

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 2 Ordinance/Resolution# 11-187 Council District: ALL

For Meeting of March 7, 2011
(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES POLICE DEPARTMENT (LCPD) TO ACCEPT GRANT FUNDING FROM THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) 2009 OPERATION STONEGARDEN (OPSG) FUNDING AS A SUB-GRANTEE UNDER THE ALLOCATION TO DONA ANA SHERIFF'S OFFICE (DASO) TO CONDUCT CRIMINAL INTERDICTION ACTIVITIES WITHIN THE BORDER AREA, IN AN AMOUNT UP TO \$251,929, TO RATIFY THE GRANT ACCEPTANCE PACKAGE (MEMORANDUM OF AGREEMENT AND MUTUAL AID AGREEMENT) AND TO ADJUST THE FY 2011 BUDGET.

PURPOSE(S) OF ACTION: To accept grant funding from DASO as sub-grantee for 2009 funds awarded under FEMA's OPSG, a funding program created to enhance law enforcement visibility and operational readiness along the U.S. border.

Drafter and Staff Contact: Maria J. Nape		Department: Finance / GAO		Phone: (575) 541-2281	
Department	Signature	Phone	Department	Signature	Phone
Police Department		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 FY 2009 OPSG provides funding to designated localities to enhance cooperation and coordination between Federal, State, Local, and Tribal law enforcement agencies in a joint mission to address increased criminal activity along the border, including drug sales, human trafficking, money laundering and weapons trade along routes of ingress from International border to include travel corridors in states bordering Mexico and Canada. OPSG funding will be used for additional law enforcement personnel, overtime, travel and other related costs to fighting border-area crime. OPSG funding is awarded to the designated State Administration Agency (SAA) with 100% pass-through to selected local units of government at the county level and federally recognized-tribal governments.

The LCPD **WILL NOT** use OPSG funding, or any other funding, for immigration enforcement purposes absent an ongoing criminal investigation. Requests by LCPD officers for immigration documentation are performed **ONLY** in conjunction with arrest or detention within a legitimate criminal investigation.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" – Grant Acceptance Package
3. Exhibit "B" – Memorandum of Agreement with Dona Ana Sheriff's Office
4. Exhibit "C" – Mutual Aid Agreement with Dona Ana Sheriff's Office
5. Exhibit "D" – Budget Adjustment

SOURCE OF FUNDING:

Is this action already budgeted?	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 (# and Fund Name) Fund.	
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>2401 Police Protection Fund</u> in the amount of <u>\$251,929</u> for FY2011.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Funds in the amount of \$251,929 will be deposited in the Police Fund 2470 for a two-year project to be expended on officer overtime (14 operations per year for two years) and equipment (2 each four-wheel drive vehicles with GPS equipment and fiber optic scope for fuel tanks; binoculars and video cameras for surveillance, as well as vehicle maintenance and fuel.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Police protection	24147030-610210-37315	\$251,929	\$251,929	-0-	

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will accept funds of \$251,929 from DASO and OPSG.
2. Vote "No"; this will reject the grant and funds from DASO for OPSG.
3. Vote to "Amend" could change the grant agreement delaying the process and possibly result in loss of the funding opportunity.
4. Vote to "Table" is not an option, failure to act will amount to a "No" vote and the funding opportunity will be lost.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

None

RESOLUTION NO. 11-187

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES POLICE DEPARTMENT (LCPD) TO ACCEPT GRANT FUNDING FROM THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) 2009 OPERATION STONEGARDEN (OPSG) FUNDING AS A SUB-GRANTEE UNDER THE ALLOCATION TO DONA ANA SHERIFF'S OFFICE (DASO) TO CONDUCT CRIMINAL INTERDICTION ACTIVITIES WITHIN THE BORDER AREA, IN AN AMOUNT UP TO \$251,929, TO RATIFY THE GRANT ACCEPTANCE PACKAGE (MEMORANDUM OF AGREEMENT AND MUTUAL AID AGREEMENT) AND TO ADJUST THE FY 2011 BUDGET.

The City Council is informed that:

WHEREAS, FEMA provides funding under OPSG to law enforcement agencies along the southwest U.S. border to law enforcement agencies in border states; and

WHEREAS, the Doña Ana County Sheriff's Office (DASO) was awarded the Operation Stonegarden grant from the NM State Homeland Security Department in 2009; and

WHEREAS, LCPD will NOT be using OPSG funding, or any other funding, for immigration enforcement purposes absent an ongoing criminal investigation; and

WHEREAS, DASO has offered the LCPD a sub-grantee contract to partake in a portion of the OPSG funding.

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

(I)

THAT LCPD is authorized to accept the sub-grantee contract up to \$251,929 from DASO's allocation under FEMA's OPSG.

(II)

THAT the grant will be utilized to fund officer overtime and equipment to assist LCPD in crime fighting activities.

