

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

DEPARTMENT: International Bridges
AGENDA DATE: January 10, 2017
CONTACT PERSON/PHONE: Mathew S. McElroy – International Bridges Department, Director (915) 533-7428
DISTRICT(S) AFFECTED: 6
STRATEGIC GOAL NO. 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBJECT:

That the Mayor be authorized to sign a Donations Acceptance Agreement by and between the U.S. Department of Homeland Security, U.S. Customs and Border Protection ("CBP"), the U.S. General Services Administration, Public Buildings Service and the City of El Paso ("City"), for the City's removal of a traffic median at the Ysleta Port of Entry and reconstruction of the affected commercial inspection lanes in accordance with CBP's operational needs ("Project"), through the Section 559 program which allows for the donation of infrastructure improvements.

BACKGROUND / DISCUSSION:

The purpose of this donation is to make infrastructure improvements to the commercial port of entry at the Zaragoza/ Ysleta Bridge. The improvements involve reconfiguration of various physical infrastructures which impede northbound traffic flow at the port. This will improve the commercial truck traffic flow into the primary inspection area, which in turn should increase throughput and help decrease commercial wait times in the CBP queue.

The value of the donated work to U.S. Customs and Border Protection is \$50,602.00.

PRIOR COUNCIL ACTION:

December 15, 2014 – City Council approved the submission of the application for the project proposal Zaragoza Bridge, "Ysleta Commercial Island Project." allowing the City to participate in the new Section 559 federal legislation that grants U.S. Customs and Border Protection and the U.S. General Services Administration donation acceptance authority.

Donation Acceptance Program with

AMOUNT AND SOURCE OF FUNDING:

Department: International Bridges
Amount: \$50,602.00
Fund Source: International Bridges Restricted
Account: 532030-564-3360-64870-PCP171B002

BOARD / COMMISSION ACTION:

N/A

*****AUTHORIZATION*****

DEPARTMENT HEAD:



Mathew McElroy, International Bridges Department, Director

RESOLUTION

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

That the Mayor be authorized to sign a Donations Acceptance Agreement by and between the U.S. Department of Homeland Security, U.S. Customs and Border Protection ("CBP"), the U.S. General Services Administration, Public Buildings Service and the City of El Paso ("City"), for the City's removal of a traffic median at the Ysleta Port of Entry and reconstruction of the affected commercial inspection lanes in accordance with CBP's operational needs ("Project"), through the Section 559 program which allows for the donation of infrastructure improvements.

ADOPTED this the _____ day of _____, 2017.


THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy
Director of International Bridges

**DONATIONS ACCEPTANCE AGREEMENT
BY AND BETWEEN
THE U.S. DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
THE U.S. GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDINGS SERVICE,
AND
THE CITY OF EL PASO, TEXAS**

1. PARTIES

U.S. Customs and Border Protection (CBP), in collaboration with the U.S. General Services Administration (GSA), intends to enter into a Donations Acceptance Agreement (DAA) with the City of El Paso, Texas (the Donor) to facilitate the proposed donation of real property and non-personal services at the Ysleta Land Port of Entry (LPOE) located in El Paso, Texas. GSA, CBP, and the City are collectively referred to herein as the “Parties” and each individually as a “Party.” The City of El Paso, TX is referred to individually herein as the “Donor.”

2. PURPOSE

The purpose of this DAA is to memorialize the mutual understanding of the Parties regarding the proposed donation to the United States and the terms and conditions of that donation.

As described in the Donor’s final detailed scope, site plans, specifications and cost estimates for the overall project, which include the specific improvements to occur both on and off the federal property, copies of which are attached hereto as Exhibit A and incorporated herein by reference, the Donor seeks to reconfigure various physical infrastructures which impede the current flow of northbound commercial traffic at the Ysleta LPOE. The provisions set forth in this DAA are specific only to those improvements that are to occur on federal property as described in the attached Exhibit B. The United States has only reviewed the portions of the design that fall within property owned by the United States, specifically set forth in Design Documents contained in Exhibit B. The United States makes no representations as to the sufficiency of the design for the portions of this project that fall outside of the property owned by the United States.

The Donor has submitted the following documentation to GSA and CBP to facilitate acceptance and approval of the project:

- Detailed Scope of Work for the project, which explains all work to be performed including work to be performed on federal property and how the work meets the requirements in the GSA and CBP reference documents listed in section 5 below;
- Project cost estimate;
- Project plans and specifications.

This DAA defines and establishes the joint project management framework by and between GSA, CBP, and the Donor for the construction of the infrastructure improvements at the Ysleta LPOE. Once completed, the improvements made on federal property will become the property of the

United States and will be maintained by GSA after acceptance of the work, subject to a minimum of a one-year warranty of construction to be provided by the Donor in the form prescribed in Federal Acquisition Regulation subsection 52.246-21, Warranty of Construction. This DAA outlines the principles that will govern the management of this donation and describes the membership, roles and responsibilities of GSA, CBP, and the Donor project teams.

3. AUTHORITY

Subsections 559(a) and (f) of the Consolidated Appropriations Act, 2014 (P.L. 113-76), as amended by subsection 552(a) of the Department of Homeland Security Appropriations Act, 2015 (P.L. 114-4), and the Administrator of General Services' authority to accept unconditional gifts of property, 40 U.S.C. § 3175, or a donation of a building and its site or land or an interest in land for use as a site for a public building, 40 U.S.C. § 3304.

4. CONSIDERATION AND MUTUALITY OF OBLIGATIONS

It is the agreement of the Parties and the intention and wish of the Donor that the donation under this Agreement will constitute the Donor's binding obligation and will be enforceable at law and equity, including against the Donor and the Donor's successors and assigns. The Donor acknowledges that GSA and CBP are relying, and will continue to rely, on the Donor's donation being fully satisfied as set forth herein and that the United States is willing to accept the donation subject to the terms and conditions set forth in this Agreement. In consideration for the donation, GSA will enter into a site access or other similar agreement with the Donor authorizing the Donor to enter onto the LPOE property to carry out its responsibilities under this Agreement. The United States further agrees to accept the donation upon completion, provided it is constructed in accordance with the terms and conditions of this Agreement, and to use the donation for its intended purpose, i.e., the reconfiguration of various physical infrastructures which impede the current flow of northbound commercial traffic at the Ysleta LPOE.

