

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: International Bridges

AGENDA DATE: December 3, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Jane Shang, DCM for Transportation and Public Works, shangj1@elpasotexas.gov, 541-4327

DISTRICT(S) AFFECTED: all

SUBJECT:

Discussion and action that the Mayor be authorized to execute a Section 560 Reimbursable Fee Agreement and Annex between the City and U.S. Customs and Border Protection ("CBP") to allow for the reimbursement of additional CBP staffing hours to reduce wait times at the City's ports of entry (PDN and Ysleta).

BACKGROUND/DISCUSSION:

Section 560 of the Consolidated and Further Continuing Appropriations Act, 2013 allows CBP to enter into up to five agreements for overtime staffing at U.S. ports of entry on a reimbursable basis. The agreement establishes a partnership between CBP and the City to generate alternative funding sources to pay for additional CBP staff hours during peak travel times to reduce wait times which will in turn encourage economic growth for the City. The City was selected as one of the five pilot programs.

Additional staffing will be used at the City's ports of entry to target the following wait times:

- Pedestrians: 12-15 minutes
- Vehicles: 12-15 minutes
- Commercial trucks: 19 minutes or less

during peak travel times throughout the week.

PRIOR COUNCIL ACTION:

- August 3, 2011: authorized increasing bridge tolls by .50 cents.
- August 20, 2013: authorized tolls to be increased by 50 cents during FY 2014 budget process.

AMOUNT AND SOURCE OF FUNDING: Estimated annual cost for additional staff is approximately \$1.5M. Tolls to be increased by 50 cents in accordance with Schedule C to the FY 2014 Budget Resolution, as amended.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____



Information copy to Jane Shang, Deputy City Manager

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the "Section 560" Reimbursable Fee Agreement and the Annex to the "Section 560" Reimbursable Fee Agreement between the City of El Paso and the U.S. Customs and Border Protection ("CBP") whereby the City will reimburse CBP for overtime provided by CBP officers to reduce wait times at the City ports of entry for a reimbursement amount not to exceed \$2.5 million.

ADOPTED this the _____ day of _____, 2013.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Brie Franco
Assistant City Attorney

APPROVED AS TO CONTENT:



Jane Shang
Deputy City Manager

U.S. CUSTOMS AND BORDER PROTECTION
“SECTION 560” REIMBURSABLE FEE AGREEMENT

I. General

Under the provisions of Section 560 of Division D of the *Consolidated and Further Continuing Appropriations Act, 2013* (Public Law 113-6) (hereinafter, “the Act”) the Commissioner of U.S. Customs and Border Protection (“CBP”) is authorized to enter into up to five agreements to provide CBP services to requesting parties on a reimbursable basis. The purpose of this document is to establish a partnership between CBP and the party requesting such services (“Requestor”) that will generate an alternative funding source to reimburse CBP for services in order to promote the United States economy and border security (“Agreement”). Under this Agreement, the payments received by CBP shall be used to reimburse CBP for the requested services, which may include additional or expanded services at existing CBP facilities or the provision of services at new facilities. As required by law, any reimbursements for services performed at existing CBP-serviced air facilities under this Agreement will be limited to overtime pay. As a partnership, it is the intention of the parties to this Agreement to maintain an ongoing spirit of transparency, collaboration, and mutual respect with regards to this program.

The party requesting to enter into this Agreement with CBP is:

Requestor Name:

Location(s) covered by this Agreement:

The Requestor shall be considered the “Person” requesting CBP services as the term is defined in the Act and this Agreement. A determination has been made by the Commissioner of CBP, upon the recommendation of CBP’s Office of Field Operations (“OFO”), that the Requestor named above has met the requirements for entering into an agreement for provision of CBP services as authorized by the Act.

The Requestor and CBP (“the parties”) will also develop and mutually agree upon the terms of an Annex. The Annex will contain further details about the specific services, schedules, and other conditions for the port location(s) covered by this Agreement. Where there may be a conflict between the terms of this Agreement and the Annex, the terms of the Agreement control; however, to the extent that a more specific requirement is provided for and agreed upon by the parties in the Annex, then the terms of the Annex shall control as to that requirement. The Annex may be amended by mutual agreement in writing of the parties.

This Agreement and the Annex together form the entire agreement between the parties. If any part of this Agreement or the Annex is found to be unconstitutional or unlawful in any respect, then the remaining provisions of this Agreement and Annex will remain in full force and effect.

