



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: December 5, 2022

APPROVED

DATE

12/7/2022

SUBJECT: REQUEST FOR THE POLICE DEPARTMENT TO CONTINUE PARTICIPATION IN THE LAW ENFORCEMENT SUPPORT OFFICE PROGRAM AND REQUEST FOR AUTHORIZATION TO ACQUIRE CERTAIN ITEMS

REASON FOR ADDENDUM

The Police Department is bringing forward this item to the City Council to request authorization to continue participating in the Law Enforcement Support Office (LESO) Program. Pursuant to a recent executive order by President Biden, law enforcement agencies participating in the LESO Program must certify that they have received authorization from their governing body to participate in the program by January 1, 2023. If the Department fails to meet this deadline, it will be required to return all items acquired in the LESO Program to the Federal Government. The purpose of this addendum is to ensure that the City Council can consider this item on the December 13, 2022 City Council agenda, which would allow the Department to meet the January 1, 2023 deadline should the City Council approve the staff recommendation.

RECOMMENDATION

Approve the San José Police Department's request to continue participation in the LESO Program and the authorization to acquire certain items without returning to City Council prior to acquisition.

OUTCOME

Approval of this memorandum will accomplish the following:

1. The Department will be authorized to continue participation in the LESO Program.
2. The Department will be authorized to acquire certain items without returning to City Council prior to acquisition.
3. The Department will complete the certification process required by Presidential Executive Order 14074.

BACKGROUND

The Department currently participates in the Public Safety Procurement Program, also known as the LESO Program, which allows the Department of Defense to transfer excess property to federal, state, and local law enforcement agencies to support law enforcement activities.¹ Through the Program, the Department has been able to procure much needed equipment, which would not otherwise have been possible due to budgetary constraints. The federal side of the LESO Program is managed by the Defense Logistics Agency (DLA), while the state side of the LESO Program is managed through the California Governor’s Office of Emergency Services (OES).² The following graphic illustrates the involved entities.

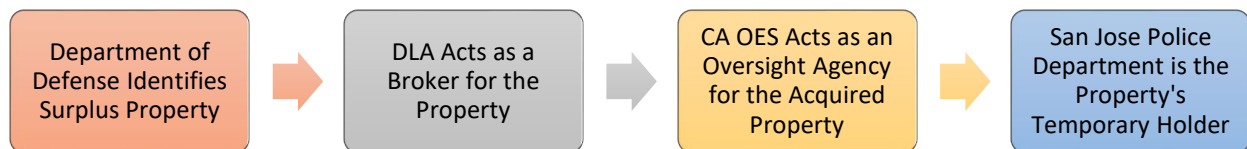


Figure 1: Entities involved in the LESO Program

Process

The DLA maintains a login-controlled website listing all items available through the LESO Program. The majority of these items are used equipment from the military or other federal agencies under the Department of Defense, but some new, unused items are also available due to regulations that require them to be donated, sold, or destroyed. All items acquired in the LESO Program are free, with no cost to the Department.

Duty Manual chapter L 9100 outlines the Department’s participation in the LESO Program. The Department maintains a small cadre of two to four personnel authorized to access the DLA listing of available property. Those personnel are able to find surplus equipment by either discovering it during a search or establishing a “want list” on the DLA website. When an item becomes available, it is open to all 8,800 agencies³ participating in the Program. The item is provided to the first agency to satisfactorily complete the proper request forms, including

¹ <https://www.dla.mil/Disposition-Services/Offers/Law-Enforcement/>

² <https://www.caloes.ca.gov/office-of-the-director/operations/response-operations/law-enforcement/leso-program/>

³ <https://www.dla.mil/Disposition-Services/Offers/Law-Enforcement/>

articulation of how that item will be used and the agency's need. Upon approval of the application, the items are no longer available. As such, items often appear and disappear from the list DLA website quickly.

Recent Program Changes

On May 25, 2022, President Biden signed Executive Order 14074, entitled *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*.⁴ This executive order took a number of actions intended to “increase public trust and enhance public safety and security by encouraging equitable and community-oriented policing.” Among other things, it made changes to how the LESO program operates. On August 15, 2022, the DLA sent a memorandum to all agencies participating in the LESO Program in order to implement the changes directed in the executive order. A copy of this memorandum is included as Attachment 1.

In this memorandum, the DLA provides an addendum to the State Plan of Operation (SPO) between the State of California and the Police Department. The SPO sets out the rules by which the LESO Program is conducted. Among the changes are requirements that law enforcement agencies receive authorization from their governing body in order to participate in the LESO Program (see section 9, bullet “a” in Attachment 1) and that they give notice to both their governing body and the local community of any equipment they plan to request through the LESO program (see section 9, bullet “b.”) To continue participating in the LESO program Law enforcement agencies must certify that both of these requirements have been satisfied by signing the SPO addendum and returning it to the State by January 1, 2023. The Department is bringing forward this item to the City Council, as the City's governing body, to request authorization to continue participating in the program and to provide notice as to the type of items that will be requested.

ANALYSIS

Authorization to Continue

The Department is seeking authorization from the City Council to continue participating in the LESO Program. As stated above, the LESO Program has provided the Department with essential operational equipment that would otherwise not have been able to be acquired due to budgetary constraints. To provide the Council and the public with a sense of how this program has been used in the past, staff has compiled a list of equipment obtained from the LESO Program that is currently in the Department's possession. The full list can be found in Attachment 2, as part of a public notification issued by the Department in November 2022. It includes rifle components, night vision equipment, a computer, a camouflage net, and two vehicles: a Mine-Resistant

⁴ <https://www.govinfo.gov/content/pkg/DCPD-202200454/pdf/DCPD-202200454.pdf>

Ambush-Protected (MRAP) vehicle and a High Mobility Multipurpose Wheeled Vehicle (HMMWV).

