

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

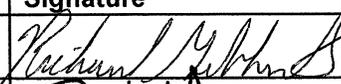
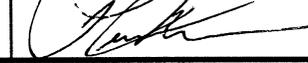
Item # 6 Ordinance/Resolution# 11-053 Council District:       

For Meeting of September 7, 2010

(Adoption Date)

**TITLE:** A RESOLUTION AUTHORIZING THE LAS CRUCES POLICE DEPARTMENT (LCPD) CONTRACT WITH IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) FOR REIMBURSEMENT OF LCPD OVERTIME EXPENSES FOR ANY JOINT OPERATION OR INVESTIGATION BETWEEN LCPD AND ICE FOR A MAXIMUM OF \$15,000 PER OFFICER PER YEAR, ESTIMATED FOR FY2011 AT \$10,000, TO RATIFY THE CITY MANAGER 'S APPROVAL OF THE CONTRACT AND ADJUST THE FY 2011 BUDGET.

**PURPOSE(S) OF ACTION:** To accept funds from ICE in the amount of \$10,000, ratify the City Manager's approval of the contract and adjust the budget.

<b>Drafter and Staff Contact:</b> Maria J. Nape		<b>Department:</b> Finance/GAO		<b>Phone:</b> 541-2104	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Police Department		541-4200	Budget		541-2107
GAO		541-2281	Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** The Las Cruces Police Dept. signed a Memorandum of Understanding (MOU) with the U.S. Dept. Homeland Security, Immigration and Customs Enforcement (ICE) agreeing to assign dedicated officers to any investigation or joint operation with ICE, primarily gang-related investigations. Under the MOU ICE agrees to reimburse the LCPD overtime expenses related to investigation or joint operation.

**SUPPORT INFORMATION:**

1. Resolution
2. Exhibit "A" - MOU with ICE
3. Exhibit "B" - Budget Adjustment

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input checked="" type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.	
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>2400 Police Fund</u>
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**FUND SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Police fund – Revenue	24140210 551022- 37312	\$10,000	0.00	\$10,000	Fulfill the scope of the grant activities
Police fund – Expenses	24147460 various- 37312	\$10,000	0.00	\$10,000	Law enforcement overtime expenses

**OPTIONS / ALTERNATIVES:**

1. Vote “Yes”; this will authorize the contract for law enforcement overtime under the ICE MOU.
2. Vote “No”; this will prevent the LCPD from receiving reimbursement for overtime expenses for law enforcement activities related to ICE.
3. Vote to “Amend”; this could affect the LCPD’s ability to receive reimbursement as terms were established agreed to in the ICE agreement.
4. Vote to “Table”; this is not an option at this time, as funds have already been expended under this agreement.

**REFERENCE INFORMATION**

None.

**RESOLUTION NO. 11-053**

**A RESOLUTION AUTHORIZING THE LAS CRUCES POLICE DEPARTMENT (LCPD) CONTRACT WITH IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) FOR REIMBURSEMENT OF LCPD OVERTIME EXPENSES FOR ANY JOINT OPERATION OR INVESTIGATION BETWEEN LCPD AND ICE FOR A MAXIMUM OF \$15,000 PER OFFICER PER YEAR, ESTIMATED FOR FY2011 AT \$10,000, TO RATIFY THE CITY MANAGER 'S APPROVAL OF THE CONTRACT AND ADJUST THE FY 2011 BUDGET.**

The City Council is informed that:

**WHEREAS**, the Las Cruces Police Department (LCPD) participates in joint operations with the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE); and

**WHEREAS**, the City of Las Cruces entered into a Memorandum of Agreement detailing the nature of the joint operations and providing for reimbursement for LCPD overtime expenses; and

**WHEREAS**, ICE provides a maximum reimbursement of \$15,000 per officer per year, estimated for FY2011 at \$10,000.

**NOW, THEREFORE**, be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the City of Las Cruces supports the joint operations with LCPD and ICE.