II. Definitions

1. "Baseline overtime amount" means CBP's budgeted overtime allocation for a port of entry at the time that services are requested under this Agreement. Baseline amounts may be subject to change during the fiscal year due to appropriations and budgeting conditions wherein CBP determines to adjust overtime allocations for ports of entry. Regardless of any reimbursements received by CBP from the Requestor for overtime services, CBP within its sole discretion may expend its baseline overtime amounts in a reasonable manner so as to maximize the total amount of overtime services it provides.
2. "Overtime services" means services for which CBP officers pursuant to applicable law are entitled to receive Overtime pay and/or Premium pay differential that are in excess of services payable from the baseline overtime amount.
3. "Overtime pay" means the compensation that a CBP officer pursuant to applicable law is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day. This term also includes any benefits and indirect costs incurred by CBP related to overtime services.
4. "Person" means any natural person or any corporation, partnership, trust, association, or any other public or private entity or consortium of public and private entities, or any officer, or employee, or agent thereof.
5. "Premium pay differential" means the compensation which a CBP Officer pursuant to applicable law is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work on holidays, Sundays and evenings.
6. "Reimbursable costs" means the costs of CBP services that are to be provided according to this Agreement and for which CBP will seek reimbursement from the Requestor. Such costs may include all costs incurred by CBP involving the provision of such CBP services, which include but are not limited to, salaries (including overtime pay and premium pay differential) and benefits of CBP employees as well as other direct and indirect costs incurred by CBP related to those services, such as program administration, upgrades to facilities (where appropriate), technology and equipment, travel and transportation expenses, and any relocation expenses incurred as a result of the services requested. For existing CBP-serviced air facilities, the term "reimbursable costs" is limited to mean "overtime pay," as defined above.

7. "Services" or "CBP Services" means any activities of any employee or contractor of CBP pertaining to customs and immigration inspection-related matters.

III. Facility Requirements

At existing CBP-serviced facilities, the Requestor agrees to provide, maintain, and equip any necessary alteration or expansion of the facility at no cost to the U.S. Government. At facilities where CBP does not currently provide services, the Requestor agrees to provide, maintain, and equip such facilities at no cost to the U.S. Government. In the event new facilities are required or alterations and/or expansions of existing facilities are required, such requirements will be specified in the Annex. All facilities are required to meet relevant CBP safety and technical design standards. In addition, for any altered or expanded CBP facility covered by this Agreement, the Requestor also agrees to reimburse CBP for costs associated with those CBP requirements that can only be met by CBP acquiring the necessary equipment and related services. CBP will regularly inspect the facilities to verify that all CBP requirements described in this Section are met. The Requestor's failure to meet the requirements of this Section throughout the duration of this Agreement may result in CBP denying service requests and/or terminating this Agreement in accordance with Section XI.

IV. CBP Services to be Reimbursed

As described in greater detail in the Annex, the CBP services to be reimbursed by the Requestor will only be services in excess of those which CBP would have regularly provided at the location under existing resource, budget, and operating conditions.

The new or additional services to be provided under this Agreement may include, but are not limited to, primary inspections processing, secondary inspections processing, baggage control, and any enforcement or administrative functions necessary to support increased inspectional activities as requested under this Agreement. Services may be performed in any area of the designated port of entry or any place where CBP employees have the authority to perform their duties.

V. Requests for CBP Services

The Requestor will initiate a request for services electronically by sending an email to an established CBP email account. Upon receipt, CBP will consider whether to grant the request. In assessing whether to approve a request, CBP will determine the number of CBP personnel and total hours needed to perform the requested services, based on any available advance passenger, conveyance, cargo information, and/or any other relevant information. In an effort to maintain reasonable wait times by pre-identifying travelers, conveyances, or cargo requiring additional

security reviews, the Requestor will use its best efforts to obtain and provide CBP with available and accessible advance passenger, conveyance, and/or cargo data.

The Requestor must make a request for services as far in advance as possible so that CBP has adequate time to review resource availability and evaluate the impact on overall operations. If CBP is not given adequate time to consider a request, CBP may not be able to approve the request for services.

During the first year of operations after the Service Date described in Section X, CBP and the Requestor will review the program's impact and exchange feedback on a monthly basis. In subsequent years, this review shall be conducted on at least a quarterly basis. Any adjustments in service request levels or procedures that result from these reviews shall be addressed and formalized by the processes further outlined in the Annex.

CBP and the Requestor will jointly review the resources needed to provide any requested services covered by this Agreement. Protocols for establishing the duration of assignments for CBP personnel and for scheduling consultations will be further outlined in the Annex. CBP is prohibited by law from approving any request that would unduly and permanently impact services provided for by appropriations.

Notwithstanding any other provision of this Agreement, CBP retains sole administrative and operational control over the CBP personnel or its contracted employees at the port of entry and/or location(s) covered by this Agreement.

VI. CBP Responsibilities

CBP will consult with the Requestor to establish the length and frequency of work assignments requested under this Agreement, as further outlined in the Annex.

CBP will send bills to the Requestor every four weeks to recover the reimbursable costs for all services provided under this Agreement.

As further outlined in the Annex, CBP will provide monthly reports to the Requestor, which will include information on how the services billed for under this Agreement are being utilized and additional metrics on how they are impacting operations for the location(s) affected by this Agreement. If no services are requested or provided during a given month, CBP will not generate such a report for that month.

VII. Requestor Responsibilities

The Requestor hereby agrees to reimburse CBP for all reimbursable costs requested under this Agreement. Requestor also agrees to remit payments electronically to CBP as instructed on each bill.