The Council's authorization to continue in the Program will allow the Department to sign the SPO Addendum and return it to the State, as required by Presidential Executive Order 14074. If the SPO Addendum is not completed, the Department will be required to return all items acquired in the LESO Program to the DLA.

In addition to certifying that the Council has approved participation in the program, the Department must make a number of other certifications by signing the SPO Addendum. The full list of required certifications is found in section 9 of Attachment 1. In particular, the Department would note the following certifications from the list, which are intended to ensure that the equipment obtained through the program is used appropriately and with public oversight:

- That the Department has authorization from the City Council to participate in the LESO Program.
- That the Department has provided the City Council and local community a comprehensive list of controlled property that may be requested through the LESO Program and that requests for controlled property complies with all applicable approval requirements of the City Council. This requirement is discussed in the next section of the memorandum, where the Department proposes a standard for City Council approval.
- That the Department has adopted and complies with controlled property standards (i.e., appropriate use, supervision of use, effectiveness evaluation, auditing/accountability of use, transparency/notice of use, and record-keeping requirements).
- That the Department has provided annual training to personnel on the maintenance, sustainment, and appropriate use of controlled property, including respect for the rights of citizens under the Constitution of the United States and de-escalation of force.
- That controlled property vehicle(s) are utilized exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief. This requirement will apply to the two vehicles that the Department acquired through the LESO Program, described above.
- That controlled property requiring a license (or other authorization), is only utilized by personnel who hold license (or other authorization) to operate such property.

The Department will comply with these standards and all other requirements included in the SPO addendum.

Future Acquisition

The SPO Addendum also requires that law enforcement agencies provide their governing bodies and their local community with a comprehensive list of controlled property that may be requested through the LESO program on an annual basis. Law enforcement agencies may

request any property included in this list from the LESO program during the course of the year without providing additional notice to the governing body; however, to request property not included on the list, law enforcement agencies must provide their governing body and local community with 30 days' notice of the request.

While the Department is not currently seeking any specific additional items from the LESO Program, Department personnel continue to check the DLA website on a regular basis for items that may meet the Department's equipment needs. For most types of equipment available through the LESO program, the Department recommends seeking City Council approval on a case-by-case basis, with 30 days' notice provided to the Council and the public, as required in the SPO addendum. There is one specific category of equipment that the Department is requesting authority to acquire without returning to the City Council.

The DLA uses Demilitarization (DEMIL) Coding to identify the restrictions and requirements for disposition of each piece of equipment in the LESO Program.⁵ Items with a DEMIL Code of "A" are the least restricted category of item. They are items with identical equivalents in the commercial market. Examples of items in this category include clothing, backpacks, first aid kits, tools, hearing protection, eye protection and office supplies. Given that these items have identical equivalents in the commercial market, and due to the expediency with which these items must be requested, the Department is seeking authorization to acquire DEMIL Code A items without prior City Council approval.

Items categorized under any other DEMIL Code will be brought before City Council for review prior to acquisition. Items falling under the other DEMIL Code, including "B," "C," "D," "E," "F," "G," or "Q3," are considered controlled property conditionally transferred to the law enforcement agency, but title or ownership of the controlled property remains with the Department of Defense in perpetuity and will not be relinquished to the law enforcement agency. The LESO Program retains the right to recall the property. Some examples of this type of controlled property include firearms, firearm parts, ammunition, armored vehicles, body armor, and night-vision optics. The Department will seek Council approval for any items in these categories.

In the interest of transparency, notification to the local community of the Department's LESO Program Inventory and intention to continue to acquire certain items was made on Thursday November 10, 2022, through a Press Release and posting to the Department's website. The Public Notification is included as Attachment 2. A screen shot of the Department's website with the Press Release is included as Attachment 3. In addition, this memorandum and the attached documents were posted on the City Council Agenda website for the December 13, 2022 Council Meeting.

⁵ <https://www.dla.mil/Working-With-DLA/Federal-and-International-Cataloging/DEMIL-Coding/DEMIL-Codes/>

Future Reporting

On June 21, 2022, the Department presented the Military Equipment Use Policy and Inventory to City Council.⁶ This policy and inventory defines Military Equipment according to California Government Code section 7070(c).⁷ While items acquired from the Department of Defense may colloquially be called “military equipment,” many of items do not qualify as Military Equipment in the statutory requirements provided in the California Government Code. In fact, only two items from the Department’s Military Equipment were acquired through the LESO Program: the Mine-Resistant Ambush-Protected (MRAP) vehicle and the High Mobility Multipurpose Wheeled Vehicle (HMMWV). None of the other items from the LESO Program in the Department’s possession are regulated under Government Code section 7070.

To consolidate the annual reporting requirement for both Military Equipment and LESO Program items, the Department will provide updates for both in the annual report to City Council on Military Equipment at the Public Safety, Finance, and Strategic Support Committee. The next report is scheduled for April 20, 2023.

CONCLUSION

Pursuant to Presential Executive Order 14074, this memo fulfills the requirement to notify the Civilian Governing Body (City Council) and local community of the Department’s intent to maintain the controlled property items identified in the list above.

EVALUATION AND FOLLOW-UP

The items inventoried in Attachment 2 and any future items acquired through the LESO Program will be included in the Military Equipment Annual Report to City Council at the Public Safety, Finance, and Strategic Support Committee meeting on April 20, 2023.

In addition, within 30 days of submitting and publicly releasing Military Equipment Annual Report, the Department will hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the Military Equipment Annual Report and the Police Department’s funding, acquisition, or use of military equipment.

