

ORDINANCE NO. 03-11 AC CMS

**AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF OBERLIN AND THE OHIO DEPARTMENT OF PUBLIC
SAFETY, LAW ENFORCEMENT SUPPORT OFFICE, RELATING TO THE RECEIPT
BY THE CITY OF EXCESS U.S. DEPARTMENT OF DEFENSE PROPERTY
AND DECLARING AN EMERGENCY**

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain,
State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the attached Memorandum of Understanding between
the City of Oberlin and the Ohio Department of Public Safety, Law Enforcement
Support office, relating to the receipt by the City of excess U.S. Department of
Defense property is hereby approved, and the City Manager and Chair of
Council are hereby authorized and directed to execute same on behalf of the
City.

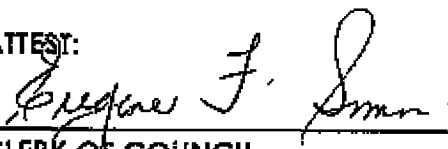
SECTION 2. It is hereby found and determined that all formal actions of this
Council concerning or relating to the adoption of this ordinance were adopted in
an open meeting of this Council and that all deliberations of this Council and of
any of its committees that resulted in such formal action were in meetings open
to the public in compliance with all legal requirements, including Section 121.22
of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency
measure necessary for the preservation of the public peace, health and safety of
the citizens of the City of Oberlin, Ohio, to wit:

"to authorize a Memorandum of Understanding as soon as possible
in order to provide for the usual daily operation of the municipality",
and shall take effect immediately upon passage.

PASSED: 1st Reading - January 21, 2003 (E)
2nd Reading -
3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: January 22, 2003

EFFECTIVE DATE: January 22, 2003

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF OHIO
DEPARTMENT OF PUBLIC SAFETY
AND
OHIO LAW ENFORCEMENT AGENCIES**

This Memorandum of Understanding (MOU), is entered into by and between the State of Ohio, through the Ohio Department of Public Safety Law Enforcement Support Office (hereafter "State"), located at 1970 W. Broad St, Columbus, Ohio 43223, and Chief of Police, Oberlin Police Department (hereafter "law enforcement agency" or "LEA") located at 85 South Main Street, Oberlin 44074 (collectively referred to hereafter as "parties") to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DoD) property which is transferred to law enforcement agencies within the State pursuant to the National Defense Authorization Act of 1997, as amended, (hereafter "Act") and the designation of authority by the Governor of the State of Ohio. Failure of the parties to abide by this agreement shall result in revocation of privileges to participate in the program as well as any other remedies provided for under the law.

This MOU amends, modifies, and replaces the previous MOU executed between the State and LEA. This MOU is effective as of the date of signature by the Director of the Ohio Department of Public Safety and applies to all property received by the LEA since October 1, 1995. The designated LEA representative identified below represents that he/she is authorized by State and local law to enter into this agreement on behalf of the LEA.

ARTICLE I: AUTHORITY

The Secretary of Defense is authorized by Section 1033 of the Act, to transfer to State agencies, personal property that is in excess to the needs of the DoD and the Secretary determines is suitable to be used by such agencies in law enforcement activities, including counter-drug and counter-terrorism activities, under such terms prescribed by the Secretary. On October 1, 1995 the Secretary of Defense transferred this responsibility to the Defense Logistics Agency (DLA). The program is presently being facilitated by the Law Enforcement Support Office (LESO).

Law enforcement agencies are defined as government 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. Counter-drug activities are defined as a wide range of activities in support of counter-drug objectives. The State of Ohio will act as a sponsor for the LEAs that desire excess personal property through this program.

ARTICLE II: TERMS AND CONDITIONS

A. PROPERTY

1. Requisition/Use

- a) Property is for use by LEAs authorized to participate in the program; authorization is to be controlled by the State.
- b) Requests must be based on bona fide law enforcement activities, including counter-drug requirements. Requests shall not be based on speculative or possible future use of equipment, rather it must be based on current needs. DLA will give preference to LEAs

for transferred property used in counter-drug or counter-terrorism activities.

c) Property may not be obtained for the purpose of sale, lease, rent, exchange, barter, giving it away, or to secure a loan or to otherwise supplant or supplement normal law enforcement agency budgets.

d) Requisitioning of code "A" property, for the purpose of cannibalization is not allowed. "Cannibalization" shall include dismantling of equipment for parts.

e) Property must be placed into use within one year of receipt and utilized for a minimum of one year, unless the condition of the property renders it unusable.

f) Inventory of all property received must be maintained. If the LEA no longer has in its possession, an item received through the program, the LEA's inventory must indicate where that item went and under what authority it was transferred/disposed of, etc. Failure to dispose of or transfer property as set forth in the agreement can result in the LEA being precluded from further participation in the program.

