

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

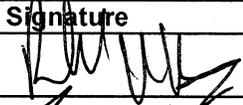
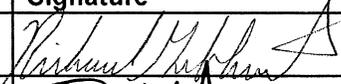
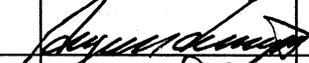
Item # 5 Ordinance/Resolution# 11-130 Council District: All

For Meeting of December 6, 2010

(Adoption Date)

**TITLE:** A RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF LAS CRUCES ON BEHALF OF THE LAS CRUCES POLICE DEPARTMENT AND THE U.S. MARSHALS OFFICE FOR REIMBURSEMENT OF OVERTIME EXPENSES FOR JOINT OPERATIONS IN THE VIOLENT OFFENDER TASK FORCE (VOTF) UP TO \$26,000; TO ACCEPT A FORD FLEX VEHICLE VALUED AT \$25,000 FOR USE IN JOINT OPERATIONS; AND REIMBURSEMENT OF VEHICLE EQUIPMENT UPGRADES IN THE AMOUNT OF \$5,000; TO RATIFY THE CITY MANAGER'S SIGNATURE AND TO ADJUST THE FY2011 BUDGET.

**PURPOSE(S) OF ACTION:** To authorize approval of MOU with U.S. Marshals office to reimburse law enforcement overtime costs in VOTF operations, approve receipt of a vehicle for use in the operations and ratify the City Manager's signature accepting the contract and adjust the FY2011 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 Dept.		528-4200	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 Department (LCPD) participates in joint operations with the U.S. Marshals office and requests authorization of this contract for the reimbursement of overtime expenses for operations in the Violent Offender Task Force (VOTF). The U.S. Marshals are providing the LCPD with a vehicle for use in VOTF activities. The intent of the joint effort is to investigate and apprehend local, state and federal fugitives, to improve public safety and reduce violent crime.

**SUPPORT INFORMATION:**

1. Resolution
2. Exhibit "A" - Grant Acceptance Package
3. Exhibit "B" - MOU with U.S. Marshals Office
4. Exhibit "C" - Documentation of vehicle donation and reimbursements amounts for upgrades and overtime.
5. Exhibit "D" - Budget adjustment

(Continue on additional sheets as required)

**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</u> Police Fund in the amount of <u>\$31,000</u> for FY2011.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

The US Marshals is providing the LCPD with a Ford Flex vehicle valued at \$25,000, and the related asset fund (9990) will reflect receipt of the vehicle. In addition, \$31,000 will be deposited into fund 2400, with \$26,000 to cover law enforcement overtime for VOTF activities and \$5,000 for equipment upgrades to the donated vehicle.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A					

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will allow the LCPD to move forward on the executed contract with the US Marshals.
2. Vote "No"; this will prevent the LCPD from participating in the VOTF, and force the LCPD to return the Ford Flex vehicle donated for use in VOTF activities.
3. Vote to "Amend"; this could delay the process of the cooperative program with the US Marshals and result in the failure to apprehend federal or state fugitives.

(Continue on additional sheets as required)

4. Vote to "Table"; not a recommended option, as this program is set to begin immediately.

**REFERENCE INFORMATION**

None.

**RESOLUTION NO. 11-130**

**A RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF LAS CRUCES ON BEHALF OF THE LAS CRUCE POLICE DEPARTMENT AND THE U.S. MARSHALS OFFICE FOR REIMBURSEMENT OF OVERTIME EXPENSES FOR JOINT OPERATIONS IN THE VIOLENT OFFENDER TASK FORCE (VOTF) UP TO \$26,000, TO ACCEPT A FORD FLEX VEHICLE VALUED AT \$25,000 FOR USE IN JOINT OPERATIONS AND REIMBURSEMENT OF VEHICLE EQUIPMENT UPGRADES IN THE AMOUNT OF \$5,000, TO RATIFY THE CITY MANAGER'S SIGNATURE AND TO ADJUST THE FY2011 BUDGET.**

The City Council is informed that:

**WHEREAS**, the U.S. Marshals Office has established the Violent Offender Task Force and contracts with area law enforcement agencies to conduct joint operations; and

**WHEREAS**, a Memorandum of Understanding (MOU) between the U.S. Marshals Office and the Las Cruces Police Department was executed and both parties agreed collaborate on the VOTF to apprehend fugitives in the Las Cruces area; and

**WHEREAS**, these awarded grant funds, will be utilized to provide reimbursement for law enforcement overtime used to engage in VOTF activities, up to \$26,000 for FY 2011; and

**WHEREAS**, U.S. Marshals Office is providing a new vehicle to the LCPD for use in VOTF activities, along with \$5,000 in equipment upgrades for the vehicle.