⁶ Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=980797&GUID=15E52BAD-B60D-4CDC-8522-CF23FA24E5FC>

⁷ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=7070.&lawCode=GOV

HONORABLE MAYOR AND CITY COUNCIL

Subject: Request for the Police Department to Continue Participation in the Law Enforcement Support Office Program and Request for Authorization to Acquire Certain Items

November 21, 2022

Page 7

CLIMATE SMART SAN JOSÉ

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum and the attached documents will be posted on the City's Council Agenda website for the December 13, 2022 Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/

Anthony Mata
Chief of Police

For questions, please contact Lieutenant Michael O'Neil, Special Operations Division, San José Police Department, at michael.p.oneil@sanjoseca.gov.

Attachment 1: Memorandum from the DLA to LESO Program Participating Law Enforcement Agencies regarding an Addendum to the LESO Program State Plan of Operation (SPO)

Attachment 2: Public Notification

Attachment 3: Department Website Screenshot

Attachment 1: Memorandum from the DLA to LESO Program Participating Law Enforcement Agencies regarding an Addendum to the LESO Program State Plan of Operation (SPO)



DEFENSE LOGISTICS AGENCY
DISPOSITION SERVICES
74 WASHINGTON AVENUE NORTH
BATTLE CREEK, MICHIGAN 49037-3092

GPL

August 15, 2022

MEMORANDUM FOR LAW ENFORCEMENT SUPPORT OFFICE (LESO) PROGRAM
PARTICIPATING LAW ENFORCEMENT AGENCY (LEA)

SUBJECT: Addendum to LESO Program State Plan of Operation (SPO)

This addendum amends the existing State Plan of Operation (dated February 2021) between the State and Law Enforcement Agency (LEA) and is herein referred to as the SPO Addendum. The SPO Addendum implements requirements found within Presidential Executive Order (EO) 14074 (Section 12), signed on May 25, 2022. In accordance with current SPO-Paragraph 17, notice is being provided of a unilateral change to the SPO. Unless an LEA takes immediate action to terminate the current SPO, the modifications or amendments will become binding.

1) ROLES AND RESPONSIBILITIES The State Shall:

- a) Ensure each LESO Program participating Law Enforcement Agency (LEA) has signed the LESO-approved SPO Addendum no later than January 1, 2023. The SPO Addendum will be signed by the Chief Law Enforcement Official (CLEO) (or assigned designee) and the current State Coordinator (SC) (or authorized State Point of Contact [SPOC]).
- b) Provide LESO with a comprehensive list of LEAs who do not sign the SPO Addendum by January 1, 2023. LESO will restrict the LEA to ensure LEA may not request or receive "controlled" property as defined within this addendum.

2) MODIFICATION TO DEFINITION OF "CONTROLLED" PROPERTY This SPO Addendum adds the below items to the "controlled" property definitions currently found in the 2021 SPO. These items are added pursuant to EO 14074 which reestablishes EO 13688. In 2017, the Law Enforcement Equipment Working Group (established by EO 13688), further added, deleted and refined the definitions of "controlled" items in their annual equipment list review. Provisions within the 2021 MOA applicable to "controlled" property apply to the items listed below (regardless of DEMIL and/or DEMIL Integrity Code). Title and ownership of the "controlled" property listed below remains with the DoD in perpetuity and will not be relinquished to the LEA (regardless of DEMIL and/or Integrity Code). The LESO retains final authority to determine what items qualify as "controlled" property. The below items listed in Section 1.2 of Law Enforcement Equipment Working Group (LEEWG) Recommendations (as modified in 2017), will be managed and issued as controlled property unless other restrictions or conditions are noted:

- a) *Manned Aircraft, Fixed Wing*: Powered aircraft with a crew aboard, such as airplanes, that use a fixed wing for lift. (Note: These items were previously listed as controlled in LESO Program. Any aircraft without commercial application are prohibited).
- b) *Manned Aircraft Rotary Wing*: Powered aircraft with a crew aboard, such as helicopters, that use a rotary wing for lift. (Note: These items were previously listed as controlled in LESO Program. Any aircraft without commercial application are prohibited).

c) *Unmanned Aerial Vehicles*: A remotely piloted powered aircraft without a crew onboard. (Note: These items are not currently issued in the LESO Program).

d) *Armored Vehicles, Wheeled*: Any wheeled vehicle either purpose-built or modified to provide ballistic protection to its occupants, such as a Mine-Resistant Ambush Protected (MRAP) vehicle or an Armored Personnel Carrier (APC). These vehicles are sometimes used by law enforcement personnel involved in dangerous operating conditions, including active shooter or similar high-threat situations. These vehicles often have weapon-firing ports. (Note: These vehicles were previously considered controlled due to DEMIL code and are now prohibited unless certification requirements in Section 3 are met).

e) *Tactical Vehicles, Wheeled*: A vehicle purpose-built to operate on- and off- road in support of military operations, such as a High Mobility Multi-purpose Wheeled Vehicle (HMMWV), 2.5-ton truck, 5-ton truck, or a vehicle with a breaching or entry apparatus attached. These vehicles are sometimes used by law enforcement in rough terrain or inclement weather for search and rescue operations, as well as other law enforcement functions. This excludes commercially available vehicles not tactical in nature, such as pick-up trucks or SUVs. (Note 1: This is LEEWG modified definition from 2017. Note 2: All tactical vehicles will now be considered controlled, and title will not pass. Note 3: Armored vehicles in this category will be considered prohibited unless certification requirements in Section 3 are met).

f) *Command and Control Vehicles*: Any wheeled vehicle either purpose-built or modified to facilitate the operational control and direction of public safety units responding to an incident. Command and control vehicles provide a variety of capabilities to incident Commander, including, but not limited to, the provision for enhanced communications and other situational awareness capabilities. Command and Control Vehicles are similar to a recreational vehicle and can accommodate multiple people at multiple workstations in the command center. This category does not include SUVs and is not intended for other types of vehicles that could serve as a command-and-control center. (Note 1: This is the LEEWG modified definition from 2017. Note 2: Armored vehicles in this category will be considered prohibited unless certification requirements in Section 3 are met).

