications on behalf of the Governor of their State. The LESO should be notified of any applications disapproved at the State Coordinator level. The State Coordinator will only forward and recommend certified LEAs to the LESO that are government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated officers have the powers of arrest and apprehension. The LESO retains final approval / disapproval authority for all LEA applications forwarded by State Coordinators.
- 4) Ensure LEAs enrolled in the LESO Program update the PARTICIPATING LEAs account information annually (accomplished during the FY Annual Inventory in the Federal Excess Property Management Information System [FEPMIS]).
- 5) Provide a comprehensive overview of the LESO Program to all LEAs once they are approved for enrollment. This comprehensive overview must be done within thirty (30) days and include, verbatim, the information contained in Paragraph III E of this SPO.
- 6) Ensure that screeners of property are employees of the PARTICIPATING LEA. Contractors may not conduct screening on behalf of the PARTICIPATING LEA.
- 7) Ensure that at least one person per PARTICIPATING LEA maintains access to the FEPMIS. Account holders must be employees of the PARTICIPATING LEA.

V. ANNUAL INVENTORY REQUIREMENTS

A. Per the DLA Instructions and Manuals and the DLA MOA, the STATE and PARTICIPATING LEAs are required to conduct an annual inventory certification of controlled property, which

includes DEMIL "A" for one (1) year from Ship Date. Annual inventories start on October 1 of each year and end January 31 of each year.

B. The STATE shall:

- 1) Receive, validate, and reconcile incoming certified inventories from PARTICIPATING LEAs.
- 2) Ensure PARTICIPATING LEAs provide serial numbers and photos identified during the annual inventory process for inclusion in the LESO property accounting system for all controlled property identified in Paragraph III E, small arms and other unique items as required. For equipment that does not contain a serial number, such as riot control or breaching equipment, a photograph will suffice.
- 3) Suspend the PARTICIPATING LEA as a result of the PARTICIPATING LEAs failure to properly conduct and/or certify and submit certified inventories, according to the aforementioned requirements.

C. The PARTICIPATING LEA shall:

- 1) Complete the annual physical inventory as required.
- 2) Provide serial numbers and photos identified in the annual inventory process for inclusion in the LESO property accounting system for all controlled property identified in Paragraph III E, small arms and other unique items, as required. For equipment that does not contain serial number, such as riot control or breaching equipment, a photograph will suffice.
- 3) Certify the accountability of all controlled property received through the LESO Program annually by conducting and certifying the physical inventory. The PARTICIPATING LEA must adhere to additional annual certification requirements as identified by the LESO.
 - a. The STATE and the LESO requires each PARTICIPATING LEA to submit certified inventories for their Agency by January 31 of each year. The Fiscal Year (FY) is defined as October 1 through September 30 of each year. This gives the PARTICIPATING LEA four (4) months to physically inventory LESO Program property in their possession and submit their certified inventories to the State Coordinators.
 - (1) The LESO requires a front or side and data plate photo for Aircraft and Tactical Vehicles that are serial number controlled, received through the LESO Program.
 - (2) The LESO requires serial number photos for each small arm received through the LESO Program.

b. The PARTICIPATING LEAs failure to submit the certified annual inventory by January 31 may result in the agency being suspended from operations within the LESO Program. Further failure to submit the certified annual inventory may result in a LEA termination.

4) Be aware that High Profile Commodities (Aircraft, Tactical Vehicles and Small Arms) and High Awareness (controlled) property are subject to additional controls.

VI. PROGRAM COMPLIANCE REVIEWS

A. The LESO conducts a Program Compliance Review (PCR) for each State that is enrolled in the LESO Program every two (2) years. The LESO reserves the right to require an annual PCR, or similar inspection on a more frequent basis for any State. The LESO PCRs are performed in order to ensure that State Coordinators, SPOCs and all LEAs within a State are compliant with the terms and conditions of the LESO Program as required by 10 USC § 2576a, DLA Instructions and Manuals, and the DLA MOA signed by the State.

- 1) If the STATE and/or PARTICIPATING LEA fail a PCR, the LESO will immediately suspend their operations and will subsequently issue corrective actions (with suspense dates) to the State Coordinator, which will identify what is needed to rectify the identified deficiencies within the State and/or LEA.
- 2) If the STATE and/or PARTICIPATING LEA fail to correct identified deficiencies by the given suspense dates, the LESO will move to terminate the LESO Program operations within the State and/or LEA.