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

**(I)**

**THAT**, the City of Las Cruces is authorized to accept the awarded funding on behalf of the Las Cruces Police Department, of \$56,000 for law enforcement overtime and equipment; from the U.S.Marshals Office; and

**(II)**

**THAT**, the awarded grant funds will be utilized by the LCPD for law enforcement overtime (\$26,000); the vehicle (valued at \$25,000) and upgrades (approximately \$5,000) will be utilized for VOTF activities; and

**(III)**

**THAT**, the awarded grant funds do not require an in-kind match or any other required funding on the part of the City of Las Cruces; and

**(IV)**

**THAT**, the City of Las Cruces FY 2011 Budget is hereby adjusted as designated in Exhibit D attached hereto and made a part of this resolution; and

**(V)**

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

**DONE AND APPROVED** this 6<sup>th</sup> day of December, 2010.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Connor: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

## Grant Acceptance Package

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### Grant Acceptance Verification and Signature

Opportunity Title: Violent Offender Task Force

Offering Agency: US Marshals Office

Opportunity Number: N/A

Amount Awarded: \$56,000

Performance Period: Open

Requesting Agency/Department: Las Cruces Police Department

GAO – Grant Writer: Maria Nape

#### SUPPORT INFORMATION:

MOU with US Marshals agreeing to reimbursement LCPD for law enforcement overtime (\$26,000), provision of a vehicle (valued at \$25,000) and reimbursement for equipment upgrades (approximately \$5,000) for LCPD's participation in the Violent Offender Task Force.

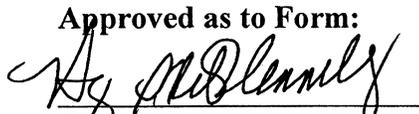
#### OPTIONS

1. Agree with request to accept grant funding Affirmed by signature below. Package to be returned to GAO.
2. Disagree, funding agreement to be returned to funder. Unsigned package to be returned to GAO.

**Approved:**

  
 \_\_\_\_\_  
 City Manager

**Approved as to Form:**

  
 \_\_\_\_\_  
 City Attorney

CMP #2.2 Effective 07/06/09: The City Manager may authorize the application for any grant with these exceptions:  
 The grant award is anticipated to be in excess of \$50,000 and funding has not been appropriated as part of the current budget.  
 The ARRA grant award is anticipated to be in excess of \$500,000 and funding has not been appropriated as part of the current budget.  
 The acceptance of the grant will require City Council to adjust the current budget to appropriate matching funds.  
 The grant requirements stipulate that the City will continue to operate and fund the project/program after the grant period is complete.  
 The grant requirements stipulate that the City enter into a new Memorandum of Understanding or a Joint Powers Agreement with another entity.

**United States Marshals Service**  
**Violent Offender Task Force – Memorandum of Understanding**

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**PARTIES AND AUTHORITY:**

This Memorandum of Understanding (MOU) is entered into by the City of Las Cruces on behalf of the Las Cruces Police Department and the United States Marshals Service (USMS) pursuant to 28 U.S.C. § 566(e)(1)(B). As set forth in the Presidential Threat Protection Act of 2000 and directed by the Attorney General, the USMS has been granted authority to direct and coordinate permanent USMS Violent Offender Task Forces consisting of Federal, state, and local law enforcement authorities for the purpose of locating and apprehending fugitives. The authority of the USMS to investigate fugitive matters as directed by the Attorney General is set forth in 28 USC § 566. The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC § 561(g) and 28 CFR 0.111. The authority of United States Marshals and Deputy U.S. Marshals, "in executing the laws of the United States within a State . . . [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" is set forth in 28 USC § 564. Additional authority is derived from 18 USC § 3053 and Office of Investigative Agency Policies Resolutions 2 & 15. (See also) "Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation" concerning the "Authority to Pursue Non-Federal Fugitives", issued by the U.S. Department of Justice, Office of Legal Counsel, dated February 21, 1995. (See also) Memorandum concerning the Authority to Pursue Non-Federal Fugitives, issued by the USMS Office of General Counsel, dated May, 1, 1995. (See also) 42 U.S.C. § 16941(a)(the Attorney General shall use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements).