g) *Specialized Firearms and Ammunition Under .50-Caliber (excludes firearms and ammunition designed for regularly assigned duties) and less lethal launchers*: Weapons and corresponding ammunition for specialized operations or assignment. This includes launchers specifically designed and built to launch less lethal projectiles. This excludes weapons such as service issued handguns, rifles or shotguns that are issued or approved by the agency to be used by all sworn officers/deputies during the course of regularly assigned duties. (Note 1: This is the LEEWG modified definition from 2017. Note 2: The LESO Program only issues weapons under .50 caliber that are designed for regularly assigned duties).

h) *Explosives and Pyrotechnics*: Includes “flash bangs” as well as explosive breaching tools often used by special operations units. (Note: These items were previously prohibited in the LESO Program and are now specifically prohibited in EO 14074).

i) *Breaching Apparatus*: Tools designed to provide rapid entry into a building or through a secured doorway. These tools may be mechanical in nature (a battering ram connected to a vehicle or a propellant), ballistic (slugs), or explosive. This category does not include dual purpose tools such as a sledgehammer or bolt cutter. (Note: This is the LEEWG modified definition from 2017).

j) *Riot/Crowd Control Batons*: Non-expandable of greater length (more than 24 inches) than service-issued types and are intended to protect its wielder during crowd control situations by providing distance from assailants. This category includes all batons with advanced features such as tear gas discharge, electronic or “stun” capabilities. (Note: This is the LEEWG modified definition from 2017).

k) *Riot Helmets*: Helmets designed to protect the wearer's face and head from injury during melees from projectiles including rocks, bricks, liquids, etc. Riot helmets include a visor which protects the face. (Note 1: The LEEWG removed these items from the controlled list in 2017. Note 2: LESO does not issue Kevlar helmets based on DoD policy).

l) *Riot/Crowd Control Shields*: Shields intended to protect wielders from their head to their knees in crowd control situations. Most are designed for the protection of the user from projectiles including rocks, bricks, and liquids. Some afford limited ballistic protection as well. (Note: This is the LEEWG modified definition from 2017).

3) PROHIBITED ITEMS THAT MAY BE ISSUED FOR LIMITED PURPOSES EO 14074 lists the below items as "prohibited" for issue under the LESO Program; however identifies specific authorized uses for these "prohibited" items if requested, utilized and annually certified as being used only in authorized manners. When utilized in an authorized manner (as indicated in the below example descriptions), the items are categorized as "controlled" property.

a) *Long Range Acoustic Devices (LRAD) that do not have commercial application*- LRADs are capable of directing sound over great distances at extreme volume in more geographical precision than an ordinary speaker. Certain LRAD capabilities which are aimed at dispersing individuals or groups as a kinetic use-of-force shall not be used. Examples of LRAD capabilities that shall not be used include (but are not limited to) attention commanding alert tones, powerful warning tones and/or deterrent tones.

i) *Authorized uses*- LRADs may only be utilized as a public address system for commercial purposes. Any other use is not authorized.

ii) *Annual Certification Requirements*- During the LESO Program annual inventory, LEAs with LRADs must certify that the LRAD is utilized exclusively as a public address system for commercial purposes. An LEAs signature on the SPO Addendum agreeing to these new terms will serve as initial certification.

iii) LEAs that do not have a current SPO Addendum on file by January 1, 2023 or who fail to annually certify the LRAD is being used in an authorized manner must return LRAD(s) to DLA Disposition Services.

b) *Vehicles that do not have commercial application*- This includes all tracked and armored vehicles, such as a Mine-Resistant Ambush Protected (MRAP), Armored Personnel Carrier (APC), or Armored HMMWV. (Note: This category excludes vehicles with commercial application, such as pick-up trucks, non-armored HMMWVs, 2.5-ton trucks, 5-ton trucks, or SUVs. The LESO Program identifies/defines vehicles with "commercial application" as items with a DEMIL Code of "A" or DEMIL "Q" (with an Integrity Code of 6) that may be sold to the general public under DoD sales programs).

i) *Authorized uses*- EO 14074 allows limited transfer of vehicles that do not have commercial application if the LEA certifies that the vehicle will be used exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief. Any other use of these vehicles is not authorized.

ii) *Annual Certification Requirements*- During the LESO Program annual inventory, LEAs with these vehicles must certify that the vehicle(s) is utilized exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief. An LEAs signature on the SPO Addendum agreeing to these new terms will serve as initial certification.

iii) LEAs that do not have a current SPO Addendum on file by January 1, 2023 or who fail to annually certify that the vehicle(s) use is exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief must return vehicle(s) to DLA Disposition Services.

4) ACQUIRING (OR RETAINING) CONTROLLED PROPERTY The State shall:

a) Review, verify and only submit to LESO for approval, requests for controlled property by LEAs who have current SPO and SPO Addendum on file with the state.

b) Ensure LEAs return controlled property to DLA Disposition Services if the Department of Justice (DOJ) determines or a Federal, State, Tribal, local, or territorial court enters a final judgment finding that the LEA has engaged in a pattern or practice of civil rights violations.

c) Ensure that prior to requesting/acquiring any controlled property, the LEAs:

i) Provide written or electronic notification to the local community of its intent to request controlled property. The notification must be translated into appropriate languages to inform individuals with limited English proficiency. The LESO Program would *recommend* that LEAs provide a notice of intent to request controlled property to the local community on or before January 1, 2023 and at the beginning of each fiscal year (October 1st) thereafter. This notification should include a comprehensive list of any controlled property that may be requested throughout the year. If this notice of intent does not include a specific controlled property item, such item may not be requested in the LESO Program until 30-days after an updated notice is published.

ii) Provide written or electronic notification to the city council or appropriate local Civilian Governing Body (CGB) of its intent to request controlled property and allow “reasonable opportunity to review” (normally 30-days). The LESO Program would *recommend* that LEAs provide a notice of intent to the CGB on or before January 1, 2023 and at the beginning of each fiscal year (October 1st) thereafter. This notification should include a comprehensive list of any controlled property that may be requested throughout the year. If this notice of intent does not include a specific controlled property item, such item may not be requested in the LESO Program until 30-days after an updated notice is published. Requests for controlled property must comport with all applicable approval requirements of the CGB.