As further described in the Annex, the Requestor agrees to immediately notify CBP once the Requestor becomes aware of the need for any changes to requests that have already been approved pursuant to this Agreement. Regardless of such notice, the Requestor will still be responsible for all of CBP's reimbursable costs relating to such approved requests that cannot be reasonably avoided.

Moreover, the Requestor should maintain liquid assets sufficient to pay all of CBP's reimbursable costs that it is anticipated will be owed by the Requestor for a two-month period. The Requestor agrees to notify CBP within a reasonable amount of time if it expects to become unable to pay the reimbursable costs owed to CBP pursuant to this Agreement.

The Requestor agrees to execute and adhere to the terms of an appropriate non-disclosure agreement ("NDA") pertaining to all information marked as For Official Use Only, including operational reporting data and metrics provided to the Requestor by CBP. Each member, partner, or employee of the Requestor who has a justifiable need to view such sensitive CBP-provided information must sign an NDA. Failure of the Requestor and/or any member, partner, or employee of the Requestor to adhere to the terms of the NDA may result in penalties as outlined in that document, the denial of service requests under this Agreement, and/or the termination of this Agreement pursuant to Section XI. The further dissemination of any CBP-provided information that is not subject to an NDA and that was received pursuant to this Agreement requires the advance approval in writing of CBP.

VIII. Unanticipated Service Adjustments

The Requestor acknowledges that during emergency situations, contingency operations, sudden decreases in workload, unanticipated operational impacts, changes to CBP's budget and/or resource allocations for the ports of entry affected by this Agreement, or the like, CBP reserves the right to terminate, suspend, or reduce unapproved or approved services under this Agreement. The occurrence of such event(s) shall be solely determined at the discretion of CBP, and CBP is not limited to the events listed herein. CBP shall promptly notify Requestor when any such event described in this paragraph occurs. The Requestor further acknowledges that, were such an event to occur, CBP may be required to redirect officers on assignment under the terms of this Agreement to other duties. Any bill for any of these unanticipated service

adjustments will reflect any corresponding reduction made to the level of service pursuant to this section.

The Requestor also acknowledges that there will be situations where CBP experiences an unanticipated increase in workload as a direct result of a request made by the Requestor under this Agreement. In such situations, in order to maintain safe and essential operating conditions, CBP may be required to retain personnel on assignment pursuant to the request beyond the original times sought by the Requestor. When this occurs, the Requestor agrees that its original request may be amended by CBP to require the Requestor to reimburse CBP for the additional costs incurred by CBP when having to extend the workload assignments. If this occurs, CBP will promptly notify the Requestor and CBP's corresponding bill to the Requestor will reflect the increased charge.

IX. Payment of Reimbursable Costs

All reimbursable costs charged by CBP will be assessed in accordance with CBP accounting principles and standards, and applicable statutes and regulations including, without limitation, Title 19 of the Code of Federal Regulations (CFR) Part 24. Reimbursable costs will be billed every four weeks and shall be remitted by the Requestor to CBP within 15 calendar days of the transmission of each bill. The Requestor will electronically remit these payments to CBP in the manner described on each bill's instructions. Each bill will state the amount due, the location, and the total number of hours of services performed under the Agreement for that billing period.

If the Requestor disagrees with any aspect of a bill, it must contest the bill in writing to the CBP Port Director with jurisdiction over the location where the billed service was provided within 60 days of the receipt of the bill. Failure to contest a bill in a timely fashion will result in the waiver of any refund claims as to such bill. The Requestor acknowledges that, even if the Requestor contests any charge(s) for which CBP makes demand, the Requestor will continue to make timely payment of all CBP charges demanded pursuant to this Agreement. This includes, but is not limited to, demands for payment made at all times during the pendency of any administrative level reviews or during any periods of judicial review. CBP will coordinate an immediate review of a contested charge and provide a response or corrective action within 30 calendar days of CBP's receipt of the Requestor's written notice of contesting any bill.

If the Requestor fails to comply with the requirement to continue making timely payments of CBP charges pursuant to this section, in addition to CBP's termination rights provided in Section XI, the Requestor acknowledges that CBP may deny requests for service under this Agreement until such time as full payment of any outstanding amounts owed to CBP under this Agreement have been paid to CBP. Requestor further acknowledges that Section 560(d) of the Act provides CBP with certain non-contractual remedies for non-payment in the form of a penalty and interest

assessments. If all outstanding charges have been paid to CBP, CBP may consider mitigation of any penalty it is authorized to impose under the Act. Further, the Requestor may also be subjected to cross servicing referral and enrollment in the Treasury Offset Program, collection procedures, credit bureau reporting, and litigation by the Department of Justice.

X. Service Commencement Date

Reimbursable services will begin on a date mutually determined in writing by CBP and the Requestor.

XI. Duration, Revision, and Termination of Agreement

This Agreement shall become effective on the day that all signatures of the required parties have been made, as listed at the end of this Agreement. The Agreement shall continue, beginning on that date, for a period of five years. Further, this Agreement may be amended in writing at any time by mutual agreement of the parties.