5. SCOPE OF WORK

The agreed upon scope of the project is described in the attached Exhibit A. Only the elements of the project scope occurring on federal property are subject to the provisions of this DAA, as described in the attached Exhibit B. Any subsequent scope modification and its associated cost must be reviewed and approved by the Parties before taking effect, see section 27.

The Parties further acknowledge that the project must comply with all applicable State and federal laws, regulations, directives, policies, and technical and security standards, and all project Documents (defined below) required to be prepared by Donor and approved by GSA and CBP under this Agreement.

Donor agrees that the project will be designed and executed in compliance with the following reference documents and authorities, as such documents and authorities may be revised from time to time by GSA, CBP or other entities within the Federal Government, as applicable:

- *CBP Land Port of Entry Design Standards* (current version)
- *CBP Security Policy and Procedures Handbook* (current version)
- *GSA Facilities Standards for the Public Buildings Service, PBS-P100* (current version)

- *GSA Design Excellence Policies and Procedures* (<http://www.gsa.gov/portal/content/103738>)
- *National Environmental Policy Act (NEPA) of 1969*, as amended
- *National Historic Preservation Act (NHPA) of 1966*, as amended
- *GSA Project Estimating Requirements, PBS-P120* (issued January 2007)
- *Homeland Security Presidential Directive (HSPD)-12*
- *Executive Order 11423*, as amended by Executive Order 13337, on Presidential permits
- *Executive Order 13693* - Planning for Federal Sustainability in the Next Decade

Donor, with the cooperation of GSA and CBP, will be responsible for preparing the necessary environmental and historic preservation documentation and providing timely comments and information, as necessary, to enable GSA and CBP to comply with all applicable environmental and historic preservation laws. In addition, Donor must respond promptly to all requests for information from the Department of State or any other source in the event a new or amended Presidential permit is required.

GSA and CBP reserve the right to identify additional references as Project design progresses, subject, however, to the requirement that once the scope of the project is finalized and agreed upon by the Parties, any subsequent scope modification is subject to the unanimous consent of the Parties.

Donor further agrees to construct the project in accordance with the following documents, each of which, when finalized, will be attached to this Agreement and incorporated herein by reference:

- Scope of Work,
- Construction Schedule,
- Approved Project Plans, Drawings and Specifications,
- Detailed Estimated Construction Costs,
- Other related construction documents, as required,
- Project Safety Plan,
- Long-Term Operations and Maintenance Plan,
- Presidential Permit, as required,
- Signed Non-Disclosure Agreements, and

Donor agrees not to deviate from the approved Project Documents without the express prior written consent of GSA and CBP.

6. ROLES AND RESPONSIBILITIES

GSA, CBP, and the Donor will appoint the key members of the project team within one week after the signing of the DAA acceptance to govern the construction of the infrastructure improvements at the Ysleta LPOE. Key team members will include the following officials:

- CBP Project Manager,
- GSA Project Team Manager, and
- The City of El Paso, TX Project Manager.

The GSA Project Team Manager will be the primary point of contact to facilitate GSA approvals for the work activities. The Project Managers for CBP and the Donor will provide subject matter expertise to the GSA Project Team Manager, as needed, monitor the project, provide approvals,

raise issues and concerns to the GSA Project Team Manager, and coordinate activities and progress within their respective organizations.

7. PROJECT FUNDING

The Donor will be responsible for the design, construction and delivery of the project, and all other costs associated with the project, including repair of any areas damaged during the course of delivery and installation, until completion and acceptance of the final project by GSA and CBP. Upon project completion and acceptance by the Federal Government, GSA, CBP, or both, will own the donated property, subject to a minimum of a one-year warranty of construction to be provided by the Donor in the form prescribed in Federal Acquisition Regulation subsection 52.246-21, Warranty of Construction, and will operate and maintain the donated property. The estimated and anticipated costs of designing and constructing the donated property are outlined and itemized in the spreadsheet attached hereto as Exhibit B and incorporated herein by reference.

Donor represents that it has the financial capability to perform all of its obligations under this Agreement and to finance the project and agrees to provide updated information to GSA and CBP, as requested, to demonstrate such financial capability. Throughout the project and upon the request of GSA or CBP, Donor must provide costs estimates and, upon completion of the project, must provide a certified cost statement for the project to GSA and CBP.

8. SITE CONDITIONS

The Donor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its costs, including but not limited to (1) conditions bearing upon transportation, disposal, handling and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance.

The Government is not responsible for any unknown or unforeseen site conditions encountered on its property. The Donor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including exploratory work. Any failure of the Donor to take the actions described and acknowledged in this paragraph will not relieve the Donor from responsibility for estimating properly the difficulty and cost of successfully performing the work.

9. UTILITIES

To the extent Donor requires use of existing utility outlets and supplies at the LPOE for performance of the work, Donor agrees to reimburse the United States for the cost of that usage. Donor, at its sole cost and expense and in a workmanlike manner satisfactory to GSA and CBP, must install and maintain all necessary temporary connections and distribution lines and all meters and sub-meters required to measure the amount of each utility used for the purpose of determining charges.

Before final acceptance of the work by the United States, the Donor must remove all the temporary connections, distribution lines, meters, and associated equipment and restore any federally owned property to the condition existing as of the commencement of construction.

10. PROJECT EXECUTION

The Donor may proceed with project execution only after this DAA has been executed, the Parties have satisfied all of the conditions precedent to the commencement of construction and GSA has issued a Notice to Proceed for the construction activity. The commencement conditions include:

- GSA and CBP participation in, and approval of, construction contractor selection;
- GSA and CBP approval of the Donor's construction documents and work plan;
- Evidence of the Donor's compliance with insurance requirements imposed by GSA and CBP, as set forth in section 20;
- A site access, construction license or other similar agreement that is in full force and effect;
- Evidence of the Donor's financing for all project costs and expenses;
- Evidence that the payment and performance obligations relating to construction are assured to GSA and CBP's satisfaction; and
- Evidence that any necessary governmental permits or approvals have been obtained and the project is in compliance with all applicable laws, regulations and code requirements.

The decision whether to move forward with project execution is solely within GSA and CBP's discretion.

