



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
Alfred E. Smith Office Building
80 South Swan Street
Albany, New York 12210
<http://criminaljustice.ny.gov>

New York State 1033 Federal Excess Property Program

Memorandum of Agreement

Between

New York State

And

Law Enforcement Agency: _____

PURPOSE

This Memorandum of Agreement (MOA) and the Plan of Operation is entered into between the New York State 1033 Program Coordinator appointed by the Governor of the State of New York to act on behalf of the State of New York and the Division of Criminal Justice Services, an Executive Agency of the State of New York, and the _____, a New York Law Enforcement Agency (NYLEA) to set forth the terms and conditions which will be binding on the parties with respect to Department of Defense (DOD) excess property (sometimes called surplus property or personal property) which is transferred pursuant to 10 USC § 2576a, to promote the efficient and expeditious transfer of the property and to ensure accountability of same, to establish the authority of the New York State Point of Contact (s) (SPOC), and to provide for the return, subsequent transfer or destruction of excess property which has been transferred to the NYLEA.

AUTHORITY

The Secretary of Defense is authorized by 10 USC § 2576a to transfer to Federal and State agencies and local 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 emphasis on counter-drug/counter-terrorism activities, under such terms prescribed by the Secretary.

ORGANIZATIONAL AUTHORITY

The Governor of New York has designated a staff person from the Office of Public Safety, Division of Criminal Justice Services, as the New York State Coordinator (SC) to implement this program statewide. The SC and designated State Point of Contact(s) (SPOC's), have operational authority for the daily conduct and management, oversight and policy of this program.

TERMS AND CONDITIONS

The DOD through the Defense Logistics Agency (DLA) 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 State. This agreement creates no entitlement in the State to receive excess

DOD personal property. Property available under this agreement is for the current use of authorized program participants; it will not be requested nor issued for speculative use/possible future use. NYLEAs are required to utilize property within one year or schedule its return to the nearest DLA Disposition Services (DS) Site. Property will not be obtained for the purpose of sale, lease, rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Agency (LEA) or State/local governmental entities budgets. All requests for property will be based on bona fide law enforcement requirements.

NYLEA ELIGIBILITY CRITERIA

Eligibility requirements for a New York Law Enforcement Agency (NYLEA) to participate in the 1033 Program are detailed in the State Plan of Operation. The State Coordinator shall provide all NYLEAs access to the State Plan of Operation, all of the provisions of which are incorporated into this agreement as though set forth in their entirety herein. All requests for, and use of, excess property shall comport with the terms and conditions set forth in the State Plan of Operation. The State Coordinator and the Law Enforcement Support Office (LESO) shall determine which Law Enforcement Agencies in New York State are eligible to participate in the 1033 Program. Any Law Enforcement Agency (NYLEA) that desires to enroll and participate in the 1033 Program must have a Chief Executive Officer (CEO) who is accountable for this Program. The CEO must comply, and must have the authority to ensure that those under their command fully comply with the New York State /LEA Memorandum of Agreement (MOA) and the State Plan of Operation, and with all applicable Federal and State laws, directives and policies related to the 1033 Program. The CEO must have the authority to enter into the MOA and must provide evidence of that authority satisfactory to the State Coordinator. By executing this agreement and agreeing to accept excess property under this Program, the NYLEA pledges that it agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DOD regulations in 32 CFR part 195.
- b. 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.
- c. 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 U.S.C. 794), as implemented by Department of Justice regulations in 28 C.F.R. Part 41 and DOD regulations at 32 C.F.R. Part 56.

SCREENING

The NYLEA CEO must appoint a sworn compensated police officer as the Property Accountability Officer (PAO). The CEO and PAO are responsible for the security, accountability and record keeping of all property received through the 1208/1033 Programs and are subject to audits by Federal and State authorities. If the NYLEA will be requesting weapons a full-time sworn compensated Police Officer must be appointed as the Weapons Point of Contact (WPOC). The CEO, PAO and WPOC are responsible for the security, accountability, return and record keeping of all weapons and weapon accessories received through the 1208/1033 Programs. If applicable, and with the express written approval in advance from the State Point of Contact which approval may be revoked by the State Point of Contact at any time, the CEO must appoint an Aircraft/Aircraft Parts Accountability Point of Contact (APOC). The APOC can be a sworn, full-time compensated police officer or an employee of the agency assigned to the aviation unit who is approved by the SC who meets the same criteria with respect to background investigations in connection with employment as is required for sworn compensated police officers in the NYLEA. The

CEO, PAO and APOC are responsible for the security, accountability and record keeping of all aircraft and aircraft parts received through the 1208/1033 Programs.