B. The STATE shall:

- 1) Support the LESO PCR process by:
 - a. Contacting PARTICIPATING LEAs selected for the PCR review via phone and/or email to ensure they are aware of the PCR schedule and prepared for review.
 - b. Receiving inventory selection from the LESO. The PARTICIPATING LEA POCs shall gather the selected items in a centralized location to ensure that the LESO can efficiently inventory the items.
 - c. Providing additional assistance to the LESO as required, prior to and during the course of the PCR.
- 2) Conduct internal Program Compliance Reviews of PARTICIPATING LEAs participating in the LESO Program in order to ensure accountability, program compliance and validate annual inventory submissions are accurate. The State Coordinator must ensure an internal PCR of at least 5% of PARTICIPATING LEAs that have a property book from the LESO Program within his / her State is completed annually. This may result in a random review of all or selected property

at the PARTICIPATING LEA.

- a. The internal PCR will include, at minimum:
 - (1) A review of each selected PARTICIPATING LEAs LESO Program files.
 - (2) A review of the signed State Plan of Operation (SPO).
 - (3) A review of the PARTICIPATING LEA application and screener's letter.
 - (4) A physical inventory of the LESO Program property at each selected PARTICIPATING LEA.
 - (5) A specific review of each selected PARTICIPATING LEA's files for the following: DD Form 1348-1A for each item currently on inventory, small arms documentation, transfer documents, turn-in documents, inventory adjustment documents, exception to policy letters (if any), approved cannibalization requests (if any), and other pertinent documentation as required.
- b. The STATE and/or PARTICIPATING LEA will bear all expenses related to the repossession and/or turn-in of LESO Program property to the nearest DLA Disposition Services site.

VII. STATE PLAN OF OPERATION (SPO)

A. The STATE shall:

- 1) Identify, establish, and issue minimum criteria to be included in the SPO for the State and each PARTICIPATING LEA.
- 2) Establish a SPO, developed in accordance with Federal and State law, and conforming (at minimum) to the provisions of the DLA Instruction and Manuals and the DLA MOA.
 - a. The SPO will include detailed organizational and operational authority including: staffing, budget, facilities, and equipment that the State believes is sufficient to manage the LESO Program within their State.
 - b. The SPO must address procedures for making determinations of PARTICIPATING LEA eligibility, allocation, and equitable distribution of material, accountability and responsibility concerning excess DOD personal property, inventory requirements, training and education, State-level internal Program Compliance Reviews (PCR), and procedures for turn-in, transfer, and disposal.

- 2) Enter into written agreement with each PARTICIPATING LEA, via the LESO approved State Plan of Operation, to ensure the PARTICIPATING LEA fully acknowledges the terms, conditions, and limitations applicable to property transferred pursuant to this agreement. The State Plan of Operation must be signed by the Chief Law Enforcement Official (CLEO), or assigned designee of the PARTICIPATING LEA, and the current State Coordinator.
- 3) Request that the LESO Suspend or Terminate a PARTICIPATING LEA from the LESO Program when a PARTICIPATING LEA fails to comply with any term of DLA MOA, the DLA Instruction and Manuals, any Federal statute or regulation, or the State Plan of Operation.

VIII. REPORTING REQUIREMENTS FOR LOST, MISSING, STOLEN, DAMAGED OR DESTROYED LESO PROGRAM PROPERTY

A. All property Lost, Missing, Stolen, (LMS) damaged, or destroyed carried on a PARTICIPATING LEA's current inventory must be reported to the LESO.

- 1) Controlled property must be reported to the STATE and the LESO within twenty-four (24) hours. The aforementioned property may require a police and National Crime Information Center (NCIC) report submitted to the LESO, to include DEMIL "A" items that are considered controlled items in Paragraph III E.
- 2) Property with a DEMIL Code of "A" must be reported to the STATE and the LESO within seven (7) days.
- 3) All reports are subject to review by the DLA Office of the Inspector General (OIG).