All work must be performed in a manner that either avoids or minimizes, to the extent reasonably possible, operational disruptions. The Donor agrees to coordinate project activities with the GSA Team Manager and CBP Project Manager to ensure that operational disruptions, if any, are mitigated and managed appropriately.

All work must be performed in a manner that will safeguard the public and Federal Government personnel and property. The Donor is required to provide the appropriate safety barricades, signs and signal lights at the project site at all times. The Donor must keep the work area free from accumulation of waste materials and upon completing the project, shall remove any trash, rubbish, tools, equipment and materials that are not Government property and leave the work area in a clean, neat, and orderly condition satisfactory to GSA and CBP.

All equipment, supplies, material and articles incorporated into the work should be new and of the most suitable grade for the purpose intended. The Donor agrees to perform all work under this Agreement in a skillful and workmanlike manner.

During project execution, GSA and CBP, as applicable, will monitor and engage in the following reviews and activities:

- Issuance of temporary site access, construction license or other similar agreement to the Donor;
- Inspection of construction quality and, if necessary, issuance of written field directives setting forth in reasonable detail alleged variances or violations and requesting that the Donor take specified corrective action;
- Preparation of written punch list after substantial completion (project is substantially complete when it may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the project);

- Coordination with the Donor to complete all items identified in the punch list;
- Monitor closeout of the project punch list;
- Staff training for building operations and items covered by the one-year warranty to be provided by the Donor;
- Review and approval of as-built documents; and
- Final inspection and acceptance.

The Donor is required to (a) commence work under this contract within 30 calendar days after the date the Donor receives the Notice to Proceed from GSA/CBP, (b) prosecute the work diligently, and (c) complete the entire work ready for use within the time set forth in Exhibit B. The time stated for completion shall include final cleanup of the premises. The Donor shall update the Project Schedule monthly to reflect its actual progress in completing the work, and submit the updated Project Schedule to the GSA Team Manager and CBP Project Managers within five working days of the end of each month or other specified period.

The project is complete only when the Donor has corrected all punch list items and noted deficiencies and has complied with all conditions in this Agreement.

Upon final acceptance by the United States, the Donor agrees to provide GSA and CBP with final as-built drawings and plans of the donated building, all relevant warranty documentation, and all documents necessary for transfer of ownership (such as a title work, deed transfer, ALTA survey, final total, itemized costs for the project), and any other reasonable request for documentation related to the project.

11. INSPECTION OF CONSTRUCTION

The Donor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under this Agreement conforms to requirements. The Donor shall maintain complete inspection records and make them available to the Government upon request.

The Government has the right, but not the obligation, to review, test or inspect the prosecution of the Donor's work to ensure compliance with the terms of this Agreement. The Donor must allow GSA and CBP, and their agents and representatives, access to the construction site and the Donor's work for such reviews, provided such access and reviews do not unreasonably interfere with or unreasonably delay the performance of the Donor's work. Government inspections and tests are for the sole benefit of the Government and do not relieve the Donor of responsibility for providing adequate quality control measures and do not constitute or imply acceptance of any part of the work.

The Donor shall, without charge to the United States, replace or correct work found by the Government not to conform to contract requirements. The Donor shall promptly segregate and remove rejected material from the premises. If the Donor does not promptly replace or correct rejected work, the Government may terminate the Donor's right to proceed.

12. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

The Donor shall keep on the work site a copy of the drawings and specifications and shall at all times give GSA and CBP access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

In case of differences between drawings and specifications, the specifications shall govern. In case of discrepancies in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to GSA and CBP, who shall promptly make a determination in writing. Any adjustment by the Donor without such a determination shall be at its own risk and expense.

If this project requires shop drawings, such as drawings on the mechanical and electrical work, such drawings must be submitted to the GSA Team Manager and CBP Project Manager for approval prior to work.

13. CONTRACT MANAGEMENT AND PERSONNEL

At all times during performance of this Agreement and until the work is completed and accepted, the Donor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the GSA Team Manager and CBP Project Manager and has authority to act for the Donor. The Donor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the project.

The Donor shall employ, and require its contractors and subcontractors to employ, qualified personnel to perform the work. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest. Repeated failure or excessive delay by the Donor to provide qualified personnel shall be deemed a default under this Agreement.

14. SECURITY CONSIDERATIONS

Each employee, worker and supplier will be subject to a background investigation prior to being authorized to commence work on any aspect of the project at the discretion of GSA or CBP.

In addition, the dissemination of any project documents related to the donation must be tightly controlled in accordance with Homeland Security Presidential Directive-12, as well as subject to a Non-Disclosure Agreement (NDA), which the Donor and all contractors, subcontractors, laborers and suppliers associated with the project will be required to execute, as discussed in the immediately preceding section.

The project will incorporate and comply with all applicable changes and updates to security regulations and requirements as promulgated by the U.S. Department of Homeland Security.

The Donor shall comply with the following requirements pertaining to security clearances:

- All personnel performing work under the Contract on the project site must obtain an Enter on Duty (EOD) determination before they will be granted access to the site.
- To obtain an EOD determination, the Donor shall submit for all such personnel fingerprints on Form SF87 and a completed Contractor Information Worksheet (CIW). Detailed information is available at <http://www.gsa.gov/portal/category/107203>. US Access Credentialing Centers can be located at <http://www.fedidcard.gov/centerlist.aspx>.

- In addition, all such personnel who will be on site 6 months or longer must apply for and receive clearance in accordance with Homeland Security Presidential Directive 12 (HSPD-12). See Section IV, *Contract Clauses*, GSAR 552.204-9.

15. ACCESS GOVERNMENT PROPERTY

The Donor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

The Donor shall account for all forms of Government-provided identification issued to Donor employees in connection with performance under this Agreement. The Donor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- When no longer needed for project performance.
- Upon completion of the Donor employee's employment.
- Upon contract completion or termination.

The Donor shall comply with GSA personal identity verification requirements, identified at <http://www.gsa.gov/hspd12>, if the Donor employees require access to GSA controlled facilities or information systems to perform contract requirements.

The Donor shall insert this clause in all subcontracts when the subcontractor is required to have access to a GSA-controlled facility or access to a GSA-controlled information system. It shall be the responsibility of the Donor to return such identification to the issuing agency in accordance with the terms set forth above.