If any amounts billed and due to CBP under the terms of this Agreement are not paid within 15 calendar days of demand, subject to such terms as stated in Section IX above, or if CBP determines that the Requestor breached any other material condition of this Agreement, CBP has the right to deny service requests under this Agreement immediately and/or terminate this Agreement effective upon 30-days prior written notice.

In addition, this Agreement may be terminated for any reason by either party upon 90-days written notice to the other party.

Upon the approach of the expiration of this Agreement, CBP and the Requestor may pursue renewal of this Agreement if permitted by law.

XII. Availability of Funds

In accordance with 31 U.S.C. § 1341, 41 U.S.C. § 6301, and any other applicable federal laws, CBP's provision of services and every term and condition set forth in this Agreement is contingent upon the availability of appropriated funds. Nothing in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies. Additionally, nothing in this Agreement may be construed or interpreted to obligate CBP to any current or future expenditure of funds in advance of, or in excess of, the availability of appropriations, nor does this Agreement obligate CBP to spend funds for any particular project or purpose, even if funds are available.

XIII. Consultation Process

In the event of a dispute concerning any aspect of this Agreement, either party may request consultations at any time. The attendance of any outside party during the consultation process is permitted if necessary to resolve the dispute and mutually agreed to by the parties to this Agreement.

The parties will first attempt to resolve any disputes arising under this Agreement through consultation with the other party at the CBP port level.

Issues raised by the Requestor that cannot be resolved through port-level consultation shall be referred to the CBP Director, Field Operations (“DFO”), with jurisdiction over the affected location(s).

If the issue raised by the Requestor continues to be unresolved after consultation with the DFO, the Requestor shall then seek resolution through CBP’s OFO Headquarters, which shall provide the final agency decision. The Requestor may only seek OFO Headquarters review after exhausting its administrative remedies both at the port-level and the DFO level.

Consultations requested with respect to the amounts of any CBP bill for services do not absolve the Requestor of its obligation, stated in section IX, to continue to pay CBP while the consultation process continues.

XIV. Assignment, Sale, Transfer

Only upon CBP’s advanced written approval, the Requestor may transfer, assign, or sell its rights under this Agreement to a third party. The new party will be required to execute a novation agreement to substitute its name for the party to this Agreement. Further, upon such transfer, assignment, or sale, all obligations contained in this Agreement will remain in effect as to CBP and the new party to the Agreement.

XV. Limitation of Liability

This Agreement is not intended to establish any liability, unless otherwise established by law, between the Requestor and CBP employees or the general public, nor is the Agreement intended to alter or reallocate any potential defense or immunity of any party which may be authorized by law.

Under the Federal Tort Claims Act, 28 U.S.C. § 2671 et. seq. (“FTCA”), the United States is liable for the negligent or wrongful acts or omissions of any employee of the Government and

claims for money damages, injury, loss of property, personal injury or death, that occur while that employee is acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

XVI. Authorization

Agreement to these terms is attested to by the signatures ascribed below. It is agreed that each individual who is signing on behalf of each party is authorized to enter into this binding Agreement.

Acting Commissioner
U.S. Customs and Border Protection

Date:

Mayor Oscar Leeser
Authorized Representative of the
Requestor

Date:

ANNEX TO THE "SECTION 560" REIMBURSABLE FEE AGREEMENT
BETWEEN U.S. CUSTOMS AND BORDER PROTECTION AND
THE CITY OF EL PASO, TEXAS

The City of El Paso ("The City") desires to reimburse U.S. Customs and Border Protection ("CBP") for the costs of requested services as permitted in Section 560 of Division D of the *Consolidated and Further Continuing Appropriations Act, 2013* ("the Act"), and subject to the terms of the attached Section 560 Reimbursable Fee Agreement ("Agreement"), when it is in the mutual interest of the The City and CBP and supports the United States economy and border security. The purpose of this document ("Annex") is to establish the method for The City to request and reimburse CBP for additional overtime provided by CBP officers in order to mitigate wait times at the El Paso Ports of Entry. CBP understands that The City chose the hours and days listed in this Annex in order to maximize as much as possible the availability of all lanes for inspection and processing during the times and days requested.

I. DELEGATION OF AUTHORITY

The City and CBP each name the following officials with the authority to request or cancel services for The City and the authority to approve or deny services for CBP.

The party entering into this Annex on behalf of CBP is the Director of Field Operations ("DFO") for the Port of El Paso. For the purposes of this Annex, the DFO hereby delegates his authority as the reviewing and approving official for CBP to the Port Director for the Port of El Paso. In the absence of the Port Director, the deciding and approving official for CBP will be the Assistant Port Director. This delegated authority will also reside in any person Acting in the capacity of the DFO, Port Director, and/or Assistant Port Director.