(III)

THAT the grant program does not require any cash or in-kind match.

(IV)

THAT the City of Las Cruces FY 2011 budget is hereby to be adjusted as designated in Exhibit "D" attached hereto and made a part of this resolution.

(V)

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

DONE AND APPROVED this 7th day of March, 2011.

(SEAL)

ATTEST:

City Clerk

Moved by: _____

APPROVED:

Mayor

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Seconded by: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

Grant Acceptance Package

Grant Acceptance Verification and Signature

Opportunity Title: Operation Stonegarden

Offering Agency: Dept. Homeland Security, NM State Homeland Security, Doña Ana Sheriff's office

Opportunity Number: DHS-09-GPD-067-1972

Amount Awarded: \$251,929

Performance Period: Jan. 1, 2011 – Dec. 31, 2012

Requesting Agency/Department: Las Cruces Police Department

GAO – Grant Writer: Maria Nape

SUPPORT INFORMATION:

Reimbursement of overtime and purchase of vehicles and equipment for criminal interdiction throughout U.S.-Mexico border area.

OPTIONS

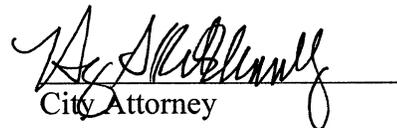
1. Agree with request to accept grant funding Affirmed by signature below. Package to be returned to GAO.
2. Disagree, funding agreement to be returned to funder. Unsigned package to be returned to GAO.

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.

20

MEMORANDUM OF AGREEMENT BETWEEN DOÑA ANA COUNTY, DOÑA ANA SHERIFF'S OFFICE AND THE CITY OF LAS CRUCES, LAS CRUCES POLICE DEPARTMENT FOR INCREASED BORDER SECURITY AND PROTECTION UNDER OPERATION STONEGARDEN

THIS AGREEMENT, is entered into by and between the County of Doña Ana New Mexico, Doña Ana Sheriff's Office (herein referred to as the County), a political subdivision of the State of New Mexico, and the City of Las Cruces, on behalf of the Las Cruces Police Department (LCPD).

WHEREAS, the County has received state funding for the overtime pay, equipment, and supplies to support activities essential to the ability of state, county and municipalities to prepare for, prevent, and respond to terrorist attacks and other all-hazardous events; and

WHEREAS, the County has been designated by the state as the fiscal agent for the state funding and has the authority to award, direct and report progress described in the state funding document from the New Mexico Department of Homeland Security and Emergency Management; and

WHEREAS, the law enforcement activities described in the state funding are necessary to ensure the health, safety, and welfare of the residents of the County as a whole; and

WHEREAS, the City and the County work cooperatively on these security measures and other emergencies affecting the public safety of Las Cruces and Doña Ana County, as outlined in the Mutual Aid Agreement between the parties, attached as Exhibit "B"; and

WHEREAS, the County is willing to plan, designate and report the law enforcement activities described in the state funding document; and

WHEREAS, the balance of funding will be expended by the County as deemed appropriate. The total amount of funding is \$965,623; and

WHEREAS, the City of Las Cruces has requested \$251,929.04 and the County agrees to award this amount through the funding document, the budget for which is attached as Exhibit "A"; and

WHEREAS, the funding expires on June 30, 2012.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

The County agrees:

1. To act as the fiscal agent for the state funding described as the 2009 Stonegarden

2. To be responsible for administration of the Grant and shall meet all requirements of the Grant.
3. To provide for the reimbursement of expenditures invoiced and paid by LCPD against the amount allocated to LCPD.
4. To report performance of LCPD to New Mexico Department of Homeland Security and Emergency Management.
5. To provide additional services mutually agreed to in writing by the parties should additional funding become available for the Project.
6. To provide reimbursement to LCPD for eligible expenses under this Agreement submitted with appropriate documentation, to be received by April 15, 2011 for expenses incurred during the first quarter of 2011, and on the 15th of the month following the termination of each quarter thereafter.

The City of Las Cruces, Las Cruces Police Department agrees:

1. The requested funds, \$251,929.04, will be used for their needs as defined in the funding document.
2. To conduct law enforcement activities that are defined in the funding document and report the results of those activities back to the Doña Ana County Sheriff's Office (DASO) designee.
3. To submit for reimbursement of expenditures in the format and manner as stated by the County. Expenditures must be consistent with operations orders submitted to Border Patrol for approval.
4. That any equipment or material purchased by the LCPD shall be maintained and cared for by the City of Las Cruces. The County is not responsible for the maintenance and care of any equipment purchased by the LCPD.
5. To record and report to the county any activity that is consistent with the respective operations orders submitted to Border Patrol for approval.
6. To submit requests for reimbursement to DASO on a quarterly basis for eligible expenses with appropriate documentation for expenses incurred under this Agreement, with the first request to be submitted by LCPD by April 15, 2011 for expenses incurred during the first quarter of 2011. Subsequent requests will be submitted to DASO by the 15th of the month following the termination of each quarter.