16. DONOR EMPLOYEE/SUBCONTRACTOR ACCESS

Sensitive Information, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

- Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
- Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized

official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

- Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
- Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

“Information Technology Resources” include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

Donor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by GSA and CBP. Upon the request of GSA and CBP, the Donor's employees shall be fingerprinted, or subject to other investigations as required. All Donor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

GSA and CBP may require the Donor to prohibit individuals from working on the contract if GSA and CBP deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

Work under this Agreement may involve access to sensitive information. Therefore, the Donor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by GSA and CBP. For those Donor employees authorized access to sensitive information, the Donor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after performance.

The Donor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

17. ACCESS TO SENSITIVE BUT UNCLASSIFIED (SBU) BUILDING INFORMATION AND CONTROLLED UNCLASSIFIED INFORMATION

The Donor acknowledges that, as part of its project execution activities, GSA and CBP will need to provide the Donor with confidential and sensitive information. In accordance with section 552.101 of the Texas Government Code, the Donor agrees to maintain the confidentiality of information designated by the Federal Government as Sensitive But Unclassified (SBU), Controlled Unclassified Information (CUI) or For Official Use Only (FOUO) and will sign a Non-Disclosure Agreement (NDA) to that effect. If the Donor receives a request for documents related to this DAA from a Party who is not a signatory to this DAA, the Donor agrees to assert any and all applicable defenses, privileges, exceptions, and exemptions from disclosure under the Texas Public Information Act or any other law and to maintain the confidentiality of the information to the maximum extent permissible under law. The Donor will immediately notify GSA and CBP of any such request and will draft a response, in consultation and coordination with GSA and CBP, to

submit to the Texas Attorney General within the 10 business days allowed under the Texas Public Information Act. The DAA must be executed by all the Parties and the NDA must be executed by any individual requesting access to SBU, CUI or FOUO information before proceeding with project execution activities.

During project execution, the Donor may need to consult with other entities that may be involved with the project. To the extent any of these other entities require access to SBU, CUI or FOUO information, they, too, will be required to execute an NDA.

18. SAFEGUARDING AND DISSEMINATION OF SBU BUILDING INFORMATION

This clause applies to all recipients of SBU building information, including offerors, bidders, awardees, the Donor, subcontractors, lessors, suppliers and manufacturers.

Marking SBU: The Donor-generated documents that contain building information must be reviewed by GSA and CBP to identify any SBU content, before the original or any copies are disseminated to any other Parties. If SBU content is identified, the GSA Project Team Manager may direct the Donor, as specified elsewhere in this contract, to imprint or affix SBU document markings to the original documents and all copies, before any dissemination.

Authorized Recipients: Building information designated SBU must be protected with access strictly controlled and limited to those individuals having a legitimate business need to know such information. Those with a need to know may include Federal, State and local government entities, and nongovernment entities engaged in the conduct of business on behalf of or with GSA and CBP. Nongovernment entities may include architects, engineers, consultants, subcontractors, suppliers, utilities, and others submitting an offer or bid, or performing work under this project. Recipients must have a legitimate business need to know such information. If a subcontractor is not registered in the System for Award Management (SAM) and has a need to possess SBU building information, the subcontractor shall provide to the Donor its DUNS number or its tax ID number and a copy of its business license. The Donor shall keep this information related to the subcontractor for the duration of the contract and subcontract.

All GSA, CBP and Donor personnel must be provided SBU building information when needed for the performance of official Federal, State, and local government functions, such as for code compliance reviews and for the issuance of building permits. Public safety entities such as fire and utility departments may require access to SBU building information on a need to know basis. This clause must not prevent or encumber the dissemination of SBU building information to public safety entities.

Dissemination of SBU building information:

- By electronic transmission. Electronic transmission of SBU information outside of the GSA/CBP network must use session encryption (or alternatively, file encryption). Encryption must be via an approved NIST algorithm with a valid certification, such as Advanced Encryption Standard (AES) or Triple Data Encryption Standard (3DES), in accordance with Federal Information Processing Standards Publication (FIPS PUB) 140-2, Security Requirements for Cryptographic Modules per GSA policy.
- By nonelectronic form or on portable electronic data storage devices. Portable electronic data storage devices include, but are not limited to CDs, DVDs, and USB drives.

Nonelectronic forms of SBU building information include paper documents, among other formats.

- By mail. The Donor must utilize only methods of shipping that provide services for monitoring receipt such as track and confirm, proof of delivery, signature confirmation, or return receipt.
- In person. The Donor must provide SBU building information only to authorized recipients with a need to know such information.

Record Keeping: The Donor must maintain a list of all entities to which SBU is disseminated, in accordance with the above paragraphs addressing authorized recipients and dissemination of SBU building information. This list must include at a minimum: (1) the name of the State, Federal, or local government entity, utility, or firm to which SBU has been disseminated; (2) the name of the individual at the entity or firm who is responsible for protecting the SBU building information, with access strictly controlled and limited to those individuals having a legitimate business need to know such information; (3) contact information for the named individual; and (4) a description of the SBU building information provided. Once “as built” drawings are submitted, the Donor must collect all lists maintained in accordance with this clause, including those maintained by any subcontractors and/or suppliers, and submit them to the GSA Project Team Manager.

Safeguarding SBU Documents: SBU building information (both electronic and paper formats) must be protected, with access strictly controlled and limited to those individuals having a legitimate business need to know such information. The Donor and subcontractors must not take SBU building information outside of GSA or their own facilities or network, except as necessary for the performance of that contract. Access to the information must be limited to those with a legitimate business need to know.

Destroying SBU Building Information: When no longer needed, SBU building information must be destroyed so that marked information is rendered unreadable and incapable of being restored, in accordance with guidelines provided for media sanitization within GSA CIO IT Security 06-32, Media Sanitization Guide and Appendix A of NIST Special Publication 800-88, Guidelines for Media Sanitization. Alternatively, SBU building information may be returned to the GSA Project Manager.

Notice of Disposal: The Donor must notify the GSA Project Manager that all SBU building information has been returned or destroyed by the Donor and its subcontractors or suppliers in accordance with the paragraphs above, with the exception of the Donor’s record copy. This notice must be submitted to the GSA Project Team Manager at the completion of the contract. The Donor may return the SBU documents to the GSA Project Manager rather than destroying them.