**MISSION:**

The primary mission of the task force is to investigate and arrest, as part of joint law enforcement operations, persons who have active state and federal warrants for their arrest. The intent of the joint effort is to investigate and apprehend local, state and federal fugitives, thereby improving public safety and reducing violent crime.

Each participating agency agrees to refer cases for investigation by the VOTF (Violent Offender Task Force). Cases will be adopted by the VOTF at the discretion of the District Chief Deputy. Targeted crimes will primarily include violent crimes against persons, weapons offenses, felony drug offenses, failure to register as a sex offender, and crimes committed by subjects who have a criminal history involving violent crimes, felony drug offenses, and/or weapons offenses. Upon receipt of a written request, the VOTF may also assist non-participating law enforcement agencies in investigating, locating and arresting their fugitives. Task force personnel will be assigned federal, state, and local fugitive cases for investigation. Investigative teams will consist of personnel from different agencies whenever possible. Participating agencies retain responsibility for the cases they refer to the VOTF.

Federal fugitive cases referred to the task force for investigation by any participating agency will be entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate. State or local fugitive cases will be entered into NCIC (and other applicable state or local lookout systems) as appropriate by the concerned state or local agency.

**SUPERVISION:**

The VOTF will consist of law enforcement and administrative personnel from federal, state, and local law enforcement agencies. Agency personnel must be approved by the District Chief Deputy prior to assignment to the VOTF. Agency personnel may be removed at any time at the discretion of the District Chief Deputy.

Direction and coordination of the VOTF shall be the responsibility of the USMS District Chief Deputy. Administrative matters which are internal to the participating agencies remain the responsibility of the respective agencies. Furthermore, each agency retains responsibility for the conduct of its personnel.

A Task Force Advisory Committee, consisting of representatives of participating agencies and USMS district personnel, may be established at the discretion of the District Chief Deputy and will meet and confer as necessary to review and address issues concerning operational matters within the VOTF.

**PERSONNEL:**

In accordance with Homeland Security Presidential Directive 12, personnel assigned to the task force are required to undergo background investigations in order to be provided unescorted access to USMS offices, records, and computer systems. The USMS shall bear the costs associated with those investigations. Non-USMS law enforcement officers assigned to the task force will be deputized as Special Deputy U.S. Marshals.

Task force personnel may be required to travel outside of the jurisdiction to which they are normally assigned in furtherance of task force operations. State or local task force officers traveling on official business at the direction of the USMS shall be reimbursed directly by the USMS for their travel expenses in accordance with applicable federal laws, rules, and regulations.

**REIMBURSEMENT:**

If the Marshals Service receives Asset Forfeiture funding for either 1) overtime incurred by state and local investigators who provide full time support to USMS VOTF joint law enforcement task forces; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies or equipment for state and local investigators in direct support of state and local investigators, the USMS shall, pending availability of funds, reimburse your organization for expenses incurred, depending on which category of funding is provided.

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the VOTF during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total quarterly cost.

The request for reimbursement must be submitted to the District Chief Deputy, who will review the request for reimbursement, stamp and sign indicating that services were received and that the request for reimbursement is approved for payment. Supporting documentation must accompany requests for reimbursement for equipment, supplies, training, fuel, and vehicle leases.