Note: The PAO can also be identified as the WPOC and APOC.

The CEO must appoint a screener with a maximum of 4 (four) “Screeners” who will be authorized to “screen” or search for property either physically at a DS Site, or electronically utilizing the Disposition Services website. Screeners must be sworn compensated police officers.

REQUESTING PROPERTY

The State Coordinator reserves the right to limit the number and types of items ordered to ensure equitable distribution of property statewide. NYLEAs can “screen” or search for property electronically through the Disposition Services website or by visiting a DS Site. NYLEAs screening electronically should verify property availability telephonically with the holding DS Site and to obtain any additional information on the desired property.

UTILIZATION OF PROPERTY

Property received through the 1033 Program must be placed into use within 1 year of receipt and utilized for a minimum of 1 year, unless the condition renders it unusable, in which case the NYLEA must contact the State Point of Contact for instructions. If property is not placed into use within 1 year of receipt, it must be transferred to another authorized agency, or returned to a DRMO. Property returns/turn-ins must be coordinated through the Office of the State Coordinator and LESO. The DOD has authorized the transfer and use of excess Federal property to Law Enforcement Agencies (LEA) and as such reserves the right to recall any and all property issued through the 1208/1033 Programs. As stipulated in Federal regulation, title may be conditionally granted to the NYLEA, however **prior written approval** must be obtained by the NYLEA. **Property will not be transferred, disposed of or returned to a DS Site without prior State Coordinator and LESO approval. It is important that the NYLEA DOES NOT DISPOSE, TRANSFER OR RETURN ANY PROPERTY WITHOUT STATE COORDINATOR AND LESO APPROVAL.**

USE OF PROPERTY BY NON-LAW ENFORCEMENT OPERATIONS

Excess DOD personal property cannot be used for the needs of non-law enforcement operations of any State Agency, County, City, Town or Village or other government jurisdiction in New York State. Under no circumstances will property be used, loaned or transferred, even temporarily, to law enforcement officers or civilians or other persons or to other governmental units for their own private non-official use at any time.

SECURITY OF PROPERTY

It is the sole responsibility of the NYLEA to safeguard all excess Department of Defense personal property received through the 1208/1033 Programs.

ACCOUNTABILITY OF PROPERTY

All excess DOD personal property must be managed utilizing secure and controlled property accounting records that are concise, accurate, and able to provide timely and relevant information. Records must be maintained until the property is turned in, disposed of, or transferred in accordance with the DLA Record Management Procedures and Records (DLA Directive 5025.30). Records must provide an audit trail for

all property from receipt (“cradle”), to transfer, turn-in, or disposal (“grave”), and arranged in a manner that facilitates easy review, audit and accountability of property. **Because the NYLEA is accountable for all property received under this Program, it is important that the NYLEA DOES NOT DISPOSE OF ANY PROPERTY WITHOUT STATE COORDINATOR APPROVAL. ANY PROCEEDS RECEIVED BY THE NYLEA IN THE COURSE OF DISPOSING OF PROPERTY MUST BE USED ONLY FOR NYLEA PURPOSES.**

TURN IN OF PROPERTY

NYLEAs must coordinate all turn in requests through the State Coordinator’s (SC) Office and obtain prior approval of the State Coordinator and LESO before any property is turned in.

TRANSFER OF PROPERTY

NYLEAs must coordinate the transfer of property through the State Coordinator’s (SC) Office. Approval must be obtained from both the State Coordinator and LESO before any property is transferred.

