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LOAN OF MILITARY EQUIPMENT FOR RIOT CONTROL

Department of Defense
Pentagon
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FOREWARD

This document summarizes the Department of Defense program for providing resources, including chemical munitions and protective masks, to civil authorities to meet an urgent need during an actual civil disorder. It is provided on a CONFIDENTIAL basis to law enforcement personnel and its contents should not be quoted, released, or discussed outside of official law enforcement or military channels.

To initiate planning under this program, police officials should contact the commanding officer of the nearest military installation. While prior planning may reduce the time required to arrange for the loan of military equipment, some delay is inevitable and communities will continue to find it necessary to provide the manpower and equipment required for that immediate response which has proved essential in the control of civil disorders.

Thompson S. Crockett
Chemical Agents Program
International Association of
Chiefs of Police

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Loan of Military Resources to Civil Authorities

The Department of Defense in certain limited situations, can lend defense resources to civil law enforcement authorities in the event of civil disturbances. Such loans of equipment are limited to those necessary to meet an urgent need during an actual disorder and the loans are considered to be a temporary emergency action. Civilian law enforcement authorities are encouraged to procure their own equipment for police use. While all requests, which may be submitted orally or in writing to the nearest military installation, will be handled expeditiously, normally some time will elapse before the military equipment can be in the hands of the civil law enforcement authorities. Law enforcement authorities are cautioned not to rely on the loan of military equipment in the event of a civil disorder in their locality because the availability of military equipment for civilian use is contingent upon military requirements for these Department of Defense resources.

Department of Defense property may be retained by the civil authorities only for the duration of the disorder and generally for not more than 15 days; however, should the disorder exceed 15 days the loan agreement may be renewed for another 15-day period. For the purpose of loans, military resources are classified into two general types of equipment: that which is offensive in nature and that which is protective in nature. Examples of offensive equipment include arms, ammunition, tank-automotive, aircraft, riot control agents and concertina wire. Examples of protective equipment include protective masks, helmets, armored vests, communications equipment, and search lights. Requests for items which are offensive in nature normally are not approved in the absence of compelling reasons and extraordinary circumstances; each such request must be personally approved by the Secretary or Undersecretary of the Army.

In the event a loan of military equipment is approved, the civil authorities are required to execute a standard loan agreement prior to delivery of the equipment. All loan agreements contain provisions for a cash bond, performance bond or its equivalent, equal to the value of the property loaned as a condition precedent to making the loan. Civil authorities are required by the agreement to reimburse the Department of Defense for any expenses necessary to repair, replace or restore any property to its original condition.

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Also, the borrower is required to reimburse the Government in the event any property is lost, destroyed, damaged beyond repair, consumed, or otherwise not available for return to the Department of Defense. All property must be returned and the civil authorities cannot purchase the borrowed equipment.

The Department of Defense recognizes that there is often a substantial lead time before equipment procured by civilian law enforcement authorities will be delivered to them. For this reason certain military commanders may authorize loans of equipment beyond the 15 day limit when a request is made in anticipation of imminent threatened civil disorder. These loans are approved only when the civil authority requesting the loan has initiated action to procure equipment substantially similar to the military property requested. Loans may be approved for terms of up to 90 days pending delivery to the civil authority of its own equipment, with the possibility of a renewal for another 90 day period if necessary. A sample loan agreement is at Tab A. When the civil authority has initiated procurement action and the term of the loan is to be longer than 15 days, substitute paragraph 2, (Tab B) will be used. When a cash deposit is used in place of the properly executed Standard Form 25, Performance Bond, substitute paragraph 7, (Tab C) will be used. No other modifications of the loan agreement form can be made without Military Department approval.

LOAN AGREEMENT

This Loan Agreement is entered into by and between the United States of America, hereinafter called the Government, represented by (Name and title of military representative) for the purpose of entering into this agreement, and (City, County, State or other governmental body or authority) a (Definition) organized and existing under the authority of (Governing Law), hereinafter called the civil authority, represented by (Name and title of Civil Authority's representative) for the purpose of entering into this agreement.