The party entering into this Annex on behalf of The City and who is also the deciding and approving official for The City is the Mayor of the City of El Paso. For the purposes of this Annex, the Mayor hereby delegates his authority as the reviewing and approving official for The City to the City Manager. In the absence of the City Manager, the deciding and approving official for The City will be the City Manager's designee. This delegated authority will also reside in any person Acting in the capacity of the City Manager and the City Manager's designee.

II. APPROVED STANDING REQUEST FOR SERVICES BY LOCATION

The City hereby requests that the services at the locations listed below be provided by CBP; and, CBP hereby approves such standing requests. Requests for the holidays described in this section will be made utilizing the process described in Section III of this Annex. The parties further agree that the number of lanes and hours being requested represent the maximum lanes and hours authorized under this Annex and that CBP has the discretion to staff below such requested levels, if necessary. The

parties also agree that such staffing will require two CBP officers per lane during the days and hours provided below in order to keep open, to the greatest extent possible, additional lanes to enhance operations and reduce wait times. The services requested are designed to enhance operational capabilities in order to benefit the users of the pedestrian, vehicular, and cargo lanes at the Ports of Entry described below. The modification of any part, or the entire cancellation, of the standing request must be made by The City to CBP in writing with as much advance notice as possible. Further, the parties agree that the modification or cancellation of this standing request for services will not nullify any other part of this Annex while it remains in effect.

A. CBP will increase its current services with reimbursements provided by The City for the overtime pay of CBP officers for the following times and days of the week at the passenger and cargo lanes of the Ports of Entry described below:

1. Type of Services: Passenger

Extension of the enhanced operational capabilities for pedestrian and vehicular lanes at Paso Del Norte Port of Entry ("PDN") and vehicular lanes at Ysleta Port of Entry ("Ysleta"):

a. Number of lanes:

PDN Pedestrian: 7 lanes on Mondays + 7 lanes on Holidays

PDN Vehicular: 6 lanes on Saturdays + 6 lanes on Sundays + 6 lanes on Holidays

Ysleta Vehicular: 6 lanes on Saturdays + 6 lanes on Sundays + 6 lanes on Holidays

b. Number of hours:

PDN Pedestrian: 2 hours on Mondays (1000 to 1200) x 7 lanes x 52 weeks=728 hours

6 hours on Holidays (1000 to 1600) x 7 lanes x 15 days= 630 hours

PDN Vehicular: 4 hours on Saturdays (1400 to 1800) x 6 lanes x 52 weeks=1,248 hours

2 hours on Sundays (2200 to 0000) x 6 lanes x 52 weeks=624 hours

6 hours (1100 to 1400 and 1900 to 2200) on Holidays x 6 lanes x 15 days=540 hours

Ysleta Vehicular: 4 hours (1400 to 1800) on Saturdays x 6 lanes x 52 weeks=1,248 hours

2 hours (2200 to 0000) on Sundays x 6 lanes x 52 weeks=624 hours

4 hours on Holidays (1400 to 1800) x 6 lanes x 15 days=360 hours

2. Type of Services: Ysleta Cargo

To open one (1) additional lane for two (2) hours from 1200 to 1400 hours on Wednesdays, Fridays and Saturdays.

a. Number of lanes: one (1)

b. Number of hours: 312 a year

III. PROCEDURES FOR REQUESTING ADDITIONAL SERVICES

The following procedures only apply to requests for those services not already included in Section II of this Annex and holiday requests described in Section II ("additional services"):

- A. All requests for additional services and responses under this program must be conducted electronically in a standard format to support the integrity of this program.
- B. The City will submit requests for additional services to reimbursablefeeprogram-el Paso@cbp.dhs.gov, the official CBP email to address such requests, as soon as the nature of the service request is known.
- C. CBP will review and evaluate each request based on the availability of staff and mission priorities. CBP will return an electronic response with an approval or denial to The City's email.
- D. In the event it is necessary for The City to make an urgent telephone request, The City will follow up with an email to the above address detailing the request made by telephone as soon as practicable.
- E. The City will provide CBP with a request for additional services at least three (3) calendar days prior to the date of commencement of services.
- F. While The City may alter its request for additional services at any time for any reason, including but not limited to, demand, wait time and most efficient use of The City's resources, in the event it is necessary for The City to reduce or cancel any previously approved request for additional services, The City will notify CBP of the cancelation or reduction at least 24 hours prior to the commencement of the previously approved services.

IV. CBP ADMINISTRATIVE AND OPERATIONAL CONTROL

The CBP Port Director retains sole and exclusive administrative, supervisory, and operational control and direction over the CBP personnel or its contracted employees at the ports of entry described in this Annex. The City shall not exercise any control or authority over CBP employees, methods of operation, or training of employees. The City does not have any authority or control over CBP policies, practices, or procedures (whether or not The City has knowledge of those policies, practices, or procedures). CBP mission-related emergencies may require adjustments and/or interruption of previously agreed-upon services.