B. LESO may grant extensions to the reporting requirements listed above on a case-by-case basis.

IX. AIRCRAFT AND SMALL ARMS

A. All aircraft are considered controlled property, regardless of DEMIL Code. Aircraft may not be sold and must be returned to the LESO at the end of their useful life. This State Plan of Operation ensures that all PARTICIPATING LEAs and all subsequent users are aware of and agree to provide all required controls and documentation in accordance with applicable laws and regulations for these items.

B. PARTICIPATING LEAs no longer requiring small arms issued through the LESO Program must request authorization to transfer or turn-in small arms. Transfers and turn-ins must be forwarded and endorsed by the State Coordinator's office first, and then approved by the LESO. Small Arms will not physically transfer until the approval process is complete.

C. Small Arms that are issued must have a documented chain of custody, with the chain of custody including a signature of the receiving officer indicating that he / she has received the appropriate small arm(s) with the correct, specific serial number(s). Small Arms that are issued to an officer will be issued utilizing an Equipment Custody Receipt (ECR); this Custody Receipt obtains the signature of the officer responsible for the small arm.

X. AMMUNITION

A. 10 U.S.C. § 2576(a) authorizes the Secretary of Defense to transfer to Federal and State agencies personal property of the Department of Defense, to include ammunition. Ammunition will be issued to LEAs pursuant to a Memorandum of Understanding between the DLA and the U.S. Army.

B. The LESO will screen all requests from LEAs and set priorities for allocation. Federal LEAs will have priority for any DOD excess ammunition.

C. All ammunition obtained via the LESO program will be for training purposes only. Upon requesting ammunition, LEAs must certify in writing that the ammunition will be used for training purposes only. Ammunition shall not be obtained for the purpose of sale, lease, loan, personal use, rent, exchange, barter, transfer, or to secure a loan. Ammunition obtained through the LESO program shall not be sold.

D. The LESO may allocate ammunition in amounts up to 200 rounds of each type of ammunition per officer, per year. LEAs may not request new allocations of a particular type of ammunition until all previous allocations of that particular type of ammunition requested through the LESO program have been expended. LEAs must certify in writing that all previous allocations of the particular type of ammunition they are requesting have been expended, if they previously obtained that particular type of ammunition through the LESO program. DLA LESO reserves the right to adjust allocation limits.

E. Approved allocations will be issued directly from the U.S. Army. LEAs are responsible for funding all costs associated with the packing, crating & handling (PC&H), and shipping of ammunition and will make reimbursements directly to the U.S. Army.

F. Ammunition will be treated as a consumable item and not tracked in the FEPMIS inventory or inspected during PCRs. The State and/or PARTICIPATING LEA is responsible for the disposal of any unused ammunition and spent brass.

G. The LESO will track and maintain necessary records of ammunition transferred to an LEA and will post all LEA requests, approvals, and denials on the LESO public web page.

H. The issuance of ammunition will require compliance with all other provisions governing controlled property in the existing MOA and required pursuant to the recommendations of the Law Enforcement Equipment Working Group Report from May 2015, created pursuant to Executive Order 13688 (EO). (see paragraph 3.E.).

XI. RECORDS MANAGEMENT

The LESO, State Coordinator, and PARTICIPATING LEAs enrolled in the LESO Program must maintain all records in accordance with the DLA Records Schedule. Records for property acquired through the LESO Program have retention controls based on the property's DEMIL Code. All documents concerning a property record must be retained.

- 1) Property records for items with DEMIL Code of "A" must be retained for two (2) calendar years from ship date, and then may be destroyed.
- 2) Property records for controlled property must be retained for five (5) calendar years or for the life span of the property, whichever is longer.
- 3) Environmental Property records must be retained for fifty (50) years, regardless of DEMIL Code (Chemicals, Batteries, Hazardous Material / Hazardous Waste).
- 4) LESO Program files must be segregated from all other records.
- 5) All property records must be filed, retained, and destroyed in accordance with DLA Records Schedule. These records include, but are not limited to, the following: DD Form 1348-1A, requests for transfer, turn-in, or disposal, approved Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Forms 10 and 5, Certificate of Aircraft Registration (AC Form 8050-3), Aircraft Registration Application (AC 8050-1) and any other pertinent documentation and/or records associated with the LESO Program.