**(II)**

**THAT** LCPD is authorized to fulfill its obligations of participation with ICE under the contract.

(III)

THAT City Council ratifies the City Manager's signature on the MOU and approves the budget adjustment.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 7th day of September, 2010.

(SEAL)

ATTEST:

City Clerk

\_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Mayor

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

RESOLUTION NO. \_\_\_\_\_

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Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Mayor

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

APPROVED AS TO FORM:



City Attorney

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN  
IMMIGRATION AND CUSTOMS ENFORCEMENT AND LOCAL,  
COUNTY, OR STATE LAW ENFORCEMENT AGENCY FOR THE  
REIMBURSEMENT OF JOINT OPERATIONS EXPENSES FROM  
THE TREASURY FORFEITURE FUND**

This Agreement is entered into by the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT, (NCIC CODE #\_\_\_\_) and Immigration and Customs Enforcement (ICE), Special Agent in Charge (SAC), EL PASO, TEXAS, for the purpose of the reimbursement of costs incurred by the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT in providing resources to joint operations/task forces.

Payments may be made to the extent they are included in the ICE Fiscal Year Plan, and the money is available within the Treasury Forfeiture Fund to satisfy the request(s) for the reimbursement of overtime expenses and other law enforcement expenses related to joint operations.

**I. LIFE OF THIS AGREEMENT**

This Agreement becomes effective on the date it is signed by both parties. It remains in force unless explicitly terminated, in writing, by either party.

**II. AUTHORITY**

This Agreement is established pursuant to the provisions of 31 USC 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses incurred by local, county, and state law enforcement agencies as participants of joint operations/task forces with a federal agency participating in the Treasury Forfeiture Fund.

**III. PURPOSE OF THIS AGREEMENT**

This Agreement establishes the responsibilities of both parties and the procedures for the reimbursement of certain overtime expenses and other law enforcement expenses pursuant to 31 USC 9703.

**IV. APPLICABILITY OF THIS AGREEMENT**

This agreement is valid for all joint investigations led by ICE, SAC, EL PASO, TEXAS, with the participation of the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT and until terminated, in writing, by either party.

**V. TERMS, CONDITIONS, AND PROCEDURES****A. Assignment of Officer(s)**

To the maximum extent possible, the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT shall assign dedicated officers to any investigation or joint operation.

Included as part of this Agreement, the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT shall provide the ICE, SAC, EL PASO, TEXAS, with the names, titles, four last digits of SSNs, badge or ID numbers, and hourly overtime wages of the officer(s) assigned to the joint operation. This information must be updated as necessary.

**B. Submission of Requests for Reimbursement (Invoices) and Supporting Documentation**

1. The LAS CRUCES, NEW MEXICO POLICE DEPARTMENT may request the reimbursement of overtime salary expenses directly related to work on a joint operation with ICE, SAC, EL PASO, TEXAS, and performed by its officer(s) assigned to this joint operation. In addition, the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT may request reimbursement of other investigative expenses, such as travel, fuel, training, equipment and other similar costs, incurred by officer(s) assigned as members of the designated joint operations with the ICE, SAC, EL PASO, TEXAS.

The LAS CRUCES, NEW MEXICO POLICE DEPARTMENT may not request the reimbursement of the same expenses from any other Federal law enforcement agencies that may also be participating in the investigation.

2. **Reimbursement payments will not be made by check.** To receive reimbursement payments, the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT must ensure that Customs and Border Protection, National Finance Center (CBP/NFC) has a current ACH Form on file with the agency's bank account information, for the purposes of Electronic Funds Transfer. The ACH Form must be sent to the following address:

CBP National Finance Center  
Attn: Forfeiture Fund  
6650 Telecom Dr.  
INDIANAPOLIS, IN 46278

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If any changes occur in the law enforcement agency's bank account information, a new ACH Form must be filled out and sent to the CBP/NFC as soon as possible.