#### **VEHICLES AND EQUIPMENT:**

Notwithstanding the above, pending the availability of asset forfeiture funding and approval by the USMS in advance of any purchase, the USMS may reimburse or make direct payments to qualified third party vendors for vehicles and equipment purchased by the undersigned state or local agency in support of full time state and local investigators assigned to the VOTF involved in joint law enforcement operations. Such vehicle and equipment purchases are to be contracted for and titled in the name of the state or local law enforcement agency and must comply with requirements prescribed by the USMS pursuant to this MOU and applicable policies of the United States Department of Justice. Vehicles and equipment purchased by state and local law enforcement agencies with asset forfeiture monies provided by the USMS must remain available for exclusive use of the task force officers assigned to the VOTF by the undersigned participant agency for the duration of the task force. Upon termination of the agreement, usage and disposition of such vehicles are at the discretion of the undersigned state or local law enforcement agency.

Pending the availability of funds and equipment, the USMS will issue USMS radios, telephones, and other communication devices to each task force officer to be used for official VOTF business. All equipment used by or assigned to task force officers by the USMS or an agency will remain the property of the agency issuing the equipment and will be returned to that agency upon termination of the task force, or upon agency request.

#### **RECORDS AND REPORTS:**

Original reports of investigation, evidence, and other investigative materials generated, seized, or collected by the VOTF shall be retained by the agency in the VOTF responsible for the case. However, evidence may be turned over to other law enforcement agencies as appropriate. Copies of investigative reports and other materials may be provided to other agencies in accordance with applicable laws, rules, and regulations. Task force statistics will be maintained in the USMS Justice Detainee Information System (JDIS) - Warrant Information Network (WIN). Statistics will be made available to any participating agency upon request.

#### **INFORMANTS:**

Pending the availability of funds, the USMS may provide funding for the payment of informants. However, all payments of informants utilizing USMS funding shall comply with USMS policy.

#### **USE OF FORCE:**

All members of the VOTF shall comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-lethal devices. Copies of all applicable firearms, deadly force, and less-lethal policies shall be provided to the District Chief Deputy and each concerned task force officer. In the event of a shooting involving task force personnel, the incident will be investigated by the appropriate agency(s).

**NEWS MEDIA**

Media inquiries will be referred to the District Chief Deputy. A press release may be issued and press conference held, upon agreement and through coordination with participant agencies' representatives. All press releases will exclusively make reference to the task force.

**RELEASE OF LIABILITY:**

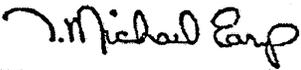
Each agency shall be responsible for the acts or omissions of its employees. Participating agencies or their employees shall not be considered as the agents of any other participating agency. Nothing herein waives or limits sovereign immunity under federal or state statutory or constitutional law.

**EFFECTIVE DATE AND TERMINATION:**

This MOU is in effect once signed by a law enforcement participant agency. Participating agencies may withdraw their participation after providing 30 days advanced written notice to the District Chief Deputy U.S. Marshal.

  
United States Marshal *10-12-10*  
**CONRAD CANDELARIA**

  
Participant Agency Representative  
**RICHARD WILLIAMS**

 *11/03/2010*  
Assistant Director, IOD

  
Mayor, City of Las Cruces  
**KEN MIYAGASHIMA**

APPROVED AS TO FORM:  
  
City Attorney



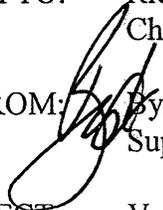
57 U.S. Department of Justice

United States Marshals Service

*District of New Mexico/Las Cruces*

9/1/2010

MEMORANDUM TO: Richard Williams  
Chief of Police/Las Cruces

FROM:  Byron Hollister  
Supervisory Deputy United States Marshal

SUBJECT: Vehicle Purchase

On or around August 01, 2010 I received notice that the United States Marshal Service had the means to purchase a vehicle for the Las Cruces Police Department through Asset Forfeiture Funds. The vehicle would be purchased by the United States Marshal Service and delivered to the Las Cruces Police Department for use in furthering our task force efforts. The vehicle would become the property of the Las Cruces Police Department with no further requirements. Further direction for retrofitting and fuel will be forthcoming. The vehicle will be delivered during the 2011 fiscal year. The vehicle in question is a 2011 Ford Flex. If you have any further questions please call me at 575-649-9543.