(1) The above requirement includes elected Sheriff’s who also shall notify their CGB or city or county government within their jurisdiction.

(2) In cases of disagreement between requesting LEAs and CGB, the Governor appointed LESO Program State Coordinator (SC) will obtain an advisory opinion from the States Attorney General’s Office on whether CGBs are authorized by state law to deny the request.

iii) *Campus LEAs operating in Institutions of Higher Education (IHE)*- LEAs operating in IHEs otherwise referred to as “Campus Police” or “Campus LEAs” must also adhere to the requirements identified below:

(1) Obtain the IHE Board of Governors (or an equivalent body) *explicit approval* for the acquisition of controlled property. Such approval must be evidenced in the Campus LEAs request submitted to the LESO Program. Silence or inaction by the Campus LEAs Board of Governors does not constitute evidence of approval, and the “reasonable opportunity to review” (normally 30-days) standard does not apply to Campus LEA applications.

(2) Certify that their policies and training include specific provisions on using controlled property in a way that does not chill speech, is not disruptive to the educational environment, and does not foster a hostile climate among students.

(3) Campus LEAs who receive controlled vehicles are required to remove the militaristic appearance (i.e., painting the vehicle a different color).

5) REGIONAL SHARING AGREEMENTS LESO Program participants who are part of a regional sharing agreement must also adhere to the following requirements. LEAs shall:

a) Provide information regarding the size of the region, including the number and size of the LEA with access to the requested controlled property and the estimated population served.

b) Ensure any controlled property providing support in a regional sharing agreement is utilized in accordance with the LESO Program SPO and this SPO Addendum.

c) Ensure that only LESO Program participants within the regional sharing agreement utilize the controlled property. Agencies/activities who are not LESO Program participants may not utilize or direct the use of controlled property obtained via the LESO Program.

d) Obtain SC/SPOC approval to temporarily conditionally loan property to another LESO Program participant within the regional sharing agreement (if mission requires). If the SC/SPOC approves the temporary conditional loan, it shall be done using an acceptable Equipment Custody Receipt (ECR). At the end of the temporary conditional loan, the item (s) shall be returned to the original LEA for accountability. All requests for conditional loans will be based on bona fide law enforcement requirements.

i) The LESO Program participant with controlled property on their inventory must certify that the other LESO Program participant in the regional sharing agreement requesting the property under a conditional loan:

(1) Has adopted requisite protocols (in Section 6 below) or will adopt those protocols before their personnel use the controlled property,

(2) Have provided requisite training (in Section 7 below) or will provide that training before their personnel use the controlled property, and

(3) Will adhere to the information collection and retention requirements (in Section 8 below).

ii) The LEA conditionally loaning the controlled property will remain accountable to the LESO Program to ensure the above provisions are met.

6) POLICIES/PROCEDURES LEAs must establish policies/procedures that are consistent with the standards listed below, in order to request or maintain controlled property. LEAs must:

a) Adopt and comply with general policing standards.

i) *Community Policing*- LEA policies/procedures should reflect the concept that trust and mutual respect between police and the communities they serve are critical to public safety. Community policing fosters relationships between law enforcement and the local community which promotes public confidence in LEAs therefore increasing LEA ability to investigate crimes and keep the peace.

ii) *Constitutional Policing*- LEA policies/procedures must emphasize that all police work should be carried out in a manner consistent with the requirements of the U.S. Constitution and federal law. Policies/procedures must include First, Fourth, and Fourteenth Amendment principles in law enforcement activity, as well as compliance with Federal and State civil rights laws. LEA certified law enforcement officers receive training on the rights embodied by such Constitutional Amendments and how these amendments inform policing policies/procedures.

iii) *Community Input and Impact*- LEA policies/procedures must identify mechanisms that LEAs will use to engage the communities they serve to inform them and seek their input about LEAs actions, role in, and relationships with the community. LEAs should make particular efforts to seek the input of communities where controlled property is likely to be used so as to mitigate the effect that such use may have on public confidence in the police. This could be achieved through the LEAs regular interactions with the public through community forums, town halls, or meetings with the Chief, or community outreach divisions.

b) Adopt and comply with controlled property standards.

i) *Appropriate Use of Controlled Property*- LEA policies/procedures must define appropriate use of controlled property; officers who are authorized to use controlled property must be trained on these policies/procedures. LEAs should examine scenarios in which controlled property will likely be deployed, the decision-making processes that will determine whether controlled property is used, and the potential that both use and misuse of controlled property could create fear and distrust in the community. Policies/procedures should consider whether measures can be taken to mitigate that effect (i.e., keep armored vehicles at a staging area until needed) and any alternatives to the use of such property and tactics to minimize negative effects on the community, while preserving officer safety.

ii) *Supervision of Use*- LEA policies/procedures must specify appropriate supervision of personnel operating or utilizing controlled property. Supervision must be tailored to the type of controlled property being used and the nature of the engagement or operation during which the property will be used. Policies/procedures must describe when a supervisor of appropriate authority is required to be present and actively overseeing the property being used.

iii) *Effectiveness Evaluation*- LEA policies/procedures must articulate that the LEA will regularly monitor and evaluate the effectiveness and value of controlled property to determine whether continued deployment and use is warranted on operational, tactical, and technical grounds. LEAs should routinely review after-action reports and analyze any data on, for example, how often controlled property is used or whether controlled property is used more frequently in certain law enforcement operations or in particular locations or neighborhoods.

