

SUBJECT: HOMELAND SECURITY EQUIPMENT USE AGREEMENT – LENCO BEARCAT ARMORED RESPONSE VEHICLE


SOURCE: Police Department


COMMENT: The State of California Office of Emergency Services (now known as the State Office of Homeland Security) responsible for administering the federal Homeland Security Grant Program (HSGP) has approved HSGP grant funds in the amount of \$150,000 to the City of Visalia towards the purchase of a Lenco BearCat armored response vehicle, designed to support law enforcement in its mission to secure the safety and security of the City of Visalia, County of Tulare and its municipalities as a S.W.A.T. (Special Weapons And Tactics) Mutual Aid resource. The City of Visalia has contributed additional funds in the amount of \$175,000 and completed the purchase of a Lenco BearCat armored response vehicle and Homeland Security Grant required Performance Bond.

It is intended that this armored response vehicle be shared by certain area law enforcement agencies who have SWAT teams, in the furtherance of homeland security efforts. Currently, those area agencies are Visalia Police Department, Tulare Police Department, Porterville Police Department, and the Tulare County Sheriff's Office. The primary agency having custody and control over the vehicle will be the Visalia Police Department but will be made available to the other agencies when requested through Mutual Aid. When such a request is made, the vehicle will be delivered by the Visalia Police Department to the agency making the request and will be placed under the custody and control of the requesting agency.

The Visalia Police Department is the primary agency responsible for storage, maintenance, insurance and registration of the armored response vehicle. The other agencies will only be responsible for repairs of damage that occurs to the vehicle while in the custody of that agency. For the purposes of delineating these responsibilities, an "Agreement Between Cities of Visalia, Tulare, Porterville, and County of Tulare to Acquire, Administer, Maintain and Use Homeland Security Equipment" was drafted for signatures by the department heads of the participating agencies. Access to this Homeland Security resource requires the signature of the Porterville Police Chief.


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Item No. 17

RECOMMENDATION: That the City Council:

- 1) Authorize the Porterville Police Chief to sign the agreement and allow the Porterville Police SWAT team to utilize this resource if necessary to resolve a critical incident.

Attachment: Homeland Security Equipment Use Agreement

**AGREEMENT BETWEEN CITIES OF VISALIA, TULARE, PORTERVILLE AND
COUNTY OF TULARE TO ACQUIRE, ADMINISTER, MAINTAIN AND USE
HOMELAND SECURITY EQUIPMENT**

This Agreement ("Agreement"), which is dated _____, 2010, is made and entered into by and between the City of Visalia, a municipal corporation, the City of Tulare, a municipal corporation, the City of Porterville, a municipal corporation, and the County of Tulare, a political subdivision of the State of California (individually referred to hereunder as "party" and collectively as "Agencies").

RECITALS

- A. The Agencies are individually responsible for implementing homeland security measures within their jurisdictions.
- B. The State of California Office of Emergency Services (now known as the State Office of Homeland Security) responsible for administering the federal Homeland Security Grant Program (HSGP) has pre-approved HSGP grant funds in the amount of \$150,000 to the City of Visalia towards the purchase of a Lenco BearCat armored response vehicle, designed to support law enforcement in its mission to secure the safety and security of the City of Visalia, County of Tulare and its municipalities as a S.W.A.T. (Special Weapons And Tactics) Mutual Aid resource.
- C. The City of Visalia has contributed additional funds in the amount of \$175,000 to complete the purchase of a Lenco BearCat armored response vehicle and Homeland Security Grant required Performance Bond.
- D. The Agencies enter this agreement with the intent to coordinate the shared use of the armored response vehicle by their respective law enforcement agencies in the furtherance of homeland security efforts.
- E. The Agencies do not intend this Agreement to be a joint powers agreement, nor do they intend to create through this Agreement a joint powers agency or entity as such terms are defined in the Joint Exercise of Powers Act, California Government Code Section 6500, et seq.