DISPOSAL OF PROPERTY

NYLEAs must obtain prior approval of the State Coordinator and LESO before any property is disposed of. Approval must be obtained from both the State Coordinator and LESO before any property received or obtained by the NYLEA under any DLA federal excess property program including but not limited to 1208 and 1033 Program property is disposed of. Certain types of property have various demilitarization codes assigned to them and NYLEA’s must comply with the disposal requirements for such codes. All property must be disposed of in accordance with applicable federal, state and local laws and environmental regulations but only after approval has been received from the State Coordinator and LESO.

REPORTING LOST, STOLEN, DAMAGED OR DESTROYED PROPERTY

All excess DOD personal property lost, stolen, illegally sold, damaged, manipulated, illegally diverted, or destroyed must be reported to the State Coordinator and as outlined in the State Plan of Operation. The SC is required to notify the LESO of theft, suspected theft, illegal diversion, or manipulation of excess DOD personal property by a NYLEA for referral to the appropriate federal criminal investigative agency.

LESO AND STATE COMPLIANCE REVIEWS

LESO will conduct a Program Compliance Review (PCR) of New York State’s 1033 Program every two (2) years and may also at that time inspect individual NYLEAs. LESO also requires the State Coordinator to conduct annual on-site accountability inspections of selected NYLEAs to inventory property and review records. The State Coordinator will review Reconciliation Reports through the Law Enforcement Equipment Database System (LEEDS) and conduct annual accountability reviews of NYLEAs. This review will include inquiries to determine compliance with the State Plan of Operation and the MOA between the State and the NYLEA. The State Coordinator may also conduct such additional accountability reviews of NYLEAs as appropriate in the sole discretion of the State Coordinator.

TRANSPORTATION OF PROPERTY

It is the responsibility of the NYLEA to transport requested property from the DS Site to their location. Additionally, transportation costs associated with the turn-in of property to a DS Site are the

responsibility of the agency. DLA and New York State will not fund the transportation costs associated with property received under this Program.

TERMINATION

This MOA may be terminated by either party, provided the other party receives sixty calendar days (60) notice, in writing, or as otherwise stipulated by Public Law. If the NYLEA determines that they wish to withdraw from the 1033 Program, the disposition of the equipment acquired through the Program and currently held by the NYLEA will be determined by LESO and the State Coordinator. A final equipment disposition plan will be prepared and sent to the NYLEA. The NYLEA will have ninety (90) calendar days to comply with the plan and any and all disposition costs will be borne by then LEA. Obligations of the LEA with respect to return of and accounting for property and indemnification shall survive termination of this MOA. The undersigned State Coordinator and NYLEA CEO hereby agrees to comply with all provisions set forth herein and acknowledges that any violation of the terms and conditions of this MOA and the State Plan of Operation may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

NOTICES

The Defense Logistics Agency and the State of New York may, from time to time, propose modifications or amendments to the provisions of this MOA. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator to conform changes affecting their operations.

CONFLICTS

In the event of a conflict between the terms of this MOA executed between the NYLEA and the State of New York and the New York State Plan of Operation for the 1033 Program, the provisions of the MOA executed between the NYLEA and the State of New York shall be controlling.

RELEASE OF LIABILITY

The NYLEA accepts the transfer of property received under this MOA “as is” with no warranties of fitness for any particular purpose. No representations with respect to property, history thereof, maintenance, condition, prior use or safety have been made or can be relied on by the NYLEA. The NYLEA acknowledges that there are hazards associated with the use of this property which can result in damage to property and/or serious injury or death and that hidden defects may render the property unsafe or unfit for use until thorough testing has occurred. The recipient agrees that it **IS NOT** the responsibility of the department of Defense, the Division of Criminal Justice Services, the State Coordinator, the designated Point of Contact(s) or the State of New York to provide appropriate training, or ensure that federal, state or local training, maintenance or physical security standards are maintained, to any person who may use the property. To the extent permitted by law, the NYLEA shall indemnify and hold the New York State Division of Criminal Justice Services, the State of New York, it’s officers, employees and the people of the State of New York harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and any incidental, consequential, compensatory, punitive, nominal or any other damages of whatever kind and attorney’s fees arising out of or which may arise out of, be claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness, disabilities 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 Law Enforcement Agency, its agents, servants or employees arising out of or