2. Disposal

a) LEAs are only permitted to transfer, exchange, sell, or otherwise dispose of property in the manner required by this MOU and the procedures and controls incorporated into the State's 1033 Program Operating Plan.

b) Aircraft (fixed-wing and rotary), Flight Safety Critical Aircraft Parts (FSCAP), Strategic List Items (SLI) and Munitions List Items (MLI) (both requiring and not requiring demilitarization), must be returned to and received by DLA, through the closest Defense Reutilization Marketing Office (DRMO), when no longer needed for law enforcement activities or in the event the LEA ceases to exist. The LESO will coordinate such action. Written proof of return and receipt by the DLA must be provided to the State by the LEA.

Exceptions to above rule:

(i). Aircraft - if the LEA provides evidence to the DLA that aircraft are/will be maintained under Federal Aviation Administration (FAA) maintenance and repair guidance, it will be allowed to permanently retain the aircraft after a period of five years, (ii). Aircraft and FSCAP - can be exchanged, upon approval by the State, by and between other LEAs authorized to participate in the program provided the aircraft and components are maintained under FAA maintenance and repair guidelines and provided further that the LEAs perpetuate repair and maintenance documentation. LEAs are permitted to retain reasonable quantities of aircraft components for existing aircraft for future use.

c) Property may be transferred to other LEAs authorized to participate in the program when no longer needed by the LEA having possession or in the event the LEA ceases to exist. Such transfer must be preceded by a request for approval to the State. State approval or denial will then be given to the LEA before such property can be transferred. If the request is denied, the LEA must coordinate with the State to decide on what other methods are available for disposal of the property.

d) Except as otherwise indicated, disposal of all other types of property, except for property requiring demilitarization, - must be in accordance with State and local laws when no longer needed for law enforcement activities or in the event the LEA ceases to exist. During a yearly inventory the LEA must provide the State with documentation and certify which items have been disposed of and the manner in which they have been disposed.

e) Costs of shipping, repossession, transfer and/or disposal of the property will be the responsibility of the LEA.

f) It is the responsibility of the LEA to return demilitarized property and other property so designated by the DLA to the DRMO.

3. Title

a) The State accepts title to excess DoD property for the sole purpose of compliance with the Act in the transfer of said property from the DoD to LEAs within the State. Certain property listed herein remains the property of the DoD, title to which never changes.

b) Title to property acquired under this MOU is granted to the LEA, except for those items identified above, excluding Strategic List/MLI (not requiring demilitarization), as requiring return to DoD through the DLA.

4. Liability

a) The State shall at no time and under no circumstances be physically, financially or legally responsible or accountable for the transport, storage, use, repair, maintenance, return, insurance, misuse, or disposal of excess DoD property transferred to the LEA from the DoD.

b) The LEA shall indemnify and hold the State harmless for any and all suits, actions, demands or claims of any nature arising out of the use of the property. The State assumes no liability for damages or injuries to any person or property arising from the use of the property.

c) Risk of Loss shifts to the LEA upon receipt (defined either as an authorizing signature on Form 1348 or physical receipt of the property) of property acquired under this MOU.

5 Insurance

a) The LEA agrees to maintain, at no expense to the State, adequate insurance to cover damages or injuries to persons or property relating to the use of the property. The insurance shall include liability and property damage insurance as well as workman's compensation. Self-insurance coverage is considered acceptable.

b) The LEA shall produce proof of coverage to the State upon request.

6. Warranties

The LEA understands that at no time does the State ever have in its physical possession any excess DoD property transferred to LEAs within the State. The LEA acknowledges

that all property is transferred "AS IS" with no warranty of any kind, including implied warranties and no warranties as to title, fitness for a particular purpose or use.

B. General Procedure

1. The DoD through the DLA shall:

- a) Receive and approve applications for participation in the program that have been certified by the State as having law enforcement activities.
- b) Encourage and assist in the use of electronic screening capability to locate property.
- c) Upon receipt of a properly executed request (electronic or manual), process the request for issue of the excess property (presently via Form 1348), free of charge, to the State or designee for further transfer to authorized LEAs at the DRMO.
- d) Identify Munitions and Strategic List Items (MLI/SLI), FSCAP and/or any other property requiring special controls and/or return to DoD custody through the DLA.
- e) FSCAP components - provide the LEA with the available flight historical records and related documentation. This documentation will be available for inspection by LEAs prior to transfer. The documentation will be sufficient to be acceptable by a FAA authorized repair facility for evaluation and possible documentation for use on an aircraft. DoD makes no representation as to the property's conformance with FAA requirements.

The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Requirements.

