

**53866**

December 14, 2016

To: Honorable Members of the Board of Acquisition and Contract

From: George N. Longworth, Commissioner/Sheriff  
Department of Public Safety

Re: Authority for the County of Westchester, acting by and through its Department of Public Safety (the "County"), to enter into an agreement with the New York State Division of Criminal Justice Services ("DCJS") for DCJS to provide training and equipment necessary for the County to implement DCJS' Reality Based Training program in the Police Academy.

Authority is requested for the County of Westchester (the "County"), acting by and through its Department of Public Safety (the "Department"), to enter into an agreement (the "Agreement") with the New York State Division of Criminal Justice Services ("DCJS") for DCJS to provide training and equipment necessary for the County to implement DCJS' Reality Based Training program ("RBT") in the Police Academy. The Agreement is attached hereto.

RBT is a course designed to enhance officers' decision-making skills, reaction and response times by covering all aspects of a real force-on-force situation. The training covers the psychological and physical aspects of responding to such calls, and during the training exercises, participants use simulated weapons that act and feel like the firearms they use in the line of duty. Participants also are taught how to develop scenarios that can be used to train their fellow officers, using situations that those officers are likely to encounter on the job.

In anticipation that RBT will soon be a mandated component of its police and peace officer curricula throughout New York State, DCJS has purchased requisite necessary equipment to distribute to police academies throughout the State one time at no cost.

This agreement is exempt from the operation of the Westchester County Procurement Policy pursuant to Section 3(a)(iii) of such Policy as it is a contract with New York State. However, since paragraph 2 of the "Liability/Indemnity" section of the Agreement provides that the Recipient shall fully indemnify and save harmless DCJS from suits, actions, damages and costs of every name and description, without limitation, the County's liability is not limited to \$20,000. Therefore this exceeds the Commissioner's short-form signing authority under the Procurement Policy and a resolution from your Honorable Board authorizing this Agreement is required.

The goals and objectives of the proposed Agreement are to allow members of the Westchester County Department of Public Safety to enhance their decision making skills and enhance the safety of everyone involved in high-risk situations.

The goals and objectives of the proposed Agreement are in the best interests of the County in terms of public safety and/or welfare, as it will enable the Department's members of the Westchester County Department of Public Safety to enhance the skills they need to survive the dangers they encounter on the job, in addition to enhancing the safety of individuals with whom they interact during high-risk situations.

The goals and objectives of the proposed Agreement will be tracked and monitored by the Department's Commanding Officer.

The proposed agreement will commence upon execution and may be terminated by either party upon 30 days notice. There will be no cost to the County.

Accordingly, I most respectfully recommend approval of the attached Resolution.

GNL/NAA/cs/jrc

APPROVED BOARD OF ACQUISITION & CONTRACTS - 01/05/2017 - LIC. NO. 11017 - SECRETARY

RESOLUTION

Upon a communication from the Commissioner/Sheriff of Public Safety, be it hereby

RESOLVED, that the County of Westchester is authorized to enter into an agreement, in substantially the same form as attached hereto as exhibit "A", with the New York State Division of Criminal Justice Services ("DCJS") for DCJS to provide training and equipment necessary for the County to implement DCJS' Reality Based Training program in the Police Academy; and be it further

RESOLVED, that the agreement will commence upon execution, with either party having the right to terminate the agreement for any reason upon thirty (30) days written notice; and be it further

RESOLVED, that there will be no cost to the County; and be it further

RESOLVED, that the County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions necessary to implement this Resolution.