Incidents: All improper disclosures of SBU building information must be immediately reported to the GSA Project Team Manager, and the Donor will provide a corrective action plan explaining how the Donor will rectify any noncompliance and comply with the clause in the future.

Subcontracts: The Donor and subcontractors must insert the substance of this clause in all subcontracts.

The provisions in this Agreement relating to the NDA and SBU, CUI or FOUO information will survive the termination or expiration of this Agreement.

19. WARRANTIES

The Donor warrants that work performed under this Agreement conforms to the statement of work requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Donor or any contractor, subcontractor or supplier at any tier. The Donor agrees to furnish GSA/CBP, at a minimum, a one-year full warranty for the donated property from the date of final acceptance. The Donor shall remedy at its expense any failure to conform or any defect within a reasonable time and shall remedy at its expense any damages to Government-owned or controlled real or personal property when the damages result from the Donor's failure to conform to contract requirements or any defect of equipment, material, workmanship or design furnished. The Donor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

If the Donor fails to remedy any failure, defect or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect or damage caused at the Donor's expense.

Donor should obtain all warranties from contractors, subcontractors, manufacturers and suppliers that would be given in normal commercial practice and enforce all warranties for the benefit of the Government if directed by GSA/CBP.

20. INSURANCE

The Donor, at its own expense, shall provide and maintain during the entire performance of this Agreement the following kinds and minimum amounts of insurance:

- Workers' compensation insurance in the amount required by the jurisdiction in which the Project is performed.
- Employers' liability coverage of at least \$2,000,000. If occupational diseases are not covered by workers' compensation insurance, Employers' liability coverage shall include occupational diseases.
- Broad form comprehensive commercial general liability insurance in the amount of at least \$5,000,000 per occurrence. Such insurance shall include, but not be limited to, contractual liability, bodily injury and property damage.
- Comprehensive automobile liability covering the operation of all automobiles used in connection with performing the Project in the amount of at least \$1,000,000 per person and \$2,500,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.

Each insurance policy required under this Agreement, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this Agreement. The insurance carrier is required to waive all subrogation rights against any of the named insured.

The Donor shall promptly provide to the GSA Team or CBP Program Manager proof that it has obtained insurance required by this Agreement in the form of certificates of insurance. The Donor shall submit to the GSA Team or CBP Program Manager all renewal certificates issued during the life of the Project immediately upon issuance.

The Donor shall also require contractors and subcontractors to provide and maintain the same insurance and shall maintain a copy of all contractors' and subcontractors' proofs of required insurance.

21. ENVIRONMENTAL COMPLIANCE

The Donor agrees to provide evidence of compliance with all applicable environmental laws, regulations and policies prior to Project commencement and, with the Federal Government's cooperation, is responsible for preparing the necessary environmental and historic preservation documentation and providing timely comments and information to enable the Federal Government to comply with all applicable environmental and historic preservation laws.

The Donor shall immediately bring to the GSA Team or CBP Program Manager's attention any hazardous materials or conditions not previously disclosed that the Donor discovers during performance of the Project.

22. LIMITATIONS

Nothing in this Agreement is intended to conflict with current law, regulation, directive, or policy of the Federal Government, GSA or CBP. If any provision of this Agreement is inconsistent with any such authority, then that provision is deemed to be invalid and subject to modification upon concurrence of the Parties and the remaining terms and conditions of this Agreement will continue in full force and effect.

The Parties acknowledge that this Agreement is not a commitment to future funding, staffing or other resources. Nothing in this Agreement may be construed or interpreted to obligate the Federal Government to any current or future expenditure of funds in advance of, or in excess of, the availability of appropriations, nor does this Agreement obligate the Federal Government to spend funds for any particular purpose, even if funds are available.

Nothing in this Agreement constitutes or can be construed as a waiver of the Federal Government's sovereign immunity.

23. LIABILITY AND INDEMNIFICATION

The Donor shall not destroy, displace or damage any Government property except as expressly permitted by this Agreement or the written consent of the GSA/CBP Project Team Manager. The Donor is responsible for all damages to persons or property that occur as a result of its activities or the activities of its employees, agents, representatives, contractors, subcontractors or suppliers ("Donor Parties") arising in any way under this Agreement, whether caused by the Donor Party's intentional conduct, recklessness, fault, negligence or otherwise. The Donor is responsible for all materials delivered and work performed until completion and acceptance of the entire work.

The Donor hereby agrees to indemnify and save harmless the United States, its agents and employees, to the maximum extent provided by applicable law, against any and all loss, damage, claim, or liability whatsoever, due to personal injury or death, or damage to property of others, directly or indirectly, arising out of or related to Donor Parties' activities under this Agreement or any other act or omission of the Donor Parties, including failure to comply with the obligations of this Agreement and the Project execution documents.

24. NOTICES

All notices and other communications arising under this DAA must be in writing and must be furnished by (i) hand delivery; (ii) United States certified mail, postage prepaid, return receipt requested; or (iii) nationally available overnight next business day courier, charges prepaid, signature of recipient required, in each instance, if to GSA to the GSA Project Team Manager, if to CBP to the CBP Regional Office Section Chief, and if to the Donor to the Donor Project Manager, at the addresses set forth immediately below. Any Party may change the notice address set forth below by serving five days' prior written notice upon the other Parties. Any such notice will be duly given upon the date it is delivered to the address (or, if delivery is refused, the date when delivery was first attempted) shown below.

CBP:

U.S. Customs and Border Protection
150 Westpark Way
Ste 300
Euless, TX 76040
Attn: Vicente De Armas

GSA:

U.S. General Services Administration
Public Buildings Services (7PTA)
819 Taylor Street
Room 12A
Fort Worth, TX 76102
Attn.: Cecil Scroggins

with a copy to:

U.S General Services Administration
Office of Regional Counsel
819 Taylor Street
Room 11A31
Fort Worth, TX 76102
Attn.: Regional Counsel

Donor:

The City of El Paso, TX:
City of El Paso, Texas
P.O. Box 1890
El Paso, TX 79950-1890
Attn.: City Manager

With a copy to:

The City of El Paso, TX:

City of El Paso, Texas
P.O. Box 1890
El Paso, TX 79950-1890
Attn: Mayor

25. EXAMINATION OF RECORDS

The Donor agrees that GSA, CBP or any of their duly authorized representatives shall, until the expiration of 3 years after final completion of the Project, have access to and the right to examine any books, documents, papers, and records of the Donor involving transactions related to this contract or compliance with any clauses thereunder. The Donor further agrees to include in all its contractors/subcontracts hereunder a provision to the effect that the contractor/subcontractor agrees that GSA, CBP or any of their authorized representatives shall, until the expiration of 3 years after final completion of the Project, have access to and the right to examine any books, documents, papers, and records of such contractor/subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder.