**Maria Nape**

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**From:** Jaime Montoya  
**Sent:** Thursday, October 07, 2010 11:54 AM  
**To:** Auguie Henry III  
**Cc:** Maria Nape  
**Subject:** RE: us marshals mou

**Importance:** High

We met with Agents Hollister and Hefley (US Marshals) to discuss this MOU today. They had some concerns about the wording advising we would revisit the MOU every two years. They said they would send it up to headquarters for approval as is.

Maria, they will be funding up to \$26,000 in OT to officers for different mission around town from October 2010-September 2011. The Ford Flex that they bought for us is valued at \$25,000. They are also giving us \$5,000 for equipment to outfit the Ford Flex. If you need anything else please let me know.

*Deputy Chief Jaime Montoya  
 Las Cruces Police Dept  
 Operations Division*

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**From:** Auguie Henry III  
**Sent:** Tuesday, October 05, 2010 8:03 AM  
**To:** Jaime Montoya  
**Subject:** RE: us marshals mou

Let me know if you need anything else.

**Auguie Henry III, MPA**

*Grants Administrator  
 Grants Administration Office (GAO)  
 Phone: (575) 541-2281  
 Fax: (575) 541-2105  
 E-mail: [auhenry@las-cruces.org](mailto:auhenry@las-cruces.org)*




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**From:** Jaime Montoya  
**Sent:** Monday, October 04, 2010 1:04 PM  
**To:** Auguie Henry III; Maria Nape  
**Subject:** us marshals mou

When you all have time can I get a electronic copy of the MOU?

*Deputy Chief Jaime R. Montoya  
 Las Cruces Police Department  
 Operations Division  
 217 E. Picacho  
 Las Cruces, NM 88001*



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

<b>FUND</b>	<b>DIVISION</b>		<b>FUND TYPE</b>	
<b>Police Fund 2400</b>	<b>Police</b>		<b>Special Revenue</b>	
	<b>FY 2009/10 Projected*</b>	<b>FY 2010/11 Adopted</b>	<b>Adjustment</b>	<b>FY 2010/11 Adjusted</b>
<b>RESOURCES</b>				
Beginning Balance	\$ 0	0		0
<b>REVENUES</b>				
37300 NM Dept of Public Safety	\$ 3,354	8,000		8,000
Univ of NM (UNM)	0	0		0
37313 Department of Homeland Security	0	530		530
37301 U.S. Department of Justice	0	10,000		10,000
37312 Immigration & Customs Enforcement	0	10,000		10,000
37310 Federal Bureau of Investigation	0	102,765		102,765
37309 OJJDP After School Program	0	250,000		250,000
37311 Domestic Highway Enforcement (HIDTA)	0	4,740		4,740
37302 Project Safe Neighborhoods-DOJ	0	10,000		10,000
Bulletproof Vest Program - DOJ	0	9,375		9,375
37015 Southern New Mexico Border Region Coalition	0	11,400		11,400
37320 U.S. Marshals	0	0	31,000	31,000
<b>Total Revenues</b>	\$ 3,354	416,810	31,000	447,810
<b>Total Resources</b>	\$ 3,354	416,810	31,000	447,810
<b>EXPENDITURES</b>				
37300 NM Dept of Public Safety	3,354	8,000		8,000
Univ of NM (UNM)	0	0		0
37313 Department of Homeland Security	0	530		530
37301 U.S. Department of Justice	0	10,000		10,000
37312 Immigration & Customs Enforcement	0	10,000		10,000
37310 Federal Bureau of Investigation	0	102,765		102,765
37309 OJJDP After School Program	0	250,000		250,000
37311 Domestic Highway Enforcement (HIDTA)	0	4,740		4,740
37302 Project Safe Neighborhoods-DOJ	0	10,000		10,000
Bulletproof Vest Program - DOJ	0	9,375		9,375
37015 Southern New Mexico Border Region Coalition	0	11,400		11,400
37320 U.S. Marshals	0	0	31,000	31,000
<b>Total Expenditures</b>	\$ 3,354	416,810	31,000	447,810
<b>ENDING BALANCE</b>	\$ 0	0	0	0

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