All Parties agree:

1. Amendment. This Agreement shall not be altered, modified, or amended except by instrument in writing executed by both parties.
2. Termination. This Agreement shall terminate June 30, 2012 or when the LCPD has exhausted the amount granted by this agreement. This agreement may be terminated earlier by either party upon 30 calendar days' written notice to the other party. Notwithstanding such notice of termination, the County shall remain obligated to reimburse LCPD for eligible expenses incurred up to the date of termination. The LCPD shall have 30 calendar days from the date of termination to submit a final reimbursement request to the County.
3. Status of Employees. Any employee of one of the parties who provides services under this Agreement shall remain the employee of his/her employer, who shall remain responsible for that employee's salary, fringe benefits, worker's compensation benefits, and unemployment compensation. Any of the parties' employees who undertake any activities under this Agreement shall remain subject to the supervision of his or her employer.
4. Sovereign Immunity. By entering into this Agreement, employees of the County and LCPD shall remain "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, do not waive sovereign immunity, and do not waive any defenses or any limitations of liability available under law. No provision in this Agreement modifies and/or waives any of the provisions of the New Mexico Tort Claims Act, *supra*, and any amendments thereto.
5. Liability. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Both the LCPD and the County agree to assume all risk in the performance of their respective actions taken hereunder and their respective activities in connection herewith and, if found liable, shall be solely responsible and answerable in damages for any and all accidents, deaths, bodily or personal injuries to person, property or damages of any other nature.
6. No Third Party Beneficiary. It is specifically agreed between the parties executing this Agreement that it is not intended by the parties, or by any provision of or any part of the Agreement, to create in the public or any member thereof status as a third party beneficiary of the Agreement or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, injury to person, damage to property, and/or any other cause of action whatsoever pursuant to the provisions of this Agreement.
7. Severability. If any part or application of this Agreement is held to be invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.

- 8. Waiver. Any waiver of any breach of any condition in this agreement to be kept and performed by either party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent either party from declaring a default for any succeeding breach of the same condition or another condition.

Law and Authority. This Agreement shall be governed by the laws of the State of New Mexico. Each person signing this Agreement represents that they have been authorized to enter into this Agreement on behalf of their respective governing body.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date of last signature, below.

City of Las Cruces

Approved as to Form:




Robert L. Garza, P.E.
City Manager

City Attorney

2-16-11

02/15/11

Date

Date

Las Cruces Police Department



2/15/11

Richard Williams
Chief of Police

Date

Doña Ana Sheriff's Office



Todd Garrison
Sheriff for Doña Ana County

02/10/2011

Date

**MUTUAL AID AGREEMENT BETWEEN THE CITY OF LAS CRUCES,
LAS CRUCES POLICE DEPARTMENT AND DOÑA ANA COUNTY,
DONA ANA SHERIFF'S OFFICE FOR MUTUAL ASSISTANCE ON AN ONGOING
BASIS AND IN THE EVENT OF TERRORISM, HAZARDOUS EVENTS OR OTHER
CIRCUMSTANCES AFFECTING PUBLIC SAFETY**

THIS AGREEMENT is entered into by and between the County of Doña Ana New Mexico, Doña Ana Sheriff's Office (herein referred to as DASO), a political subdivision of the State of New Mexico, and the City of Las Cruces, on behalf of the Las Cruces Police Department (herein referred to as LCPD).

WHEREAS, there has been a close working relationship long history of mutual aid, both formal and informal, between DASO and the LCPD in the function of law enforcement, which both wish to maintain; and

WHEREAS, during the normal course of daily operations, assistance may be required from DASO and the LCPD to the other, and both agencies wish to provide, to extent possible, assistance to each other when needed; and

WHEREAS, unforeseen circumstances such as natural disasters, terrorist attacks, detection of criminal activity such as human trafficking, drug or weapons trade, or other critical incidents may arise, posing a threat to public safety, which will require intergovernmental assistance; and

WHEREAS, it is recognized that these emergencies often overwhelm local government capability, transcend jurisdictional boundaries, and that intergovernmental coordination is essential for the protection of lives and property; and

WHEREAS, intergovernmental cooperation is also essential for the maximum use of available resources; and

WHEREAS, DASO and LCPD recognize that in order to provide mutual aid, both agencies need to have an extension of law enforcement authority beyond the jurisdictional boundaries of the respective agencies; and

WHEREAS, the New Mexico Intrastate Mutual Aid Act [12-10B-1 NMSA 1978], which established the Intrastate Mutual Aid System, of which both LCPD and DASO are members, allows for its members to enter into mutual aid agreements that extend

the authority of law enforcement officers beyond the normal boundaries of their jurisdictions.