AGREEMENT

NOW THEREFORE THE AGENCIES AGREE AS FOLLOWS:

Section 1. Purpose.

The purpose of this Agreement is to set forth the respective responsibilities of the Agencies and their respective law enforcement agencies: City of Visalia Police Department (Administrator), City of Tulare Police Department, City of Porterville Police Department, and County of Tulare Sheriff's Department (referred to hereunder collectively as "Partners"). This Agreement sets forth policy, guidance, and planning, in order to maximize interagency coordination and cooperation for the purpose of sharing the use of a S.W.A.T. armored response vehicle, more specifically described in Section 2 below, purchased through a combination of Homeland Security Grant funds and funds from the City of Visalia. The Agencies jointly and separately agree to abide by the terms and provisions of this Agreement throughout the duration of the Agreement.

Section 2. General Responsibilities of Agencies.

The responsibility of the Agencies shall be to take a unified approach toward the shared use of the Visalia Police Department's "Lenco BearCat" wheeled armored response vehicle ("Equipment"), manufactured by Lenco Armored Vehicles, as a Mutual Aid resource.

Section 3. Acquisition, Administration Maintenance and Shared Use of Equipment.

A. Responsibilities of the City of Visalia. The City of Visalia will:

1. Administrate the purchase of the Equipment from Lenco Armored Vehicles in an amount not to exceed \$325,000 by issuing the purchase order and paying for the Equipment from City of Visalia funds appropriated for this purpose with the understanding that the City will be reimbursed in the amount of \$150,000 as provided in Section 4 below. The Equipment shall be black with a graphic design prepared by the City of Visalia.
2. Secure title to the Equipment, and register the Equipment with the Department of Motor Vehicles, in the name of the City of Visalia.
3. Be responsible for: 1) remainder of purchase price and state required Performance Bond, above HSGP Grant award (\$150,000) in the amount of \$175,000; 2) cost of vehicle registration; and 3) cost of Equipment maintenance service.

4. The City of Visalia is a self-insured entity and responsible for damage to Equipment that occurs while in the care, custody and control of the City of Visalia.
5. Record mileage and condition of Equipment in log book while Equipment is in the care, custody and control of the City of Visalia.
6. Provide Equipment maintenance service through its Fleet Division. Such maintenance shall be consistent with that required to maintain the manufacturer's warranties for the Equipment.
7. Provide and maintain a log book in the Equipment for use by all operators of the Equipment in recording mileage and Equipment condition.
8. Provide storage area for the Equipment.
9. Upon request for use of the Equipment via Mutual Aid, the Visalia Police Department S.W.A.T. team will be responsible for the delivery of the Equipment in a timely manner to the requesting agency S.W.A.T. Incident Commander.
 - i. The Visalia Police S.W.A.T. personnel responsible for delivery of the Equipment will not be involved in the tactical operations of requesting agency, to include operation of the Equipment.
 - ii. The City of Visalia shall be solely responsible for all costs incurred in delivering the vehicle.
10. Provide training on the appropriate use and deployment of the Equipment to S.W.A.T. Teams associated with the aforementioned Agencies.

B. Responsibilities of the City of Tulare. The City of Tulare will:

1. Be responsible for cost of repair for any damage to the Equipment that occurs while in the care, custody and control of the City of Tulare that is not covered under warranty.
2. Record mileage and condition of Equipment in log book while Equipment is in the care, custody and control of the City of Tulare.
3. Refrain from making alterations or modifications to the Equipment or its components.