iv) *Auditing and Accountability*- LEA must establish policies/procedures that are designed to prevent misuse, unauthorized use and/or loss of controlled property. LEA will hold personnel accountable to agree and comply with State, local, Tribal and Federal controlled property use policies/procedures.

v) *Transparency and Notice*- LEA policies/procedures must articulate that LEA will engage the community regarding controlled property, policies/procedures governing its use, and review of "significant incidents" (as defined in Section 8), with the understanding that there are reasonable limitations on disclosures of certain information and law enforcement sensitive operations and procedures.

c) Must adopt and comply with record-keeping requirements for controlled property.

i) Upon LESO request, LEAs must provide a copy of the general policing standards and specific controlled property standards that were adopted, to include any related policies/procedures.

ii) *Record-Keeping Requirement*- LEAs must retain comprehensive training records, either in the personnel file of the officer who was trained or by the LEAs training division or equivalent entity, for a period of at least three (3) years, and must provide a copy of these records, upon LESO request.

7) TRAINING LEAs that request or have acquired controlled property via the LESO Program must establish written policies/procedures for controlled property use, and all personnel who are authorized to use the controlled property will be trained on these policies/procedures. LEAs must:

a) Provide annual training on general policing standards to personnel who may use the controlled property.

b) Provide annual training on property standards to personnel who may use the controlled property.

c) Provide controlled property operational and technical training to personnel and ensure personnel are proficient prior to using controlled property.

d) Provide scenario-based training to personnel that combines constitutional and community policing principles with controlled property specific training. LEA personnel authorizing or directing the use of controlled property should have enhanced scenario-based training to examine, deliberate, and review the circumstances in which controlled property should or should not be used.

8) DOCUMENTATION REQUIRED FOR "SIGNIFICANT INCIDENTS" LEAs must collect and retain the information (described below) when any law enforcement activity involves a "Significant Incident" which requires (or results in) the use of controlled property on the LEAs inventory. A "Significant Incident" is defined as any law enforcement operation or action that involves: 1) a violent encounter among civilians or between civilians and the police, 2) a use-of-force that causes death or serious bodily injury, 3) a demonstration or other public exercise of First Amendment rights, or 4) an event that draws, or could be reasonably expected to draw, a large number of attendees or participants, such as those where advanced planning is needed. LEAs must:

a) Collect and retain documentation for controlled property used in a "Significant Incident" for a minimum of three (3) years after the incident has occurred. The LEA must provide documentation to LESO upon request.

i) Documentation should also be made available to the community the LEA serves in accordance with applicable policies/procedures with exemptions made concerning the disclosure of any sensitive information.

b) No new report or format is required for "Significant Incident" reports so long as information is easily accessible and organized. The required information may already exist in a police report, operations plan, officer daily log, incident report, after-action report or described in a use-of-force report. If required information (annotated below) is contained in a pre-existing reports, the LEA must simply ensure that the report includes information that controlled property was used. Required information is listed below:

i) Name and quantity of controlled property used, including relevant details such as make/model/serial number of controlled property used.

- ii) Description of the LEA action/operation involving the controlled property.
- iii) Identification of LEA personnel who used and directed the use of the controlled property.
- iv) Identify or describe civilians who were the subject or target of LEA action/operation. For large crowds or multiple persons, the LEA must provide general description of the civilians (i.e., a crowd of approximately 250 people).
- v) Result of the action/operation in which controlled property was used (i.e., arrests, citations, injuries or fatalities, use-of-force, victim extraction, or property damage).

9) ANNUAL CERTIFICATIONS By signing the SPO Addendum, the LEA agrees to the below certification statements. In addition, the LEA must annually certify compliance with the below certification statements during the Annual LESO Program Inventory. LEAs must:

- a) Certify they have authorization from their CGB to participate in the LESO Program.
- b) Certify they have provided their CGB and local community a comprehensive list of controlled property that may be requested through the LESO Program.
 - i) Notification may be made electronically or in writing and must be translated into appropriate languages to inform individuals with limited English proficiency. It is recommended this notification be done on an annual basis.
 - ii) If controlled property is not identified in the comprehensive list provided to the CGB and local community, an updated notification to CGB and local community must be made. The CGB and local community will be afforded 30-days to review what additional items are being requested.
- c) Certify the request for controlled property comports/complies with all applicable approval requirements of the CGB.
- d) Certify they have adopted and comply with controlled property standards (i.e., appropriate use, supervision of use, effectiveness evaluation, auditing/accountability of use, transparency/notice of use, and record-keeping requirements).
- e) Certify they have provided annual training to personnel on the maintenance, sustainment, and appropriate use of controlled property, including respect for the rights of citizens under the Constitution of the United States and de-escalation of force.
- f) (*LEAs with LRADs*) Certify that the LRAD is utilized exclusively as a public address system for commercial purposes.
- g) Certify that controlled property vehicle(s) are utilized exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief.
- h) Certify that controlled property requiring a license (or other authorization), is only utilized by personnel who hold license (or other authorization) to operate such property.
- i) Certify that controlled property will be returned to DLA Disposition Services when no longer needed.
- j) Certify that they are abiding by the current LESO Program SPO and SPO Addendum, and maintain a signed copy of these documents on file.

k) Certify the Application for Participation on-file with LESO Program is current and accurately reflects the number of officers in the agency when fully staffed. (Note: If Application for Participation is not accurate, LEA must provide an updated Application for Participation to State Coordinators Office).

l) Certify they are compliant with LESO Program allocation limits. (Note: Property allocation limits are based on the number of officers at an LEA when fully staffed).

m) Certify that they agree to return the controlled property if the Department of Justice (DOJ) determines or a Federal, State, Tribal, local, or territorial court enters a final judgment finding that the LEA has engaged in a pattern or practice of civil rights violations.

n) *Campus LEAs (as described in Section 4)* must also certify that their policies and training include specific provisions on using controlled property in a way that does not chill speech, is not disruptive to the educational environment, and does not foster a hostile climate among students.

o) *Program participants who are part of a regional sharing agreement (as described in Section 5)*, must also certify that the other LESO Program participant in the regional sharing agreement requesting the property under a conditional loan: 1) Have adopted requisite protocols in (as described in Section 6) or will adopt those protocols before their personnel use the controlled property, 2) Have provided requisite training (as described in Section 7) or will provide that training before their personnel use the controlled property, and 3) Will adhere to the information collection and retention requirements (as described in Section 8).