In addition, CBP currently estimates that the rate at which CBP will charge The City for any reimbursable costs would be based on the hourly rate approximately equivalent to a GS-12 (step 5) CBP Officer as outlined by the U.S. Office of Personnel Management for this location, plus applicable benefits and indirect costs (which currently includes an assumption of 38.95% government contribution rate and 15% for indirect costs such as those related to program administration) for any overtime pay billed under the Agreement and this Annex; the actual hourly rate for each CBP officer may be lower or higher depending on the GS grade and step level of the CBP Officer(s) who actually perform(s) the requested services. The City acknowledges that this rate is only an estimate based on certain assumptions and is subject to change without advance notice to The City. CBP's intent in providing this cost information in the Annex is merely to provide a general sense of the possible charges to be made to The City. The actual amount to be billed by CBP will be based on the actual CBP services performed and CBP's reimbursable costs actually attributable to those services.

V. ADDITIONAL RESPONSIBILITIES

- A. A committee of representatives from The City and CBP ("The Committee") will be established for the purpose of meeting at least once each month to review the wait times, services, times and days requested herein, along with the need for any additional services requests or cancellations identified for the upcoming months (i.e., holidays, start of school year, etc.). The Committee will jointly seek to identify successes and challenges encountered during the previous month and shall also discuss the reimbursable costs anticipated for each upcoming month(s) based on information provided by CBP. The Committee may schedule meetings in addition to the required monthly meeting as needed. The goals of The Committee shall be to reduce wait times in the following manner:

Pedestrian from 24-30 minutes to 12-15 minutes,
Vehicles at PDN from 30 minutes to 15 minutes,
Vehicles at Ysleta from 24 minutes to 12 minutes; and,
Ysleta Cargo processing within 19 minutes or less.

- B. CBP agrees to provide The City, on a monthly basis, with the following:
1. A report of the actual hours worked by CBP officers at inspection lanes and reimbursable costs incurred, provided separately for each Port of Entry and to the extent possible by each type of service and/or lane (i.e., vehicular, pedestrian, and cargo).
 2. Any adjustments to the Port's overtime budget, staffing allocations, or funding levels that will impact CBP's regular scheduling assignments or services requested in this Annex.

- C. The City will provide CBP with a quarterly economic report to include all toll revenues for southbound users for the locations where services under this Annex are provided and any other metrics showing the impact on the economy that the City can provide or develop. CBP will provide the City with data collected related to the number of northbound users.

VI. CBP LIMITATIONS ON APPROVING OVERTIME REQUESTS

- A. The City acknowledges that CBP must adhere to the provisions of the CBP Collective Bargaining Agreement relating to overtime assignments which include, but is not limited to, least cost principles. Efforts will be made by CBP to accommodate requests for overtime within the applicable constraints.
- B. All overtime will be billed in quarter-hour (15 minute) increments.
- C. An officer who works into the next quarter-hour increment will be paid for that full quarter hour.
- D. Officers that accrue \$17,500 in overtime earnings in a given fiscal year under current pay cap restrictions will be placed into a prorated earning status, possibly limiting the number of available staff to participate in overtime requests made pursuant to this Annex.
- E. To the extent possible, CBP will minimize overtime expenses incurred pursuant to this Annex for enforcement and administrative costs.
- F. Where cost savings may be realized, CBP will attempt to fulfill The City's requests for overtime with CBP officers, and not with supervisory CBP officers.
- G. As specified under the Act, the CBP Port Director cannot approve a request that will unduly and permanently impact CBP operations at the Port of El Paso or elsewhere.

VII. FACILITIES

The services requested in this Annex do not require any alteration or expansion of CBP facilities as contemplated by Section III of the Agreement. Therefore, during the term of the Agreement, The City is not responsible for the reimbursement of any costs referenced in Section III of the Agreement.

VIII. LIMITATION OF LIABILITY

The limitations contained in this section of the Annex are intended to be additional limitations to those contained in Section XV of the Agreement.

The reimbursements provided by The City to CBP are for enhancing operational capabilities in order to benefit the users of pedestrian, vehicular, and cargo lanes at the ports of entry described in this Annex, and not intended to be payments by The City to CBP employees. The City and CBP agree that no legal relationship is created between The City and CBP employees or agents by the services requested in this Annex, including but not limited to, that of employer-employee or principal-agent.

EXCEPT TO THE EXTENT THAT THE CITY IS LIABLE FOR THE AMOUNT OF REIMBURSABLE EXPENSES AND ANY ASSOCIATED PENALTY OR INTEREST OWED AS