NOW THEREFORE, in consideration of these mutual interests, DASO and LCPD agree that the following will define their Mutual Aid working relationship:

1. Request for Aid – Both parties will have their law enforcement agencies respond to emergencies or other requests for assistance in the following manner: a) LCPD will dispatch its equipment and personnel only upon official request for assistance from the DASO Sheriff or his/her designee; b) DASO will dispatch its equipment and personnel only upon official request for assistance from the Chief of LCPD or his/her designee
2. Availability Response to a request for assistance from the other party will be subject to availability of personnel, equipment and resources. Both parties agree that furnishing of any personnel or equipment under this Agreement will be subordinate to requests for, and rendering of, any services necessary within their respective jurisdictions.
3. Upon the request of a supervising official with the law enforcement agency, the officers may provide assistance to the requesting agency. When acting upon the request for mutual aid, both DASO and LCPD officers shall have the same jurisdiction, powers, rights, privileges, and immunities as officers from the requesting agency. When requested by the Dona Ana County Sheriff's Office, LCPD officers will be cross-commissioned as DASO deputies to enforce state criminal statutes when violations occur in Doña Ana County outside LCPD jurisdiction.
4. All efforts will be made to release the assisting party as soon as practical.
5. Both parties will keep accurate records of all calls requesting assistance from the respective jurisdiction requesting aid. Said records shall include data on equipment responding, personnel employed, time spent and materials expended.
6. Both parties agree they will not seek or be entitled to reimbursement for expenses of officer hours, or use of equipment, vehicles or other resources rendering mutual aid to the other party, except as follows:

- a. In the event of any major emergency or disaster, as defined by the New Mexico Intrastate Mutual Aid Act [12-10B-1 NMSA 1978], parties are eligible to receive reimbursement for resources expended by the political subdivision receiving aid in the state of New Mexico, including the jurisdictions of both parties.
7. Nothing under the terms of this Agreement shall require DASO or LCPD to purchase additional equipment or hire additional personnel in order to comply with the terms of this Agreement.
8. Employment Status - Any employee of one of the parties who provides services under this Agreement shall remain the employee of his/her employer, who shall remain responsible for that employee's salary, fringe benefits, worker's compensation benefits, and unemployment compensation. Any of the parties' employees who undertake any activities under this Agreement shall remain subject to the supervision of his or her employer.
9. Liability - Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Both the LCPD and DASO agree to assume all risk in the performance of their respective actions taken hereunder and their respective activities in connection herewith and, if found liable, shall be solely responsible and answerable in damages for any and all accidents, deaths, bodily or personal injuries to person, property or damages of any other nature.
10. This Agreement shall supersede any previous Agreements concerning law enforcement cooperation and mutual aid and any amendments will be made to this Agreement upon the written concurrence of both parties
11. Effective date for this Agreement shall be the last date of signature below.
12. Either party upon 30 days' written notice to the other may terminate this agreement.
13. Incidents and investigations involving the activation of the LCPD officer involved Incident Task Force will be governed by the Joint Powers Agreement in force.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date of last signature, below:

City of Las Cruces



Robert L. Garza, P.E.
City Manager

2-16-11

Date

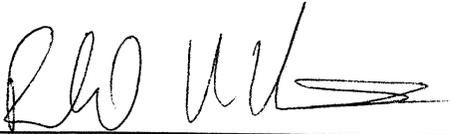
Approved as to Form:



City Attorney

02/15/11

Las Cruces Police Department



Richard Williams
Chief of Police

2/15/11

Date

Dona Ana Sheriff's Office



Todd Garrison
Sheriff for Dona Ana County

2/10/2011

Date

CITY OF LAS CRUCES
ADOPTED BUDGET FY 2010/2011

FUND	DIVISION		FUND TYPE	
Police Protection Fund 2401	Police		Special Revenue	
	FY 2009/10 Projected*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
RESOURCES				
Beginning Balance	\$ 45,176	80,460	(72,346)	8,114
REVENUES				
24140040-552003 Police Protection-NM Grant	\$ 129,600	141,549		141,549
24140040-552027 NM DHS Operation Stonegarden	0	0	251,929	251,929
2401-570010 Investment Income	2,326	1,000		1,000
2401-570015 Net Incr (Decr) Fair Value Investment	(304)	0		0
Total Revenues	\$ 131,622	142,549	251,929	394,478
Total Resources	\$ 176,798	223,009	179,583	402,592
EXPENDITURES - 24147030 Police Admin				
Salary Expenses	\$ 0	0	251,929	251,929
Operating Expenses	168,684	141,549		141,549
Total Expenditures	\$ 168,684	141,549	251,929	393,478
ENDING BALANCE	\$ 8,114	81,460	(72,346)	9,114

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