10) SAVINGS CLAUSE/INTERPRETATION Nothing in this SPO Addendum shall be construed to impair or otherwise affect the requirements under the existing SPO between the State and LEA (dated February 2021), unless expressly amended herein. To the extent there is a disagreement concerning the interpretation of this SPO Addendum or the extent this SPO Addendum affects requirements under the existing SPO, the disagreement shall be resolved at the exclusive discretion of the LESO Program.

11) AGREEMENTS OF PARTIES By signing this SPO Addendum, the State and LEA acknowledges and accepts these changes. The SPO Addendum must be signed by LEAs no later than January 1, 2023 to remain eligible for LESO Program participation. The changes contained in this SPO Addendum are acknowledged and accepted by the following:

Governor-appointed State Coordinator State of Greg Schumaker

Title (Print): State Point of Contact

Name (Print): _____

Signature (Sign): _____ Date MM/DD/YYYY): _____

Law Enforcement Agency Name: _____

Chief Law Enforcement Official (CLEO) Title (Print): _____

Name (Print): _____

Signature (Sign): _____ Date MM/DD/YYYY): _____

Attachment 2: Public Notification



San José Police Department
ANTHONY MATA, CHIEF OF POLICE



PUBLIC NOTIFICATION

November 9, 2022

SUBJECT: Notification to the community of the San José Police Department's participation in the Law Enforcement Support Office (LESO) Program and intention to continue to acquire certain items

On May 25, 2022, [Presidential Executive Order \(EO\) #14074 Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety](#) was signed. In accordance with EO #14074 (Section 12), the San José Police Department (Department) is notifying the community of its inventory and intent to request property from Federal sources (to include Federal funds or grants).

The Department currently participates in the [LESO Program](#), which allows the Department of Defense to transfer excess property to federal, state, and local law enforcement agencies to support law enforcement activities. Through the Program, the Department has been able to procure much needed equipment, which would not otherwise have been possible due to budgetary constraints. The Department currently has the following items in its inventory acquired through the LESO Program.


Qty	LESO Description	Controlled Property Description	DEMIL Code	Common Description	Hyperlink	Picture
2	BARREL AND FRONT SIGHT ASSEMBLY	Small Arms Parts/Accessories	D	Hardware for a rifle	link	
1	BUFFER ASSEMBLY, RECOIL	Small Arms Parts/Accessories	D	Hardware for a rifle	link	



201 W. Mission St. San José, CA 95110 tel (408) 277-4212 fax (408) 297-5771 www.sjpd.org

Qty	LESO Description	Controlled Property Description	DEMIL Code	Common Description	Hyperlink	Picture
2	BUTSTOCK, SUBASSEMBLY	Small Arms Parts/Accessories	D	Hardware for a rifle	link	
10	CAMERA SYSTEM, RECONNAISSANCE	Night Vision Device	C	Night vision camera	link	
4	CAMERA SYSTEM, RECONNAISSANCE	Night Vision Device	C	Night vision camera	link	
2	COMPUTER, DIGITAL	Computer System	D	Laptop computer	link	
1	MINE RESISTANT VEHICLE	Armored Vehicles, Wheeled	D	MRAP	link	

Qty	LESO Description	Controlled Property Description	DEMIL Code	Common Description	Hyperlink	Picture
1	NIGHT VISION GOGGLE	Night Vision Goggle	D	ITT Industries Model NE 6015, Gen 3 night vision goggles	link	
1	PAN AND TILT ASSEMBLY, THERMAL CAMERA	Night Vision Device	D	Computer equipment to assist night vision goggles	link	
1	SCREEN, CAMOUFLAGE	Tents/Portable Shelters	N/A	15-pound camouflage net/blanket designed to conceal	link	
2	SIGHT, REFLEX	Red Dot Sight	Q	Aimpoint Comp M4 rifle sight	link	
7	SIGHT, REFLEX	Red Dot Sight	Q	Aimpoint comp M4 rifle sight	link	
1	TRAY, WEAPON, VEHICUL	Armored Vehicles, Wheeled	D	Hardware for the weapons turret on the MRAP	link	

Qty	LESO Description	Controlled Property Description	DEMIL Code	Common Description	Hyperlink	Picture
1	TRUCK, UTILITY	Tactical Vehicles, Wheeled	D	Humvee	link	

The Defense Logistics Agency uses Demilitarization (DEMIL) Coding to identify the restrictions and requirements for destruction of each piece of equipment in the LESO Program. Items with a DEMIL Code of “B,” “C,” “D,” “E,” “F,” “G,” or “Q3” are considered controlled property conditionally transferred to the law enforcement agency, but title or ownership of the controlled property remains with the Department of Defense in perpetuity and will not be relinquished to the law enforcement agency. The LESO Program retains the right to recall the property.

Some examples of this type of controlled property include the items listed above, firearms, firearm parts, ammunition, armored vehicles, body armor, and night-vision optics.