ARTICULATED UNDER THE AGREEMENT AND ANNEX, EACH PARTY SHALL BE SOLELY RESPONSIBLE FOR FISCAL PENALTIES, FINES OR ANY OTHER SANCTIONS OCCASIONED AS A RESULT OF A FINDING THAT VIOLATIONS OF ANY APPLICABLE LOCAL, STATE OR FEDERAL REGULATIONS, CODES OR LAWS OCCURRED AS A RESULT OF THAT PARTY'S ACTIONS PURSUANT TO THIS ANNEX, EXCEPT AS MAY BE SPECIFICALLY PROVIDED BY LAW. IN NO EVENT DO THE SERVICES REQUESTED IN THIS ANNEX MAKE THE CITY LIABLE FOR ANY CLAIM ARISING OUT OF, BASED UPON, OR RELATED TO CBP'S LIABILITY, OBLIGATIONS OR RESPONSIBILITIES AS AN EMPLOYER, INCLUDING BUT NOT LIMITED TO, ANY OBLIGATION OF CBP TO PROVIDE FOR WAGES, COMPENSATION, FICA, MEDICAID AND ANY OTHER PAYROLL TAXES, PREMIUMS FOR MEDICAL AND HEALTH INSURANCE, SEVERANCE PREMIUMS, ACCRUED VACATION OR SICK DAYS, ALL LIABILITIES, DEBTS, AND OBLIGATIONS RELATING TO ANY EMPLOYEE DEFERRED COMPENSATION PLAN, PENSION OR RETIREMENT PLANS, HEALTH, AND OTHER EMPLOYEE PLANS, INCLUDING, WITHOUT LIMITATION, ANY DEFINED BENEFIT PENSION PLAN.

IX. ANNEX TERM

- A. Any modification to this Annex must be agreed to by both The City and CBP, made in writing, and signed by the CBP DFO and Mayor of The City.
- B. The initial term of this Annex shall begin on the date that CBP commences the provision of services pursuant to this Annex and shall end on September 30, 2014 unless renewed for an additional one year term by The City through written notification to CBP to begin on October 1, 2014 and to terminate on September 30, 2015. The term of the Annex may be extended to include, but not to exceed, a total of five years.
- C. The City or CBP may terminate this Annex for any reason upon 30-days prior written notice to the other party.
- D. This section only pertains to and governs the Annex and shall have no impact on the duration, revision, and termination of the Agreement.

X. SIGNATURES BY PARTIES

Agreement to the terms of this Annex is attested to by the signatures ascribed below. It is agreed that each individual who is signing on behalf of each party is authorized to enter into this binding Annex. This Annex shall become effective on the day that all signatures of the required parties noted below have been ascribed herein.

Mayor, City of El Paso

Date

Director, Field Operations, El Paso Field Office

Date

P3 Additional Staffing Proposal
November 25, 2013

Projected Total Cost: \$1,433,638		Pedestrian and Vehicle Lanes	
City pay to open:			
Paso Del Norte Bridge	\$900,502	* 2 hours on Mondays, 7 Pedestrian Lanes CBP = From 0600 - 1000 COEP = From 1000 - 1200	\$173,890
		* 6 hours on Holidays, 7 Pedestrian Lanes CBP = From 0600 - 1000 COEP = 1000 - 1600	\$150,482
			\$324,372
		* 4 hours on Saturdays, 6 Vehicles Lanes CBP = From 1000 - 1400 COEP = From 1400 - 1800	\$298,097
		* 2 hours on Sundays, 6 Vehicle Lanes CBP = From 1400 - 1800 COEP = From 2200-0000	\$149,049
		* 6 hours on Holidays, 6 Vehicle Lanes CBP = 1400 - 1800 COEP = 1100 - 1400 and 1900 - 2200	\$128,984
			\$576,130
Ysleta	\$533,136	* 4 hours on Saturdays, 6 Vehicles Lanes CBP = From 1000 -1400 COEP = From 1400 - 1800	\$298,097
		* 2 hours on Sundays, 6 Vehicle Lanes CBP = From 1400 - 1800 COEP = From 2200 - 0000	\$149,049
		* 4 hours on Holidays, 6 Vehicle Lanes CBP = From 0600 - 1000 COEP = From 1400 - 1800	\$85,990
			\$533,136

Projected Benefits in primary lane:						
Inspections Per Hour	Hours	Lanes	Daily Total	Days	Yearly Total	
90	2	7	1,260	52	65,520	
90	6	7	3,780	15	56,700	
Projected Increase in Pedestrians Inspections:					122,220	
51	4	6	1,224	52	63,648	
51	2	6	612	52	31,824	
51	6	6	1,836	15	27,540	
Projected Increase in POV's Inspections:					123,012	
51	4	6	1,224	52	63,648	
51	2	6	612	52	31,824	
51	4	6	1,224	15	18,360	
Projected Increase in POV's Inspections:					113,832	

Assumptions:

- Hourly cost: \$119.43 per officer, estimated overtime rate for GS-12 (step 5), may be higher or lower
- Two officers are needed to open one lane for one hour
- Pedestrian processing time: 40 seconds (90 per hour)
- Vehicle processing time: 70 seconds (51 per hour)
- Wait time goal: Pedestrians reduction from 24-30 minutes to 12-15 minutes (1/8 bridge mark) (115 ft.)
POV's at PDN reduction from 30 minutes to 15 minutes (1/4 bridge mark) (330 ft.) (16 cars deep)
POV's at Ysleta reduction from 24 minutes to 12 minutes (1/4 bridge mark) (325 ft.) (16 cars deep)
A bridge mark is considering the USA and Mexico sides of the international Bridges of Ysleta and Paso Del Norte as one unit.