- C. Responsibilities of the City of Porterville. The City of Porterville will:
1. Be responsible for cost of repair for any damage to the Equipment that occurs while in the care, custody and control of the City of Porterville that is not covered under warranty.
 2. Record mileage and condition of Equipment in log book while Equipment is in the care, custody and control of the City of Porterville.
 3. Refrain from making alterations or modifications to the Equipment or its components.
- D. Responsibilities of the County of Tulare. The County of Tulare will:
1. Coordinate the preparation and prompt submittal of documentation to the State Office of Emergency Services (now known as the State Office of Homeland Security) required under the Homeland Security Grant ("Grant") for the Equipment purchase, draw down of Grant funds, and disposition of the Equipment; and remit to the City of Visalia any Grant funds received for the purchase of the Equipment.
 2. Be responsible for cost of repair for any damage to the Equipment that occurs while in the care, custody and control of the County of Tulare that is not covered under warranty.
 3. Record mileage and condition of Equipment in log book while Equipment is in the care, custody and control of the County of Tulare.
 4. Refrain from making alterations or modifications to the Equipment or its components.
- E. Responsibilities of the Agencies. The Agencies, by their respective Sheriff and Chief of Police or his/her designee, will:
1. Utilize the Equipment primarily as a resource within Mutual Aid Region V of the County of Tulare; provided, however, in the event of a major disaster or terrorist act requiring mutual aid, it may be taken to another California county outside Mutual Aid Region V as long as the Equipment remains under the operation and control of the Visalia Police Department S.W.A.T. Team personnel.
 2. At the request of any Agency, meet and determine, by express consent of the City of Visalia, whether to authorize any modification to the Equipment. Any authorized modification shall be in accordance with the

Grant and consistent with the requirements to maintain the manufacturer's warranties for the Equipment.

Section 4. Reimbursement, Invoicing and Final Disposition of Equipment.

- A. Equipment Purchase and Registration. The City of Visalia shall be reimbursed in the amount of \$150,000 for partial purchase price of the Equipment from the Grant funds.
- B. Equipment Maintenance. The City of Visalia will provide routine maintenance services for the Equipment through the City's Fleet Services Division. The City of Visalia shall also be solely responsible for all repairs to the Equipment. Physical and/ or mechanical damage of the Equipment while in the care, custody and control of an Agency included in this Agreement will be the financial responsibility of said Agency who shall reimburse the City of Visalia in full for required repairs within thirty (30) days of receipt of invoice from the City of Visalia.

Section 5. Term of Agreement and Termination.

- A. Term of Agreement. The term of this Agreement shall be a period of fifteen (15) years beginning July 1, 2010 and ending June 30, 2025 unless extended by mutual written agreement of the parties or terminated as provided herein.
- B. Termination.
 - 1. Breach of Contract- Any party may terminate this Agreement upon thirty (30) days advance written notice to the other parties, in the event one or both of the other parties substantially fails to perform or comply with any of the terms or conditions hereof and such failure is not cured during such 30-day notification period. In no event shall any payment by a party constitute a waiver by the party of any breach of this Agreement or any default which may then exist on the part of another party. Neither shall such payment impair or prejudice any remedy available to the party with respect to the breach or default. Each party shall have the right to demand of another party(ies) the repayment to the party of any funds disbursed to the other party(ies) under this Agreement, which were not expended either in accordance with the terms of this Agreement, or with the terms of the Grant. The respective party (ies) shall promptly refund any such funds upon demand.
 - 2. Without Cause- Under circumstances other than those set forth above, this Agreement may be terminated by any party upon the giving at least

thirty (30) days advance written notice of an intention to terminate to the other Agencies.

Section 6. Indemnification.

- A. Each party to this Agreement shall be solely liable for, and shall indemnify, defend and hold harmless the other parties and each of their officers, officials, employees, agents and volunteers ("Indemnitees") from, any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by any of the Indemnitees, the indemnifying party or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from:
1. The negligent or intentional acts or omissions of the indemnifying party or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; or
 2. The ownership, operation or use of the Equipment when in the care, custody and control of the indemnifying party; or
 3. Damage to the Equipment when in the care, custody and control of the indemnifying party, where repair of such damage is not covered by the physical damage insurance policy or extraordinary maintenance is required that is not due to normal wear and tear on the vehicle.
- B. It is the intent of the Agencies that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, liability, fines, penalties, forfeitures, costs and damages, expense and liability attributable to that party's negligence.
- C. Each party shall establish procedures to notify the other parties where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The Agencies shall cooperate in the defense of such actions brought by others with respect to the matters covered in this Agreement. Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement.
- D. This Section 6 shall survive termination or expiration of this Agreement.