LESO Program items with a DEMIL Code of “A” or “Q6” are also conditionally transferred to the law enforcement agency and are controlled for one (1) year from the ship date. However, after one (1) year from the ship date, the DLA will relinquish ownership and title to the law enforcement agency. Prior to this date, the agency remains responsible for the accountability and physical control of the items and the LESO Program retains the right to recall the property. Some examples of this type of property include clothing, backpacks, first aid kits, tools, hearing protecting, eye protection, office supplies, and other items with identical equivalents in the commercial market.

The Department intends to seek City Council authorization to continue to acquire DEMIL Code A items without prior City Council approval. Items categorized under any other DEMIL Code will be brought before City Council for review prior to acquisition. Public notification will be made by the Department 30 days prior to the meeting at which the request for these items will be presented to City Council.

Pursuant to EO #14074 (Section 12), this Public Notification fulfills the requirement to notify the community of the San José Police Department’s intent to request the controlled property items identified above.



Anthony Mata
 Chief of Police
 San José Police Department



Attachment 3: Department Website Screenshot

SERVICES REPORTING CRIME RECORDS COMMUNITY ABOUT US I WANT TO...

- COVID-19 Changes
- Crime Prevention
- Close-Ups
- + Department Information
 - E-Government Policy
 - F.A.Q.
 - Human Trafficking Task Force
 - ICAC Task Force
 - Internal Affairs
 - Media Relations (PIO)
- News & Announcements**
- Phone Directory
- Sexual Assaults/Megans Law
- Traffic Enforcement
- Video Opener
- Video - We're Hiring 911 Operators & Radio Dispatchers

+ Organization



Get Email Alerts



Media Relations Unit

Subscribe to receive S.JPD Notifications

Public Notification of SJPD Participation in the Law Enforcement Support Office Program

Post Date: 11/10/2022 12:00 PM

MEDIA ADVISORY

On May 25, 2022, [Presidential Executive Order \(EO\) #14074 Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety](#) was signed and made effective immediately. In accordance with EO #14074 (Section 12), the San José Police Department is notifying the community of its inventory and intent to request property from Federal sources, which includes Federal funds or grants.

The Department currently participates in the Law Enforcement Support Office Program ([LESO](#)), which allows the Department of Defense to transfer excess property to federal, state, and local law enforcement agencies to support law enforcement activities. Through the Program, the Department has been able to procure much needed equipment, which would not otherwise have been possible due to budgetary constraints. The Department currently has a list of items in its inventory acquired through the LESO Program. The San José Police Department seeks to continue acquiring DEMIL Code A items. Pursuant to EO #14074 (Section 12), this Public Notification fulfills the requirement to notify the community of the San José Police Department's intent to request the controlled property items identified in the list below:

[Notification to the community of the San José Police Department's participation in the Law Enforcement Support Office \(LESO\) Program and intention to continue to acquire certain items](#)

For more information about the Department's participation in the LESO Program, please contact Lieutenant O'Neil #3797 at 3797@sanjoseca.gov or call (408) 277-4631.

BY: Sergeant Christian Camarillo #3561 AUTHORIZED BY: Lieutenant Donohue #3699
DATE: 11/10/2022 TIME: 12:00 PM DATE: 11/10/2022 TIME: 12:00 PM

[Return to full list >>](#)



- Prevenición del crimen
- Primeros planos
- + Información del departamento
- Política de Gobierno Electrónico
- Preguntas más frecuentes
- Fuerza de Tarea contra la Trata de Personas
- Grupo de trabajo del ICAC
- Asuntos internos
- Relaciones con los medios (PIO)
- Noticias y anuncios**
- Directorio telefonico
- Agresiones sexuales/Ley Megans
- Cumplimiento de tráfico
- Abridor de video
- Video - Estamos contratando operadores del 911 y despachadores de radio
- + Organización



Recibir alertas por correo electrónico

SJPD

Notificación pública de la participación de SJPD en el programa de la oficina de apoyo a las fuerzas del orden público

Fecha de publicación: 10/11/2022 12:00 p. m.

CONSULTIVO DE MEDIOS DE COMUNICACION

El 25 de mayo de 2022, se firmó y entró en vigencia de inmediato [la Orden Ejecutiva Presidencial \(EO\) n.º 14074, Promoción de prácticas policiales y de justicia penal eficaces y responsables para mejorar la confianza pública y la seguridad pública](#). De acuerdo con EO #14074 (Sección 12), el Departamento de Policía de San José está notificando a la comunidad de su inventario e intención de solicitar propiedad de fuentes federales, que incluye fondos o subvenciones federales.

El Departamento actualmente participa en el Programa de la Oficina de Apoyo al Cumplimiento de la Ley (LESO), que permite que el Departamento de Defensa transfiera el exceso de propiedad a las agencias de aplicación de la ley federales, estatales y locales para apoyar las actividades de aplicación de la ley. A través del Programa, el Departamento ha podido adquirir equipo muy necesario, que de otro modo no hubiera sido posible debido a limitaciones presupuestarias. El Departamento actualmente tiene una lista de artículos en su inventario adquiridos a través del Programa LESO. El Departamento de Policía de San José busca seguir adquiriendo artículos DEMIL Código A. De conformidad con EO #14074 (Sección 12), esta Notificación Pública cumple con el requisito de notificar a la comunidad sobre la intención del Departamento de Policía de San José de solicitar los artículos de propiedad controlada identificados en la siguiente lista:

[Notificación a la comunidad de la participación del Departamento de Policía de San José en el Programa de la Oficina de Apoyo al Cumplimiento de la Ley \(LESO\) y la intención de continuar adquiriendo ciertos artículos](#)

Para obtener más información sobre la participación del Departamento en el Programa LESO, comuníquese con el Teniente O'Neil #3797 al 3797@sanjoseca.gov o llame al (408) 277-4631.

POR: Sargento Christian Camarillo #3561

AUTORIZADO POR: Teniente Donohue #3699