



AGENDA REPORT

Meeting Date: January 7, 2014
Item Number: D-5
To: Honorable Mayor & City Council
From: David L. Snowden, Chief of Police
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND CLYDE ARMORY FOR FIREARM AND EQUIPMENT REPLACEMENT AND TRADE.

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an agreement between the City of Beverly Hills and Clyde Armory for the acquisition of new firearms and equipment in exchange for existing firearms and equipment that the Police Department no longer uses.

INTRODUCTION

The Police Department's Special Weapons and Tactics (SWAT) team currently has in its possession a number of specialized pieces of equipment that it uses during training sessions and SWAT operations in support of efforts to apprehend criminal offenders and safely mitigate crisis situations. A portion of this equipment is in excess of 10-15 years old and has reached the end of its useful life.

DISCUSSION

Over the course of the last two years, staff contacted a total of five police equipment vendors in an effort to obtain fair dollar value for the trade of older equipment. Four of the five vendors valued the equipment at approximately \$20,000 to \$25,000. However, the fifth vendor, Clyde Armory of Bogart, Georgia valued the equipment in excess of \$40,000.

Staff believes that Clyde Armory has presented the City with an offer that is substantially more favorable than the other vendors contacted for the items the Police Department is seeking to trade. Based on this offer, the Police Department will be able to exchange 71 used items for 68 new items that will be integrated into its training and operations immediately. These new items include a robotic arm for the SWAT team's AVATAR robot, several weapons systems, as well as uniform and safety equipment.

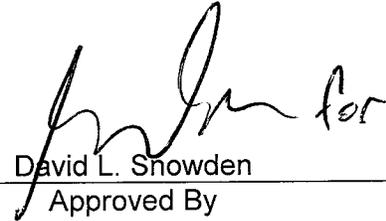
FISCAL IMPACT

There is no immediate fiscal impact to the City as a result of this transaction. This agreement will not generate any costs to the City as the trade will allow for an equal dollar value trade of items. Staff estimates the value of the older equipment items to be valued at \$41,825. Clyde Armory has agreed to provide the new equipment valued at \$41,825. The new items will be placed on the Fund 40 equipment replacement list for replacement over 10 years, and will increase the Police Department's Internal Service Fund charge by \$4,100 per year.

Don Rhoads
Approved By



David L. Snowden
Approved By



Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND CLYDE ARMORY FOR FIREARM AND EQUIPMENT
REPLACEMENT AND TRADE

NAME OF VENDOR: CLYDE ARMORY

RESPONSIBLE PRINCIPAL
OF CONSULTANT: Bret Jamieson
VENDOR'S ADDRESS: 4800 Atlanta Highway
Bogart, GA 30622

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: David L. Snowden
Chief of Police

COMMENCEMENT DATE: Upon written notice to proceed

TERMINATION DATE: Upon transfer of all weapons and equipment
to and from both parties.

CONSIDERATION: \$0.00, trade used firearms in exchange for
new firearms as more particularly described in
Exhibit B-1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND CLYDE ARMORY FOR FIREARM AND EQUIPMENT
REPLACEMENT AND TRADE

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Clyde Armory, (hereinafter called "VENDOR").

RECITALS

A. CITY desires to have certain goods and services provided (the "services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. VENDOR represents that it is qualified and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. VENDOR's Services. VENDOR shall provide to CITY the firearms and firearm related equipment described in paragraph I of Exhibit A ("new firearms") in exchange for the firearms and firearm related equipment described in paragraph II of Exhibit A ("trade firearms").

Section 2. Time of Performance. VENDOR shall perform the services on or by the Termination Date set forth above.

Section 3. Compensation. VENDOR shall accept the trade firearms for the new firearms at no additional cost to CITY.

Section 4. Independent Contractor. VENDOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of VENDOR or any of VENDOR's employees, except as herein set forth. VENDOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 5. Assignment. VENDOR shall not assign or attempt to assign any portion of this Agreement without the prior written approval of CITY.

Section 6. Responsible Principal(s).

(a) VENDOR's Responsible Principal set forth above shall be principally responsible for VENDOR's obligations under this Agreement and shall serve as principal liaison between CITY and VENDOR. Designation of another Responsible by VENDOR shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 7. Personnel. VENDOR represents that it has, or shall secure at its own expense, all personnel required to perform VENDOR's services under this Agreement. All personnel engaged in the work shall be qualified to perform such services.

Section 8. Interests of VENDOR. VENDOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with VENDOR.

Section 9. Insurance.

(a) VENDOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, including completed operations, with minimum limits of One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by VENDOR.

(b) VENDOR agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(c) VENDOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(d) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(e) VENDOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at VENDOR's expense, the premium thereon.

(f) At all times during the term of this Agreement, VENDOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. VENDOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(g) The insurance provided by VENDOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(h) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, VENDOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or VENDOR shall procure a bond guaranteeing payment of losses and expenses.