26. GOVERNMENT RIGHTS TO DATA

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this Project, including the right to use same on any other Government design or construction. The Donor for a period of three years after completion of the Project agrees to furnish the original or copies of all such works on the request of GSA/CBP.

27. MODIFICATION

This DAA may be modified or amended only by written, mutual agreement of the Parties. Any Party can initiate the amendment process by providing written notice describing the proposed amendment to the other Parties. During the ensuing 30-day period, the Parties will actively coordinate to try to reach a consensus on the proposed amendment.

28. CHANGES

The Parties may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the project, including changes in the specifications, drawings or design or method or manner of performance of the work. Any scope modification and its associated cost must be reviewed and approved by all Parties before taking effect. The Government shall not be responsible for costs associated with any scope modification initiated by the Donor or costs associated with unknown or unforeseen site conditions encountered on the property.

29. DISPUTE RESOLUTION

All disputes arising under or relating to this Agreement will be resolved following the procedures set forth in this Article 28 and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Parties agree to make good faith efforts to resolve informally disputes that may arise out of or relate to this

Agreement, or the breach thereof, that affect the Parties' obligations and responsibilities under this Agreement. In the event that such a dispute arises between Donor and the United States, Donor may file a claim (a "Donor Claim") with GSA or CBP or the United States may file a claim (a "United States Claim") against Donor. A "Claim" is a United States Claim or a Donor Claim. If the dispute cannot be settled through negotiation, the Parties will first try in good faith to settle the dispute by mediation, before resorting to litigation. The United States agrees that GSA and CBP will not issue any final determination regarding any Claim by either Party until and unless such mediation has been concluded or either Party advises the other that a resolution of the dispute by mediation does not appear likely within a reasonable time.

30. NONCOMPLIANCE AND DEFAULT

In the event the Donor, after receiving written notice from the GSA Team or CBP Program Manager of non-compliance with any requirement of this Agreement, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, GSA and CBP shall have the right to order the Donor to stop any or all work until the Donor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time.

If the Donor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Agreement including any extension, fails to complete the work within this time, fails to complete the work in the manner or to the specifications required by this Agreement, or fails to make required payment to contractors and subcontractors (which includes laborers and suppliers), GSA and CBP will, by written notice, provide the Donor a reasonable time to cure performance, not less than 30 days. If the Donor does not cure within the reasonable time, the Donor will be in default under this Agreement.

GSA and CBP may pursue any available remedy as a result of default, including terminating the right to proceed with all or part of the work, seeking reimbursement for costs the Government incurs for completing the work or requiring the Donor to restore the property to its pre-construction condition. Upon default, the Federal Government may take possession of and use any tools, materials, equipment or appliances on the work site necessary for completing the work. The Donor and its sureties shall be liable for any damage to the Federal Government resulting from the Donor's default under this Agreement, whether or not the Donor's right to proceed with the work is terminated.

The Donor's right to proceed shall not be terminated nor the Donor charged with damages under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Donor and the Donor notifies the GSA or CBP Program Manager within 10 days from the beginning of any delay of the cause for the delay.

31. TERMINATION

Any Party may terminate its participation in this agreement by providing written notice to the other Parties at least 30 days prior to commencement of construction activities, in which case all work on the project will cease and none of the Parties will thereafter have any further rights or liabilities under this DAA other than those that expressly survive termination or expiration of this DAA. In the event the Donor has altered Federal Government property prior to termination of the DAA, the Donor agrees, subject to the Government's discretion, to restore the property to its prior condition.

In the event the Donor has received any SBU, CUI or FOUO information from GSA or CBP pertaining to the proposed donation and the donation is not consummated for any reason, the Donor must promptly return all such materials. This provision survives termination or expiration of the DAA.

32. SIGNATORIES

The CBP Commissioner and the GSA Commissioner, or another agency official with the appropriate delegated authority, must execute this Agreement to be effective. The Donor signatory to this Agreement shall have full authority to bind its principals with regard to all matters relating to this Agreement. The Agreement may be signed in one or more identical counterparts.

33. COUNTERPARTS

This DAA may be executed in counterparts, each of which will be deemed to be a duplicate original, and which together will constitute one and the same instrument.

34. INTEGRATION AND MERGER

This Agreement sets out all the terms, conditions, and agreements of the Parties and supersedes any previous understandings or agreements regarding the donation whether oral or written. No modification or amendment of this Agreement is effective unless in writing and signed by both the Parties.

35. VALIDITY OF PARTS

If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, the remaining provisions will continue in full force.

36. EFFECTIVE DATE

This DAA will become effective when all the Parties have signed it. The date this DAA is signed by the last Party to sign it (as indicated by the date stated opposite that Party's signature) will be deemed to be the effective date of this DAA. This DAA will remain in effect until it is terminated as provided in section 30 and 31, above, or the property is accepted by the United States.

[Remainder of page intentionally left blank.

Signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed this DAA on the dates noted below.

FOR THE U.S. CUSTOMS AND BORDER PROTECTION

Date: _____
Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection
Department of Homeland Security

FOR THE U.S. GENERAL SERVICES ADMINISTRATION

Date: _____
Norman Dong
Commissioner
Public Buildings Service
General Services Administration

FOR THE CITY OF EL PASO, TEXAS

Date: _____
Oscar Leaser
Mayor, City of El Paso, TX

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Assistant City Attorney

Mathew McElroy, Director
International Bridges Department



Item # 21.2

Section 559 Donation Acceptance Program Agreement

January 10, 2017

**Strategic Goal # 1 – Create an Environment Conducive to
Strong, Sustainable Economic Development**

**1.5. Stimulate Economic Growth Through Transit Integration,
Cross Border Mobility, Trade and Tourism**



Presentation Outline

- Section 559 Legislation
- Section 559 History
- Outline of Project
- Timeline
- Benefits



Section 559 Legislation

Federal legislation that allows public/ private partnerships to donate infrastructure projects to U.S. Customs and Border Protection (CBP) and General Services Administration (GSA).