3. In order to receive the reimbursement of officers' overtime and other expenses related to joint operations, the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT must submit to ICE, SAC, EL PASO, TEXAS, the TEOAF Form "Local, County, and State Law Enforcement Agency Request for Reimbursement of Joint Operations Expenses (Invoice)", signed by an authorized representative of that agency and accompanied by supporting documents such as copies of time sheets and receipts.
4. The LAS CRUCES, NEW MEXICO POLICE DEPARTMENT remains fully responsible, as the employer of the officer(s) assigned to the investigation, for the payment of overtime salaries and related benefits such as tax withholdings, insurance coverage, and all other requirements under the law, regulation, ordinance, or contract, regardless of the reimbursable overtime charges incurred. Treasury Forfeiture Fund reimburses overtime salaries. Benefits are not reimbursable.
5. The maximum reimbursement entitlement for overtime worked on behalf of the joint investigation is set at \$15,000 per officer per year.
6. The LAS CRUCES, NEW MEXICO POLICE DEPARTMENT will submit all requests for the reimbursement of joint operations' expenses to ICE, SAC, EL PASO, TEXAS, at the following address:

Department of Homeland Security  
Immigration and Customs Enforcement  
Office of Investigations  
4191 N. Mesa  
El Paso, TX 79902  
ATTN: Virginia Bustamante  
(Phone Number: (915) 231-3311)

## VI. PROGRAM AUDIT

This Agreement and its provisions are subject to audit by ICE, the Department of the Treasury Office of Inspector General, the General Accounting Office, and other government designated auditors. The LAS CRUCES, NEW MEXICO POLICE DEPARTMENT agrees to permit such audits and agrees to maintain all records relating to these transactions for a period not less than three years; and in the event of an on-going audit, until the audit is completed.

These audits may include reviews of any and all records, documents, reports, accounts, invoices, receipts of expenditures related to this agreement, as well as interviews of any and all personnel involved in these transactions.

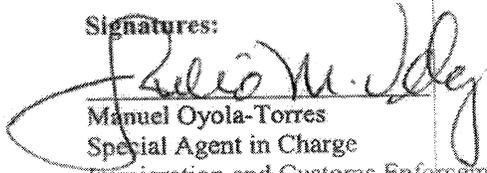
**VII. REVISIONS**

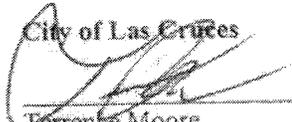
The terms of this Agreement may be amended upon the written approval by both parties. The revision becomes effective on the date of approval.

**VIII. NO PRIVATE RIGHT CREATED**

This is an internal government agreement between the ICE, SAC, EL PASO, TEXAS, and the LAS CRUCES, NEW MEXICO POLICE DEPARTMENT and is not intended to confer any right or benefit to any private person or party.

Signatures:

  
Manuel Oyola-Torres  
Special Agent in Charge  
Immigration and Customs Enforcement  
El Paso, Texas

City of Las Cruces  
  
Terrence Moore  
City Manager  
Las Cruces, New Mexico

Date: 6/11/2010

Date: 5/29/10

Approved as to Form

  
City Attorney

**CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011**

FUND	DIVISION		FUND TYPE	
Police Fund 2400	Police		Special Revenue	
	FY 2009/10 Projected*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 0	0		0
<b>REVENUES</b>				
24140050-552006 NM Dept of Public Safety	\$ 3,354	8,000		8,000
24140210-552019 Univ of NM (UNM)	0	0		0
24140210-551022 Immigration and Customs Enforcement	0	0	10,000	10,000
<b>Total Revenues</b>	\$ 3,354	8,000	10,000	18,000
<b>Total Resources</b>	\$ 3,354	8,000	10,000	18,000
<b>EXPENDITURES</b>				
24147040-37300 NM Dept of Public Safety	3,354	8,000		8,000
24147250 University of New Mexico (UNM)	0	0		0
24147460-37312 Immigration and Customs Enforcement	0	0	10,000	10,000
<b>Total Expenditures</b>	\$ 3,354	8,000	10,000	18,000
<b>ENDING BALANCE</b>	\$ 0	0	0	0

\*Projected based on 8 months actual through February 28, 2010 and 4 months projected.