Section 7. Insurance.

- A. It is understood and agreed that each party maintains insurance policies or self-insurance programs to fund their respective liabilities, including liability arising out of the ownership, maintenance, operation and use of the Equipment. Each party agrees that their respective insurance policies or self-insurance policies shall be modified as necessary to include any liability arising out of the operation and use of the Equipment by their respective departments. The Agencies agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other parties and each of its officers, officials, agents, employees and volunteers. Evidence of insurance, certificates of insurance or other similar documentation shall not be required of any party under this Agreement.

Section 8. Independent Contractor.

- A. In performance of the work, duties and obligations assumed by each party under this Agreement, it is mutually understood and agreed that each party, including any and all of its officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of any other party. Furthermore, no party shall have the right to control or supervise or direct the manner or method by which any other party shall perform its work and function. However, each party shall retain the right to administer this Agreement so as to verify that the other parties are performing their respective obligations in accordance with the terms and conditions thereof.
- B. The parties shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.
- C. Because of its status as an independent contractor, a party shall have absolutely no right to employment rights and benefits available to any other party's employees. Each party shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, each party shall be solely responsible and save the other parties harmless from all matters relating to payment of its employees, including compliance with Social Security withholding and all other regulations governing such matters.
- D. Each party retains full responsibility for the professional and personal conduct of all of its own personnel. Each party will remain responsible for establishing and assuming all personnel costs, including salaries, fringe

benefits, overtime, Worker's Compensation Insurance and training for assigned personnel.

Section 9. Maintenance of Records.

- A. Each party shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement and any addenda, including but not limited to, the costs of administering this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of expiration or termination of the Agreement. Each party and any duly authorized representative of the state or federal government that has provided funding for any acquisition or activities under this Agreement shall have access to any books, records, and documents of the Agencies that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. This paragraph shall survive expiration or termination of this Agreement.

Section 10. Non-Waiver.

- A. Waiver of any breach or default hereunder will not constitute a continuing waiver or a waiver of any subsequent breach, of either the same or another provision of this Agreement.

Section 11. Severability.

- A. If any provision of this Agreement is held invalid or unconstitutional, such decision shall have no effect on the validity of the remaining provisions of the Agreement and such remaining provisions shall continue to remain in full force and effect.

Section 12. Interpretation.

- A. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

Section 13. Governing Law.

- A. The interpretation and enforcement of this Agreement will be governed by the laws of the State of California and where applicable, by federal law. The Agencies agree to submit any disputes arising under this Agreement to a court of competent jurisdiction located in Tulare County, California.

Section 14. No Third Party Beneficiaries.

- A. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. It is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

Section 15. Assignment, Transfer, and Entrustment.

- A. No party shall assign or transfer its rights or obligations under this Agreement, except as expressly provided in this Agreement. No party shall entrust the Equipment to the care, custody or control of any third party, except for the sole purpose of repairing the Equipment.

Section 16. Extent of Agreement.

- A. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by each party.

IN WITNESS WHEREOF, the parties have executed this Agreement at Visalia, California, the day and year first above written.

City of Visalia

By: _____
Colleen Mestas, Chief of Police

ATTEST:
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney

By: _____
City Attorney

City of Porterville

By: _____
Chuck McMillan, Chief of Police

ATTEST:
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney

By: _____
City Attorney

City of Tulare

By: _____
Jerry Breckinridge, Chief of Police

ATTEST:
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney

By: _____
City Attorney

County of Tulare

By: _____
Bill Wittman, Sheriff-Coroner

ATTEST:
County Clerk

By: _____
Deputy

APPROVED AS TO FORM:
County Counsel

By: _____
City Attorney