Section 559 Background

CBP Section 559 Donation Acceptance Program

- Call for Projects October 2014
- Submission by COEP December 2014
- Announcement of Selected Projects November 2015
- Submittals of Developed Scopes Spring 2016
- Technical Requirement Package approved October 2016
- Approval of Donation Acceptance Agreement January 2017

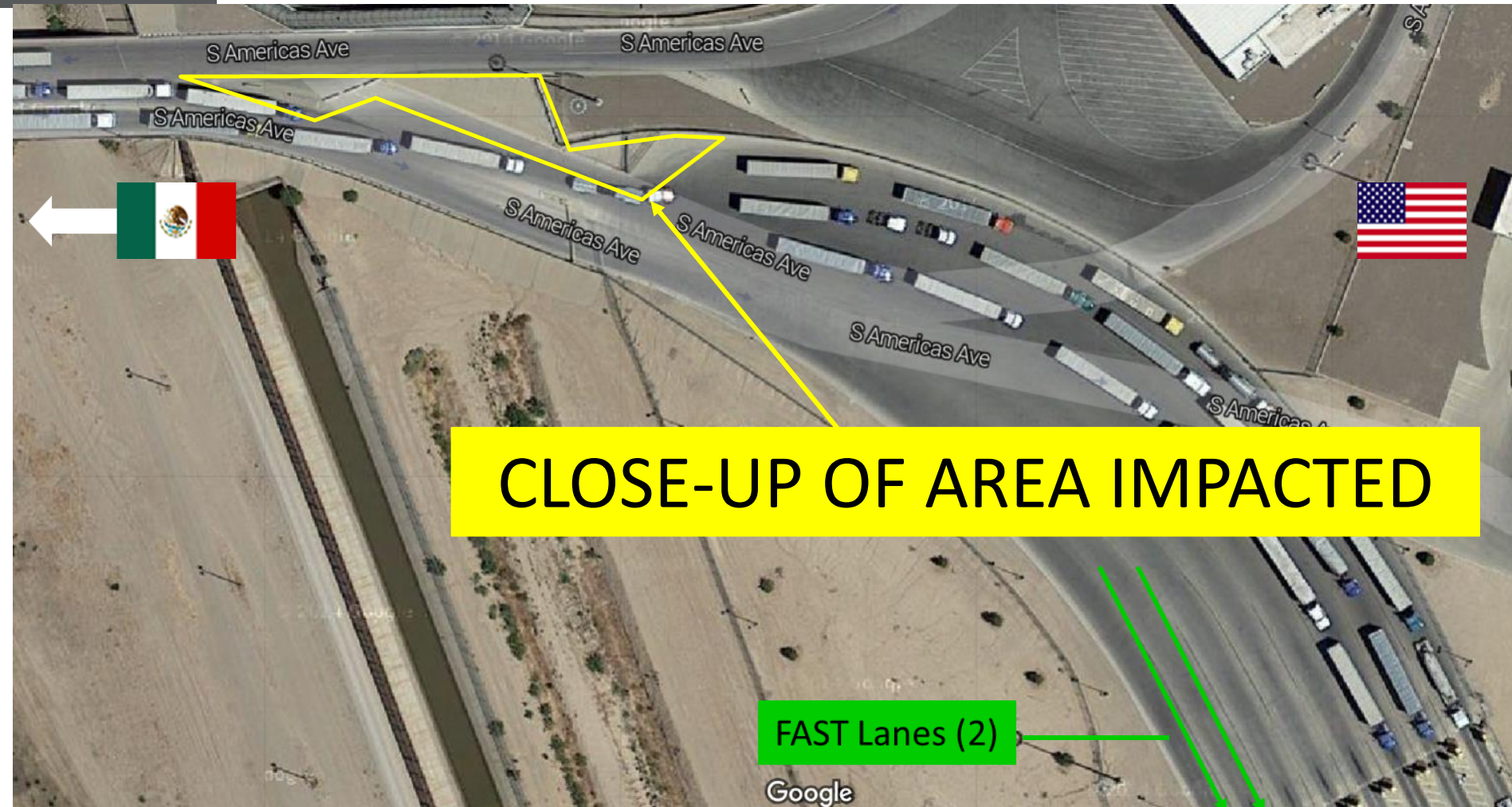


Outline of Project

- Zaragoza Bridge, “Ysleta Port of Entry”
Commercial Island Project Scope
 - Involves reconfiguration of various physical infrastructures which impede the flow of northbound commercial traffic at the port.
 - Scope includes the relocation of multiple barriers and reconfiguration of the site elements to create a wider path of travel for trucks entering the commercial primary inspection lanes.