The City of El Paso is requesting but not limited to consider 15 weekdays as Holidays during a Fiscal Year (September 1st to August 31st)

Projected Total Cost: \$74,524		Cargo at Ysleta Port of Entry	
City pays for:			
		2 hours on Wednesday, Fridays and Saturdays, 1 Commercial Lane COEP = From 1200 - 1400	

Projected Benefits GENERAL in primary lane:						
Inspections Per Hour	Hours	Lanes	Daily Total	Days	Yearly Total	
23	2	1	46	156	7,176	

Projected Benefits FAST in primary lane:						
Inspections Per Hour	Hours	Lanes	Daily Total	Days	Yearly Total	
34	2	1	68	156	10,608	

Assumptions:

- Hourly cost: \$119.43 per officer, estimated overtime rate for GS-12 (step 5), may be higher or lower
- Two officers are needed to open one lane for one hour
- No All Lanes Initiative exists for Cargo
- 8 lanes: 6 Regular lanes and 2 FAST lanes
- Cargo Processing time - General: 2 minutes 38 Seconds (23 per hour)
- Cargo Processing time - FAST: 1 minute 47 seconds (34 per hours)
- Wait time goal: 19 minutes or less (based on TTI - Bluetooth Program). Mark located at the Intersection of Manuel Sandoval and Ave. Manuel J. Cloutier in Cd. Juarez (6850 ft.)
- Option to open a FAST Lane or a General Lane is to be determined.

**Section 560 Reimbursable Fee Agreement
between the City and CBP for Additional
Staffing at the City's Ports of Entry**

December 3, 2013

Action requested

- Authorize the execution of a Section 560 Fee Agreement and Annex between the City and CBP to allow for the reimbursement of additional CBP staffing hours at PDN and Ysleta to reduce border wait times
- Amend and approve Schedule C to the FY 2014 Budget Resolution to reflect a 50 cent increase for passenger and commercial vehicles effective January 26, 2014

Background

- Reduction of bridge wait times is a priority
- August 3, 2011: City Council authorized increasing bridge tolls by 50 cents to pay for additional CBP staffing hours
- August 8, 2011: letter sent to CBP regarding toll increase to pay for additional CBP staffing hours; offer was not accepted
- 2011-2013: City worked with federal lobbyists and Congressman O'Rourke to approve legislation that will allow use of outside funding sources to pay for additional CBP staffing hours
- 2013: s. 560 of the Consolidated and Further Continuing Appropriations Act authorized public private funding sources
- May 30, 2013: City submitted P3 application
- July 30, 2103: City was selected as one of five pilot programs
- August 20, 2013: Council authorized increasing tolls during FY2014 budget process subject to an agreement with CBP

What is the Program (P3 arrangement)?

- Use of additional CBP staffing hours to reduce northbound wait times at the City's Ports of Entry (PDN and Ysleta)
- Overtime rate
- City pays for these additional service hours (estimated \$1.5M) by increasing toll rates by 50 cents for passenger and commercial vehicles (by axle)
- Staff all lanes during peak hours, in general
- Commencement date (estimated): January 26, 2014

Goals/target wait times:

- Pedestrians:
12-15 minutes (1/8 bridge mark) (115 ft.)
- Vehicles:
PDN 12-15 minutes (1/4 bridge mark) (330 ft.) (16 cars deep)
Ysleta 12-15 minutes (1/4 bridge mark) (325 ft.) (16 cars deep)
- Commercial trucks:
19 minutes or less (exiting Aduanas) (6,890 ft.)

Additional staff hours:

- **PDN:**

- Pedestrians*:

- Mondays (2hrs)

- CBP: 6-10am
 - City: 10am-12 noon

- Holidays (6hrs)

- CBP: 6-10am
 - City: 10am-4pm

- POVs*:

- Saturdays (4hrs)

- CBP: 10am-2pm
 - City: 2-6pm

- Sundays (2hrs)

- CBP: 2-6pm
 - City: 10pm-midnight

- Holidays (6hrs)

- CBP: 2-6pm
 - City: 11am-2pm, 7-10pm

Additional staff hours continued

- **Ysleta:**

- POVs*:

- Saturdays (4hrs)

- CBP: 10am-2pm
 - City: 2-6pm

- Sundays (2hrs)

- CBP: 2-6pm
 - City: 10pm-midnight

- Holidays (4hrs)

- CBP: 6-10am
 - City: 2-6pm

- Commercial trucks (2hrs)

- Wednesdays, Fridays and Saturdays (one extra lane): noon-2pm

*all lanes open

note: normal CBP shift hours: 6am-2pm; 2-10pm; 10pm-6am

P3: selected partnerships

- Dallas/Ft. Worth International Airport: fee increase
- Houston Airport: fee increase
- Miami-Dade Airport: fee increase
- South Texas Assets Consortium: small scale, as needed request. Charge manufacturer or raise tolls for a specific day.

- Questions?