XII. LESO PROGRAM ANNUAL TRAINING

A. 10 USC § 380 provides that the Secretary of Defense, in cooperation with the U.S. Attorney General, shall conduct an annual briefing of law enforcement personnel of each state. The briefing will include information on training, technical support, equipment, and facilities that are available to civilian law enforcement personnel from the Department of Defense.

B. The STATE shall organize and conduct training pertaining to information, equipment, technical support and training available to LEAs via the LESO Program.

C. The STATE shall ensure at least one representative (i.e. the State Coordinator or SPOC) attend the annual training that the LESO conducts.

XIII. PROPERTY ALLOCATION

A. The STATE Shall:

- 1) Provide the LESO website that will afford timely and accurate guidance, information, and links for all LEAs who work, or have an interest in, the LESO Program.

- 2) Upon receipt of a valid State / LEA request for property through the DLA Disposition Services RTD website, a preference will be given to those applications indicating that the transferred property will be used in the counter-drug, counter-terrorism, or border security activities of the recipient agency. Additionally, to the greatest extent possible, the STATE will ensure fair and equitable distribution of property based on current PARTICIPATING LEAs inventory and justification for property.
- 3) The STATE and the LESO reserve the right to determine and/or adjust allocation limits. Generally, no more than one of any item per officer will be allocated to a PARTICIPATING LEA. Quantity exceptions may be granted on a case-by-case basis by the LESO. Currently, the following quantity limits apply:
 - a. Small Arms: one (1) type for each qualified officer, full-time / part-time;
 - b. HMMWVs: one (1) vehicle for every three (3) officers;
 - c. MRAPs: one (1) vehicle per LEA.
- 4) The STATE and the LESO reserve final authority on determining the approval and/or disapproval for requests of specific types and quantities of excess DOD property.

B. The PARTICIPATING LEA shall:

- 1) Ensure an appropriate justification is submitted when requesting excess DOD property via the LESO Program and will ensure LESO Program property will be used for the law enforcement activity and for law enforcement purposes only within his / her State and agency.
- 2) When requesting property, provide a justification to the STATE and the LESO on how the requests for property will be used in counter-drug, counter-terrorism, or border security activities of the recipient agency. Additionally, the PARTICIPATING LEA should be fair and equitable when making requisitions based on current PARTICIPATING LEA inventory and the justification for property. Generally, no more than one of any item per officer will be allocated.
- 3) Ensure screeners of property are employees of the PARTICIPATING LEA. Contractors may not conduct screening on behalf of the PARTICIPATING LEA.
- 4) Obtain access to FEPMIS to ensure the property book is properly maintained, to include but not limited to transfers, turn-ins, and disposal requests and to generate these requests at the PARTICIPATING LEA level and forward all approvals to the STATE for action.
- 5) Ensure at least one person per LEA maintains access to FEPMIS. FEPMIS account holders must be employees of the LEA.

XIV. PROGRAM SUSPENSION & TERMINATION

A. The STATE and PARTICIPATING LEA are required to abide by the terms and conditions of the DLA MOA in order to maintain active status.

B. The STATE shall:

- 1) Suspend PARTICIPATING LEAs for a minimum of sixty (60) days in all situations relating to the suspected or actual abuse of LESO Program property or requirements and/or repeated failure to meet the terms and conditions of the DLA MOA. Suspension may lead to TERMINATION.**
- 2) The STATE and/or the LESO have final discretion on reinstatement requests. Reinstatement to full participation from a suspension and/or termination is not automatic.**
- 3) In coordination with the LESO, issue corrective action guidance to the PARTICIPATING LEA with suspense dates to rectify issues and/or discrepancies that caused suspension and/or termination.**
- 4) Require the PARTICIPATING LEA to submit results regarding all completed police investigations and/or reports regarding lost, missing, stolen and/or damaged LESO Program property, to include the PARTICIPATING LEAs Corrective Action Plan (CAP).**
- 5) Suspend or terminate the PARTICIPATING LEA from the LESO Program if the PARTICIPATING LEA fails to comply with any term of the DLA MOA, the DLA Instruction and Manuals, any Federal statute or regulation, or the State Plan of Operation.**
 - a. In the event of PARTICIPATING LEA termination, the State Coordinator will make every attempt to transfer the LESO Program property of the terminated PARTICIPATING LEA to an authorized STATE or LEA, as applicable, prior to requesting a turn-in of the property to the nearest DLA Disposition Services location.**
 - b. In cases relating to PARTICIPATING LEA termination, the PARTICIPATING LEA will have ninety (90) days to complete the transfer or turn-in of all LESO Program property in their possession.**