in connection with the use of or failure to secure property received under this Program whether caused by the negligence of employees of the LEA acting in the course and scope of their employment or otherwise. The NYLEA agrees and hereby certifies that it will maintain adequate insurance to cover damages or injuries to persons or property relating to the use or possession of the property received under this MOA. Proof of such insurance coverage must be attached to this MOA at the time of enrollment. The Law Enforcement Agency agrees to use any property it acquires or possesses under this 1033 Program only in a manner that is consistent with the provisions of the 1033 Program and further agrees that it shall not sell, scrap, trade or otherwise dispose of any property received or acquired until authorized by the New York State Division of Criminal Justice Services and LESO in writing and in advance of the proposed action. The Law Enforcement Agency agrees to maintain an approved property accountability officer for this Program. The 1033 Program requires the State Coordinator to conduct scheduled and unscheduled audits and inspections of property received, returned or disposed of under this 1033 Program and the Law Enforcement Agency agrees to cooperate in such efforts when requested by the State of New York including providing access to auditors acting on behalf of the State Coordinator. Remedial, recovery or compensation imposed by the Defense Logistics Agency in the event that property determined by the State Coordinator to be missing, lost or which otherwise cannot be located as a result of audit activity, or the result of any investigation by the State Coordinator, shall be the responsibility of the Law Enforcement Agency, and the Law Enforcement Agency shall indemnify the State of New York for any damages assessed against the State arising out of such a claim. The NYLEA acknowledges that it has been informed that, upon disposal, such disposal may produce hazardous waste. Transportation, storage, and disposal of such waste are the sole responsibility of the NYLEA. The NYLEA also acknowledges that it is solely responsible for the proper disposal of, and any and all costs associated with, any element or expendable subcomponent in accordance with environmental protection laws and regulations.

ATTESTATION

As Chief Executive Officer of the Law Enforcement Agency named above I certify that I have received and read the New York State Plan of Operation and agree to comply with the terms and conditions as set forth in the State Plan of Operation and the Memorandum of Agreement including provisions with respect to insurance requirements and that I have the authority to represent the Law Enforcement Agency named above in this matter and that I am acting on behalf of the Law Enforcement Agency named above in executing this agreement. I certify that in the event that the Law Enforcement Agency named above is an operating unit of a Political Subdivision of the State of New York that I have to authority to act on, bind and commit the Political Subdivision to the terms and conditions hereof or in the alternative in addition to my own signature, I have secured the signature of the appropriate officer or official of the political subdivision who has such authority.

ATTACH PROOF OF INSURANCE COVERAGE TO THIS PAGE.

Agency Chief Executive Officer (Signature)
CEO Printed Name: _____
Title: _____
Agency: _____
Address: _____
City/State/Zip: _____
Date (MM/DD/YYYY): _____

Printed Name and Title Signature
Date (MM/DD/YYYY): _____

STATE OF _____ }

}ss
COUNTY OF _____ }

On the ____ day of _____ in the year 20 __ , before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that s/he resides at _____, Town of _____, County of _____,

_____, State of _____; and further that s/he is a duly authorized officer of _____, that s/he is authorized to execute the foregoing instrument on behalf of the _____ for purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said Law Enforcement Agency/Political Subdivision as the act and deed of said Law Enforcement Agency/Political Subdivision.

Notary Public

FOR USE BY STATE COORDINATOR

Debra A. Bourque
1033 Program State Coordinator
Office of Public Safety
NYS Division of Criminal Justice Services
Date (MM/DD/YYYY): _____

STATE OF _____ }

}ss
COUNTY OF _____ }

On the ____ day of _____ in the year 20 __ , before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that s/he resides at _____, Town of _____, County of _____,

_____, State of _____; and further that s/he is a duly authorized officer of _____, that s/he is authorized to execute the foregoing instrument on behalf of the _____ for purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said Law Enforcement Agency/Political Subdivision as the act and deed of said Law Enforcement Agency/Political Subdivision.

Notary Public