APPROVED BOARD OF ACQUISITION & CONTRACT - 01/25/2017 - ISA PRIJAJ, SECRETARY

Account to be Charged/credited  
N/A

| Fund | Agency | Capital Project Or Org | Object/ Sub Object | Trust Account | Activity | Dollars |
|------|--------|------------------------|--------------------|---------------|----------|---------|
|      |        |                        |                    |               |          |         |
|      |        |                        |                    |               |          |         |
|      |        |                        |                    |               |          |         |

Budget Funding Year(s) \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_  
(must match resolution)

Funding Source      Tax Dollars \_\_\_\_\_  
                                  State Aid \_\_\_\_\_  
 \$ \_\_\_\_\_      Federal Aid \_\_\_\_\_  
 (must match resolution)      Other \_\_\_\_\_

Exhibit "A"

**AGREEMENT**  
**Between the**  
**New York State Division of Criminal Justice Services**  
**and the**  
**Westchester Police Academy**  
**Governing**  
**DCJS' Reality-Based Equipment and Training Program**

This Reality-Based Equipment Transfer and Training Agreement (AGREEMENT) between the New York State Division of Criminal Justice Services (DCJS), having its principal office at Alfred E. Smith Office Building, 80 South Swan Street, Albany, New York 12210, and the **County of Westchester acting by and through its Department of Public Safety (Recipient)**, having its principal office at Saw Mill River Parkway, Hawthorne, New York 10532 enumerates the terms and conditions of the DCJS Reality-Based Equipment and Training (RBET) Program.

**WHEREAS**, DCJS is an Executive Agency responsible for among other things, advising and assisting the Governor in developing policies, plans and programs for improving the coordination, administration and effectiveness of the criminal justice system, and its Municipal Police Training Council (MPTC); and

**WHEREAS**, DCJS among other statutory duties establishes and implements on an ongoing basis a training program for all current and new police officers and peace officers; and

**WHEREAS**, DCJS' MPTC recognizes and endorses reality-based training (RBT) as a vehicle to hone skills and decision-making of law enforcement officers with respect to use of force and other job-related duties; and

**WHEREAS**, the MPTC in the future will be requiring such training as an integral component of its police and peace officer curricula; and

**WHEREAS**, DCJS has purchased, through available appropriations, requisite necessary equipment permissible to be lawfully possessed by an approved Recipient consistent with the Penal Law for the purpose of conducting RBT of this nature; and

**WHEREAS**, Recipient, has been approved by DCJS to possess such equipment for implementing RBET program services at the Westchester Police Academy within Westchester Police Academy County; and

**WHEREAS**, DCJS has developed and will maintain an RBT Instructor Course; and

**WHEREAS**, the Parties hereto desire to set forth the respective responsibilities in connection with this initiative and other agreed upon terms and conditions.

**Recipient Responsibilities:**

The Recipient shall:

1. designate a program representative to oversee and coordinate RBET program services and promptly provide contact information and any updates to DCJS' Office of Public Safety (OPS).
2. maintain RBT equipment provided by DCJS in good operating condition and conduct necessary repairs.
3. adhere to terms and conditions regarding RBT equipment and training operation and any other applicable guidance, standards, rules/regulations, and/or policies and procedures related thereto by DCJS and/or the MPTC with respect to this AGREEMENT.
4. promote RBET program services in its jurisdiction through cooperation with law enforcement agencies in the County and other nearby counties in New York State and share RBT equipment provided with another Recipient with an approved AGREEMENT with DCJS and which has undergone requisite training for the purpose of conducting MPTC authorized RBT.
5. adhere to MPTC training, standards and objectives and the MPTC approved RBT Instructor curriculum and any subsequent changes established by MPTC.
6. incorporate RBT into existing courses where appropriate.
7. use only MPTC approved instructor(s) to deliver RBT utilizing equipment provided by DCJS and provide prior written notice to DCJS of the intent to hold a course when utilizing RBT equipment in accordance with specific DCJS directive(s).

**DCJS Responsibilities:**

DCJS shall:

1. distribute RBT equipment and initial quantity of supplies identified in Appendix A to the Recipient upon execution of this AGREEMENT.