1. PURPOSE

Under the authority of Department of Defense Directive 3025.12, dated June 8, 1968, and in consideration of the premises, the Government hereby lends to the civil authority and the civil authority hereby borrows from the Government the Government property, hereinafter called the property, listed and described in Exhibit I hereto attached and incorporated by reference into the terms of this agreement, which property is required by the civil authority to assist in maintaining public civil order in the area over which it has jurisdiction.

2. TERM

This loan of property is intended to meet an urgent need during actual civil disorder. The civil authority shall keep the property only for the actual duration of the disorder and in no case longer than 15 days after the date of this Loan Agreement, unless this Agreement shall be renewed. Nevertheless, the Government may revoke and terminate this Agreement and demand return of the property in whole or in part at any time.

3. LIABILITY FOR USE OF PROPERTY

The Government shall make every effort to see that each item of the property is furnished in serviceable and usable condition according to its originally intended purpose. Nevertheless, the Government makes no warranty or guarantee of fitness of any of the property for particular purpose or use, or warranty of any other type whatsoever. The civil authority assumes all responsibility for any liability or claims arising from the transportation, use, or possession of the property during the term of this loan, and agrees to hold the Government harmless from any such liability or claims.

4. CARE OF PROPERTY

The civil authority is responsible for the care of the property during the term of this loan. The civil authority shall transport, use and store the property with due care and diligence. The civil authority shall safeguard and secure any high value items, any sensitive serial numbered items, and any arms and ammunition loaned by the Government in substantially the same manner as would the Government under its applicable regulations. The civil authority shall not mortgage, pledge, assign, transfer, sublet, or part with possession of any of the property in any manner to any third party either directly or indirectly, except that this provision shall not preclude the civil authority from permitting the use of the property by a third party with the prior written approval of the Government. The civil authority shall neither make nor permit any modification to any of the nonexpendable property. At all times the Government shall have free access to all of the property for the purpose of inspecting or inventorying it.

5. RETURN OF PROPERTY

The nonexpendable property, and all of the expendable property which has not been expended, shall be returned by the civil authority to the Government at the expiration or termination of this loan.

6. PAYMENT

The civil authority shall make no payment to the Government for the use of the property except as provided below.

a. Transportation Expenses. The civil authority shall reimburse the Government for any expenses for movement of the property incurred by the Government incident to this loan, including those for necessary packing and crating, movement of the property from (Location to Location where property will be used), and return of the property to (Location).

b. Repair Expenses. The civil authority shall reimburse the Government for any expenses necessary to repair, rehabilitate, or replace parts of any of the property following its return to the Government, except that the civil authority shall not be required to make any payment on account of fair wear and tear or normal depreciation of any of the property.

c. Replacement Expenses. The civil authority shall reimburse the Government (as indicated and at the price shown on Exhibit I) for the cost of all of the expendable property used or consumed during this loan, and for any of the property lose, destroyed, damaged beyond repair, or otherwise not available for return or not returned to the Government.

7. BOND

The civil authority has provided a performance bond in the amount of the total value of the property as shown on Exhibit I, which performance bond is marked Exhibit II hereto attached and incorporated by reference into the terms of this agreement.

a. Should the civil authority fail to return any of the property as provided in paragraph 5 above, or fail to reimburse the Government within 30 days after receiving a request for payment of expenses, the bond shall be forfeited as liquidated damages in an amount equal to the expense to the Government computed in accordance with paragraph 6, above.

b. Payment of liquidated damages by forfeiture of any portion of the bond to the Government shall not operate as a sale to the civil authority of any of the property available to be returned but not returned to the Government, nor to extinguish the Government's right to have the available missing property returned.

c. Should the civil authority later return to the Government any of the missing property on account of which a portion of the bond was forfeited as liquidated damages, the civil authority shall be entitled to recoup from the Government a sum equal to 90% of the price of the late returned property as shown in Exhibit I, less an amount in payment for expenses, if any, computed in accordance with paragraph 6 above, and less an amount for depreciation. The amount for depreciation shall be computed by the straight line method, using the price shown on Exhibit I and the date of expiration or termination of this loan as initial points.

8. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress shall be admitted to any share or part of this loan, or to any benefit arising in connection with it.

9. CONTINGENCY FEES

No person or agency acting for or on behalf of the civil authority to solicit or obtain this loan shall be paid any commission, percentage, brokerage, or contingent fee in any way connected with this loan.

10. DISPUTES

Any disputes concerning a question of fact arising under this Loan Agreement which are not disposed of by mutual agreement shall be decided by the Secretary of the Army as the Government's Executive Agent for Civil Disturbance Planning and Operations, or by his designee.

Done at (Place) this (Date) day of (Month) 19 (Year) .

FOR THE GOVERNMENT:

FOR THE CIVIL AUTHORITY:

(Name and Title)

(Name and Title)

CERTIFICATE

I, the (Title) of the (City, County, State, or other governmental body or authority) , named as Civil Authority in this Loan Agreement, certify that (Name) , who signed this Agreement on behalf of the Civil Authority, was then (Title) of (City, County, State, or other governmental body or authority) and that this Loan Agreement was duly signed for and on behalf of (City, County, State, or other governmental body or authority) by authority of its governing body and is within the scope of its lawful powers. In witness whereof I have hereunto affixed my hand the seal of (City, County, State, or other governmental body or authority) by authority of its governing body and is within the scope of its lawful powers this (Date) day of (Month) , 19 (Year) .

(OFFICIAL
SEAL)

 (Name and Title of Certifying Officer)

EXHIBIT I

MILITARY PROPERTY OF THE UNITED STATES

<u>FEDERAL STK NO</u>	<u>NOMENCLATURE</u>	<u>QUANTITY</u>	<u>CURRENT ITEM PRICE, EACH</u>	<u>TOTAL PRICE</u>
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GRAND TOTAL

EXHIBIT II

Standard Form 25, Performance Bond, executed by a licensed bonding firm, or a certified bank check or a receipt for a cash deposit with the Treasurer of the United States, in the amount of the Grand Total shown in Exhibit I.

SUBSTITUTE PARAGRAPH 2

(For use when the civil authority has initiated procurement action and the term of the loan is to be longer than 15 days.)

2. TERM

This loan of property is intended to meet an urgent need connected with threatened civil disorder. The civil authority hereby covenants and certifies that it has initiated action to procure for itself from commercial sources certain public property as listed and described on Exhibit IA hereto attached and incorporated by reference into the terms of this Agreement, and that the Government property which is the subject of this Loan Agreement is required as a substitute only until delivery of the civil authority's own property listed and described on Exhibit IA. The civil authority shall keep the Government property only until delivery of its own property, and in no case longer than 90 days after the date of this Loan Agreement, unless this Agreement shall be renewed. Nevertheless, the Government may revoke and terminate this Agreement and demand return of the property in whole or in part at any time.

7. CASH DEPOSIT

The civil authority has deposited with the Government an amount of money which is equal to the total price of the property as shown on Exhibit I, which deposit is evidenced by Exhibit II hereto attached and incorporated by reference into the terms of this agreement.

a. Not later than 60 days after the expiration or termination of this agreement this deposit shall be returned to the Civil authority less an amount to compensate the Government for its expenses computed in accordance with paragraph 6, above.

b. Retention of a portion of the deposit by the Government shall not operate as a sale to the civil authority of any of the property available to be returned but not returned to the Government, nor to extinguish the Government's right to have the available missing property returned.

c. Should the civil authority later return to the Government any of the missing property on account of which a portion of the deposit was withheld by the Government, the civil authority shall be entitled to recoup from the Government a sum equal to 90% of the price of the late returned property as shown on Exhibit I, less an amount in payment for expenses, if any, computed in accordance with paragraph 6 above, and less an amount for depreciation. The amount for depreciation shall be computed by the straight line method, using the price shown on Exhibit I and the date of expirations of this loan as initial points.

(To be used when the civil authority posts bond in the form of a cash deposit as an alternative to a properly executed Standard Form 25, Performance Bond.)