C. The PARTICIPATING LEA shall:

- 1) Notify the State Coordinator's office and initiate an investigation into any questionable activity or actions involving LESO property issued to the PARTICIPATING LEA that comes to the attention of the CLEO, and is otherwise within the authority of the Governor / State to investigate. LEAs must understand that the State Coordinators, acting on behalf of their Governor, may revoke or**

terminate their concurrence for LEA participation in the LESO Program at any time, and for any reason.

- 2) Understand that the State may suspend LEA(s) and/or LEA POC(s) from within their State, based upon their findings during internal Program Compliance Reviews and/or spot checks at the State level.
- 3) Initiate corrective action to rectify suspensions and/or terminations placed upon the LEA for failure to meet the terms and conditions of the LESO Program.
- 4) Be required to complete and submit results regarding all completed police investigations and/or reports regarding lost, missing, stolen and/or damaged LESO Program property. The LEA must submit all documentation to the State and the LESO upon receipt.
- 5) Provide documentation to the State and the LESO when actionable items are rectified for the State and/or LEA(s).
- 6) The LEAs CLEO must request reinstatement as required, via the State Coordinator or SPOC(s), to full participation status at the conclusion of a suspension period.

XV. COSTS & FEES

All costs associated with the transportation, turn-in, transfer, repair, maintenance, insurance, disposal, repossession or other expenses related to property obtained through the LESO Program is the sole responsibility of the STATE and/or PARTICIPATING LEA.

XVI. NOTICES

Any notices, communications, or correspondence related to this agreement shall be provided by E-mail, the United States Postal Service, express service, or facsimile to the State Coordinators office or cognizant DLA office. The LESO may, from time to time, make unilateral modifications or amendments to the provisions of this SPO. Notice of these changes will be provided to State Coordinators in writing. Unless State Coordinators take immediate action to terminate this SPO in accordance with Section XVIII, such modifications or amendments will become binding. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator to conform changes affecting their operations.

XVII. ANTI-DISCRIMINATION

A. By signing this SPO, or accepting excess DOD personal property under this SPO, the STATE pledges that it and each PARTICIPATING LEA agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

- 1) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) as implemented by DOD regulations 32 CR Part 195.

- 2) On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations in 45 CFR Part 90.
- 3) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 USC 794), as implemented by Department of Justice regulations in 28 CFR Part 41 and DOD regulations at 32 CFR Part 56.

B. These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the DOD.

XVIII. INDEMNIFICATION CLAUSE

The STATE / PARTICIPATING LEA is required to maintain adequate insurance to cover damages or injuries to persons or property relating to the use of property issued under the LESO program. Self-insurance by the STATE / PARTICIPATING LEA is considered acceptable. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of property issued under the LESO program. It is recognized that State and local law generally limit or preclude State Coordinators / LEAs from agreeing to open-ended indemnity provisions. However, to the extent permitted by State and local laws, the STATE / PARTICIPATING LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to property and injuries, illness or disabilities to, or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the STATE / PARTICIPATING LEA, its agents, servants, employees, or any person subject to its control while the property is in the possession of, used by, or subject to the control of the STATE / PARTICIPATING LEA, its agents, servants, or employees after the property has been removed from U.S. Government control.

XIX. TERMINATION

A. This SPO may be terminated by either party, provided the other party receives thirty (30) days' notice, in writing, or as otherwise stipulated by Public Law.

B. The undersigned State Coordinator and CLEO hereby agree to comply with all provisions set forth herein and acknowledge that any violation of the terms and conditions of this SPO may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

XX. IN WITNESS THEREOF, the parties hereto have executed this agreement as of the last date written below.

Type / Print Chief Law Enforcement Official Name

Chief Law Enforcement Official Signature

Date (MM/DD/YYYY)

DOUGLAS S. CHIN

State Coordinator

State Coordinator Signature

Date (MM/DD/YYYY)