**Equipment and other Program-related Expenses:**

1. This is a one-time DCJS purchase of RBT equipment and initial quantity of supplies as delineated in Appendix A. It is understood and agreed that DCJS will not be responsible for replacement equipment, purchase(s) of additional equipment and/or any equipment supplies, maintenance, administrative/personnel-related expenses, including, but not limited to, salary, overtime, travel, or training costs by the Recipient with respect to RBET program services.
2. It is understood and agreed that the RBT equipment and supplies listed in Appendix A, after full execution of this AGREEMENT shall be transferred by DCJS to the Recipient and thereafter owned by such Recipient. A Recipient shall notify DCJS of any under-utilized equipment/supplies and make arrangements for transfer of equipment/supplies

to another Recipient with an AGREEMENT with DCJS and which has undergone requisite training.

**Notifications:**

The Parties agree to promptly notify each other in writing of any change of information which relates to or impact on this AGREEMENT or the purpose thereof. The addresses of the respective Parties and their contact information for purposes of this AGREEMENT and subsequent communications are as follows:

New York State Division of Criminal Justice Services (DCJS)  
Alfred E. Smith Office Building-8<sup>th</sup> Floor  
80 South Swan Street  
Albany, New York 12210  
Attention: Executive Deputy Commissioner  
Current Incumbent: Michael Green

Copy to: John M. Czajka, Deputy Commissioner and Counsel  
DCJS Office of Legal Services  
Alfred E. Smith Office Building - 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, New York 12210

Westchester County Department of Public Safety  
Saw Mill River Parkway  
Hawthorne, NY 10532  
Attention: Commissioner/Sheriff George Longworth

Copy to: County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

**Liability/Indemnification:**

1. Neither Party shall be liable to the other for any incidental, consequential, punitive, nominal, compensatory or any damages of any nature arising out of use of such equipment/supplies, equipment/supplies failure, provision of personnel or action or failure to act by the Parties, and DCJS is further released from any liability in regard to any consequences experienced as a result of this RBET program participation.
2. The Recipient shall fully indemnify and save harmless DCJS from suits, actions, damages and costs of every name and description, without limitation, arising from this AGREEMENT, including, but not limited to, any injury, death, and damage to property to the extent caused by performing or failure to provide RBET services and/or use of such equipment, and any and all actions brought by any RBET program participants or other individual(s).

**Term:**

The term of this AGREEMENT shall commence on the date it is fully executed by all Parties and shall remain in effect until otherwise terminated by either Party.

**Modification:**

This AGREEMENT may be modified only by mutual consent of both Parties and execution of an amendment to this AGREEMENT signed and dated by both Parties indicating any change and its effective date.

**Termination:**

This AGREEMENT may be cancelled at any time by either Party in writing by providing a minimum of thirty (30) calendar days' notice in writing to the contact individual identified above. However, DCJS reserves its right to terminate this AGREEMENT immediately upon its determination or finding that the Recipient is not adhering to the terms and conditions of this AGREEMENT or the Recipient requests to be relieved of its obligations under this AGREEMENT.

In the event of a cancellation or termination of this AGREEMENT, the Recipient shall make arrangements for transfer of equipment/supplies to another Recipient with an AGREEMENT with DCJS and which has undergone requisite training.

**Entire Agreement:**

This AGREEMENT constitutes the entire agreement of the Parties hereto and all previous communications between the Parties hereto and all previous communications between the Parties, whether written or oral, with reference to the subject matter of this AGREEMENT are hereby superseded.

It is hereby agreed that the terms and conditions contained in this AGREEMENT have been read and are understood by the appropriate officials of DCJS and of the Recipient whose signed names appear below, and they certify that they are authorized to sign the AGREEMENT on behalf of their respective entities.

\_\_\_\_\_  
Michael Wood  
Deputy Commissioner  
Office of Public Safety  
NYS Division of Criminal Justice Services

\_\_\_\_\_  
George Longworth  
Commissioner/Sheriff  
Westchester County  
Department of Public Safety

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment: Appendix A