2. The State shall:

- a) Receive applications for participation in this program from LEAs within the State of Ohio and validate their law enforcement mission prior to forwarding to DLA for approval as an authorized law enforcement agency.
- b) Forward and approve requests (electronic or manual) for excess property which are necessary to meet requirement for LEA law enforcement activities, including counter-drug and counter-terrorism efforts. The State's signature shall constitute transfer authority. Assure the recipient LEA is identified on all requisitions.
- c) Allocate property to qualified LEAs.
- d) Allow a maximum of four (4) screeners per LEA to physically screen at any DRMO.

The screeners must be named in a letter of authorization issued by DLA LESO. The authorization is to be updated as changes occur.

e) Identify to LEAs the property requiring demilitarization and the special controls on MLI/SLI and FSCAP.

f) Identify to DLA the requisitions that indicate transferred property that will be used in counter-drug or counter-terrorism activities of the LEA.

3. The LEA shall:

a) Once authorized to participate in the program, requisition property (electronically or manually); submit said requisition to the State and upon notification, pickup approved property at the designated DRMO. If property is to be used for counter-drug or counter-terrorism activities, LEA must indicate such on their request. At the DRMO, the LEA shall sign Form 1348 for each piece of property received. A copy of each signed Form 1348 must be provided to the State by the LEA. The signature of the LEA on Form 1348 shall simultaneously transfer title from the DoD to the State and from the State to the LEA, except for those items listed in this MOU that always remain property of the DoD.

b) Identify on all requisitions which transferred property will be used in counter-drug or counter-terrorism activities. To the extent practical by the DLA, preference will be given to those requisitions which indicate that the transferred property will be used in counter-drug or counter-terrorism activities of the LEA.

c) Control and maintain accurate records on all property obtained under this MOU in accordance with pertinent State and local property laws and regulations. The records must at least identify the property received by the LEA and its disposition and must be available for review by the State upon request. If copies of records are requested, these must be provided to the State within in fourteen (14) days.

d) Be solely responsible for any transportation, repair, maintenance, insurance, licensing, registering or other expenses associated with property received, returned, and/or disposed of pursuant to this MOU.

e) Dispose of all environmentally regulated property in accordance with applicable Federal, State and local environmental laws and regulations.

f) Upon receipt of weapons, immediately register all of them with the U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms. A copy of registration must be provided to the State immediately or the weapons must be returned to the DRMO.

g) Provide the following information:

Chief Financial Officer:

Salvatore Talarico

Telephone:

(440) 775-7210

Title:

City Auditor

Fax:

Address:

69 South Main St. Oberlin, OH 44074

Federal Tax ID:

34-6002073

ARTICLE III: NOTICES

Any notices, requests, correspondence or other communications related to this MOU shall be in writing and shall be deemed duly given if personally delivered or sent by the United States Postal Service, express service or facsimile to the addresses set forth below:

1) In case of the State to:

Craig Batzer

1033 Coordinator

Ohio Department of Public Safety

Ohio Law Enforcement Support Office

1970 W. Broad St

Columbus, Ohio 43223

Fax: 614-466-5181

2) In case of the law enforcement agency to:

Name: Michael D. Moorman, Chief of Police

Agency: Oberlin Police Department

Address: 85 South Main St.
Oberlin, OH 44074

County in which LEA is located: Lorain

Phone Number: (440) 774-1061

Fax: () (440) 774-1150

ARTICLE IV: MODIFICATIONS

The State may, from time to time, propose written modifications or amendments to the provisions of this MOU. In such cases, reasonable opportunity will be afforded the LEA to review and approve any changes and to conform their operations as may be required.

ARTICLE V: TIME OF PERFORMANCE

This Agreement shall be binding upon both parties, and shall remain in effect until amended or rescinded approval to participate in the program. LEAs must reapply to participate in the program as changes in screeners, agency head, or other information changes regarding to the Law Enforcement Data Sheet or until the agreement is terminated as otherwise set forth herein.

ARTICLE VI: TERMINATION

The LEA may terminate its participation in the program by giving the State written notice. Upon receiving notice the State will cease all processing of requests for property. The LEA shall comply with the requirements of this MOU so long as it has in its possession, any property received under this program.

The State shall immediately terminate the participation of the LEA in the program at any time where the State determines this MOU has been violated or the LEA is in violation of the 1033 Operating Plan. If a violation of this MOU is perceived, the State may suspend the LEA participation in the program pending further investigation.

ARTICLE VII: NONFORBEARANCE

No act of forbearance or failure to insist on the prompt performance by the Contractor of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the State of any of its rights hereunder.

WHEREAS the above-named parties agree to the terms as set forth herein, the parties have executed the MOU as set forth below.

STATE:

LAW ENFORCEMENT AGENCY:

State of Ohio, through
Ohio Department of Public Safety

By: Kenneth L. Porched
Director, Ohio Department of
Public Safety

Oberlin Police

By: Michael D. Marmen
(signature of agency head)
Michael D. Marmen

(Printed name of agency head)

(Title): Chief of Police

Date: 1/7/03

Date: 1/2/03