Section 10. Indemnification. VENDOR agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of VENDOR or any person employed by VENDOR in the performance of this Agreement, or in connection with the sale of trade firearms to any person, the purchase of trade firearms by any person, or the trade of trade firearms to any person. VENDOR's duty to indemnify, hold harmless and defend "in connection with the sale of trade firearms to any person, the purchase of trade firearms to any person, or the trade of trade firearms to any person" includes, without limitation, any claim for liability or financial loss brought by a third party arising from any interaction between the third party and a person who purchased or received trade firearms from VENDOR.

Section 11. Waiver and Release.

(a) CITY hereby conveys the trade firearms to VENDOR in "as-is" condition and disclaims any and all warranties as to the condition of the trade firearms. VENDOR warrants and represents to CITY that it has inspected the trade firearms, consulted with persons knowledgeable in proper operating conditions of the trade firearms, and is fully appraised of the condition of the trade firearms. VENDOR accepts the conveyance of the trade firearms in the "as-is" condition.

(b) In accepting the trade firearms in its "as-is" condition, VENDOR, on behalf of itself and its successors and assigns, does fully and forever remise, release and discharge the CITY, its elected and appointed officials, employees and agents, from any and all causes of action, damages, claims, demands, torts, actions, suits, obligations, losses and liabilities of whatever kind or nature, in law, equity, or otherwise, whether known or unknown, for any and all damages arising from the trade firearms and the use or condition of the trade firearms.

(c) The parties hereto acknowledge that they are familiar with the provision of California Civil Code Section 1542, which is expressly understood by each party hereto to provide as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Fully aware of this Code Section, the parties expressly waive any and all rights they may have thereunder, as well as under any other statute or common law principles of similar effect.

Section 12. Legal Authorization. VENDOR represents that it is legally authorized to sell and transfer, and maintains the required local, state and federal licenses and/or permits to sell

and transfer the trade firearms. VENDOR also warrants that it shall comply with all local, state and federal laws and regulations in connection with the sale and transfer of the trade firearms.

Section 13. Termination.

(a) CITY may cancel this Agreement at any time upon five (5) days written notice to VENDOR. VENDOR agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, VENDOR shall not be compensated.

Section 14. CITY's Responsibility. CITY shall provide VENDOR with all pertinent data, documents, and other requested information as is available for the proper performance of VENDOR's services.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by VENDOR and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Changes in the Scope of Work. CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by VENDOR must be made in writing and approved by both parties.

Section 17. Notice. Any notice required to be given to VENDOR shall be deemed duly and properly given upon delivery, if sent to VENDOR postage prepaid to the VENDOR's address set forth above or personally delivered to VENDOR at such address or other address specified to CITY in writing by VENDOR.

Any notice required to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage prepaid to CITY's address set forth above or personally delivered to CITY at such address or other address specified to VENDOR in writing by CITY.

Section 18. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and VENDOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and VENDOR.

Section 20. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 21. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the _____ day of _____, 201____, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST

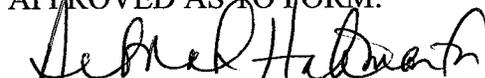
(SEAL)
BYRON POPE
City Clerk

VENDOR: CLYDE ARMORY



BRET JAMIESON
Title: CIO

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager



DAVID L. SNOWDEN
Chief of Police



KARL KIRKMAN
Risk Manager

EXHIBIT A
SCOPE OF SERVICES

I. New Firearms

CITY shall trade the trade firearms set forth in section II for the following new firearms and firearm related equipment from VENDOR:

	<u>Item</u>	<u>Quantity</u>	<u>Specs</u>
(a)	Barrett M82A1 CQ	1	20' bbl. .50BMG, 1 10 rnd Mag
(b)	Trijicon TA648-50G ACOG	1	6x48 Chevron BAC .50 BMG w/TA75 & M1913 Rail
(c)	Colt LE901	1	16" bbl. .308 1 20 rnd magazine
(d)	Trijicon TA01NSN	1	.308
(e)	Magpul magazines	6	.308 20rnd
(f)	Barrett magazines	2	.50 BMG 10rnd
(g)	Avatar II Manipulator Arm	1	#A014B
(h)	Avatar II High Angle Stabilizers	1	#A016A
(i)	5.11 Rapid Assault Shirts	27	Product # 72194, TDU Green (190): (1) 2XL; (5) XL; (17)L; and (4)M
(j)	5.11 Nomex Gloves TACNF02	27	Product #59342, Black (019): (1) XL; (21) L; and (5) M

II. Trade Firearms

CITY shall trade the following trade firearms in exchange for the new firearms:

	<u>Item</u>	<u>Quantity</u>	<u>Specs</u>
(a)	HK MP5A2	3	9mm
(b)	HK MP5A3	1	9mm

(c)	HK MP5N	4	9mm
(d)	HK MP540 A2	1	.40
(e)	HK MP540 A3	5	.40
(f)	HK MP5SD2	1	.9mm
(g)	HK 53A3	1	.223
(h)	HK G3FS	1	7.62
(i)	High Standard 10B	2	12 Gauge
(j)	Remington 700BDL	1	25-06
(k)	Remington 700BDL	1	7mm
(l)	Remington 700	4	.308
(m)	Knights Armory Sup	1	9mm
(n)	Knights Armory Sup	1	10mm
(o)	Surfire Sup's	23	5.56
(p)	Surefire Sup's	2	7.62
(q)	Leupold 3.5x10x40	4	
(r)	Leupold 6.5x14x50	1	
(s)	Leupold fixed power	1	
(t)	Def Tec	1	.37 mm
(u)	Barret Model 95	1	.50 Cal
(v)	Winchester 94	1	30-30
(w)	Tac-Op's Supressors	10	5.56 Cal.

III. Delivery schedule:

All of the new firearms shall be delivered by **VENDOR** to the **CITY** Police Department for inspection and issuance. Upon receiving the **CITY**'s new firearms, the **CITY**'s trade firearms will be made available for pick up or delivery at **VENDOR**'s expense. **VENDOR** shall provide

cases, protective wrap or covering for the trade firearms to protect them from scratches or other cosmetic damage during shipping.

EXHIBIT B-1

SCHEDULE OF RATES

<u>PURCHASES</u>			
<u>Item</u>	<u>Qty</u>	<u>Description</u>	<u>Extended Price</u>
(a) Barrett M8SA1 CQ	1	20' bbl. .50BMG, 1 10 rnd Mag	\$8,289.00
(b) Trijicon TA648-50G ACOG	1	6x48 Chevron BAC .50 BMG w/TA75 & M1913 Rail	\$1,835.00
(c) Colt LE901	1	16" bbl. .308 1 20 rnd magazine	\$1,574.00
(d) Trijicon TA01NSN	1	.308	\$875.00
(e) Magpul magazines	6	.308 20rnd	\$95.70
(f) Barrett magazines	2	.50 BMG 10rnd	\$300.00
(g) *Avatar II Manipulator Arm	1	#A014B	\$24,500.00
(h) *Avatar II High Angle Stabilizers	1	#A016A	\$1,250.00
(i) 5.11 Rapid Assault Shirts	27	#72194, TDU Green (190)	\$1,350.00
(j) 5.11 Nomex Gloves TACNF02	27	#59342, Black (019)	\$1,113.75

Subtotal

Applicable CA sales tax @ 9.75%

N/A

*Insurance

\$394.55

Freight	\$248.00
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TOTAL	\$ 41,825.00
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<u>TRADE</u>			
<u>Item</u>		<u>Quantity</u>	<u>Specs</u>
(a)	HK MP5A2	3	9mm
(b)	HK MP5A3	1	9mm
(c)	HK MP5N	4	9mm
(d)	HK MP540 A2	1	.40
(e)	HK MP540 A3	5	.40
(f)	HK MP5SD2	1	.9mm
(g)	HK 53A3	1	.223
(h)	HK G3FS	1	7.62
(i)	High Standard 10B	2	12 Gauge
(j)	Remington 700BDL	1	25-06
(k)	Remington 700BDL	1	7mm
(l)	Remington 700	4	.308
(m)	Knights Armory Sup	1	9mm
(n)	Knights Armory Sup	1	10mm
(o)	Surfire Sup's	23	5.56
(p)	Surefire Sup's	2	7.62
(q)	Leupold 3.5x10x40	4	
(r)	Leupold 6.5x14x50	1	
(s)	Leupold fixed power	1	
(t)	Def Tec	1	.37 mm
(u)	Barret Model 95	1	.50 Cal
(w)	Winchester 94	1	30-30
(v)	Tac-Op's Supressors	10	5.56 Cal

HK MP5A23	9mm
Applicable CA sales tax @ 9.75%	N/A
TOTAL	\$41,825.00
Purchases Total	\$41,825.00
Less Trade Total	\$41,825.00
GRAND TOTAL:	\$ -0-

EXHIBIT B-2

SCHEDULE OF PAYMENT

VENDOR shall submit an itemized statement to CITY upon CITY's written approval of the new firearms as described in Exhibit A. The invoice shall include documentation setting forth in detail a description of the new firearms purchased by CITY. Upon VENDOR's pick up and inspection of the trade firearms described in Exhibit A, VENDOR shall submit a second itemized statement to CITY which details the cost of the new firearms purchased by CITY, less the value of trade firearms as specified in Exhibit B-1.



**EXHIBIT C
CERTIFICATE OF INSURANCE**

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		AGGREGATE
				B.I.	P.D.	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days'** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

TITLE: _____

AGENCY: _____

ADDRESS: _____