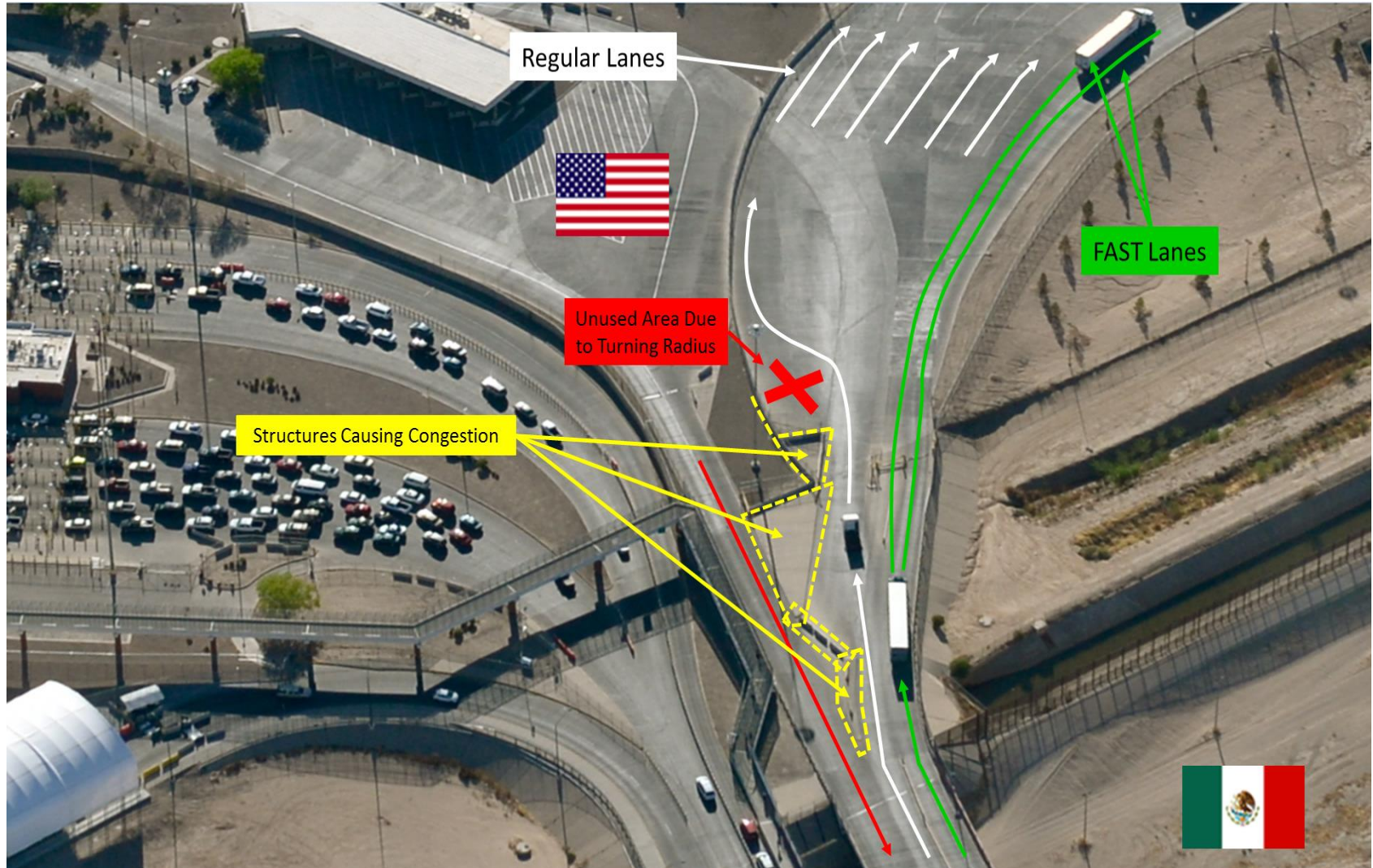


Current Conditions





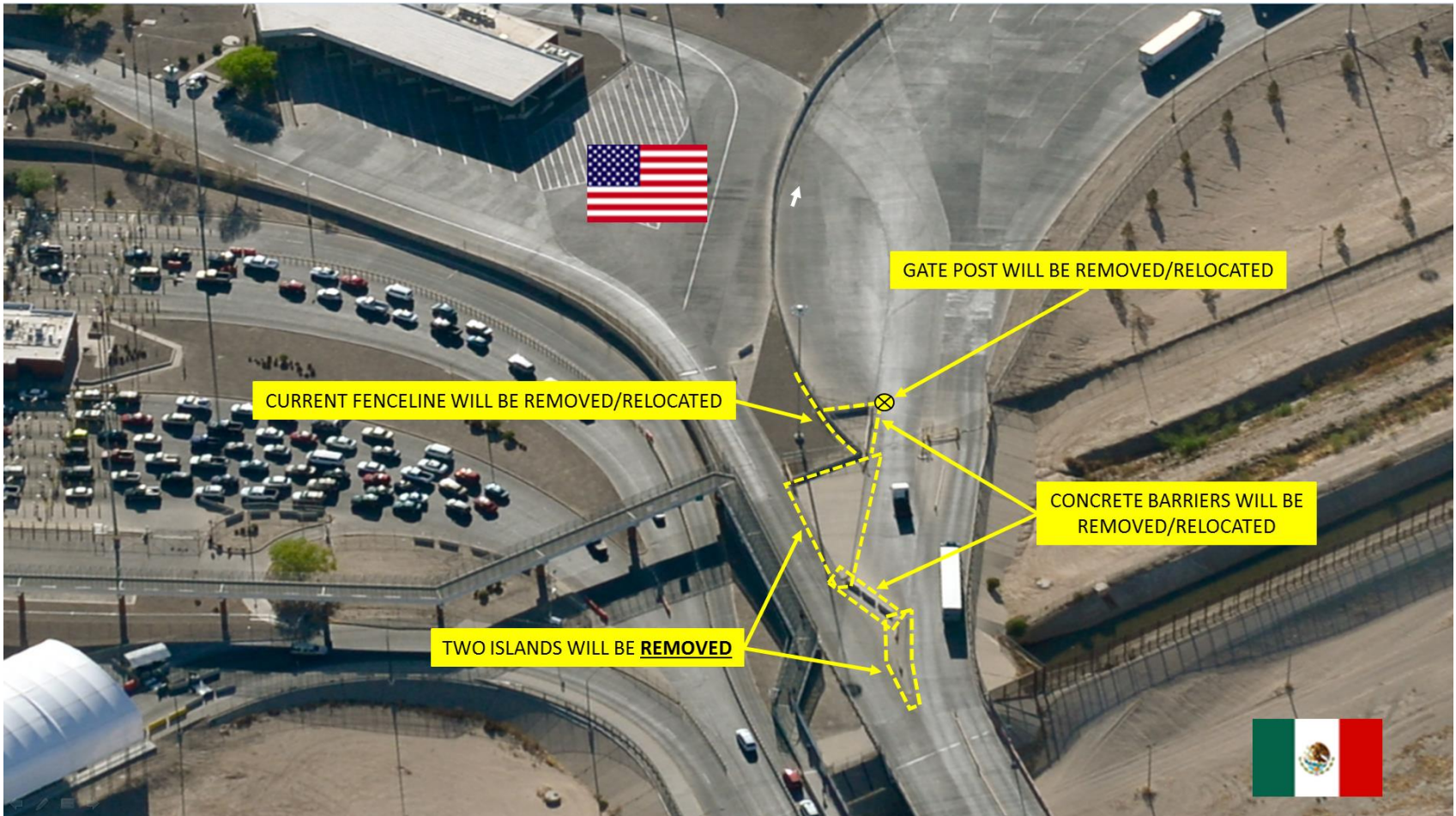
Current Conditions



“Delivering Outstanding Services”



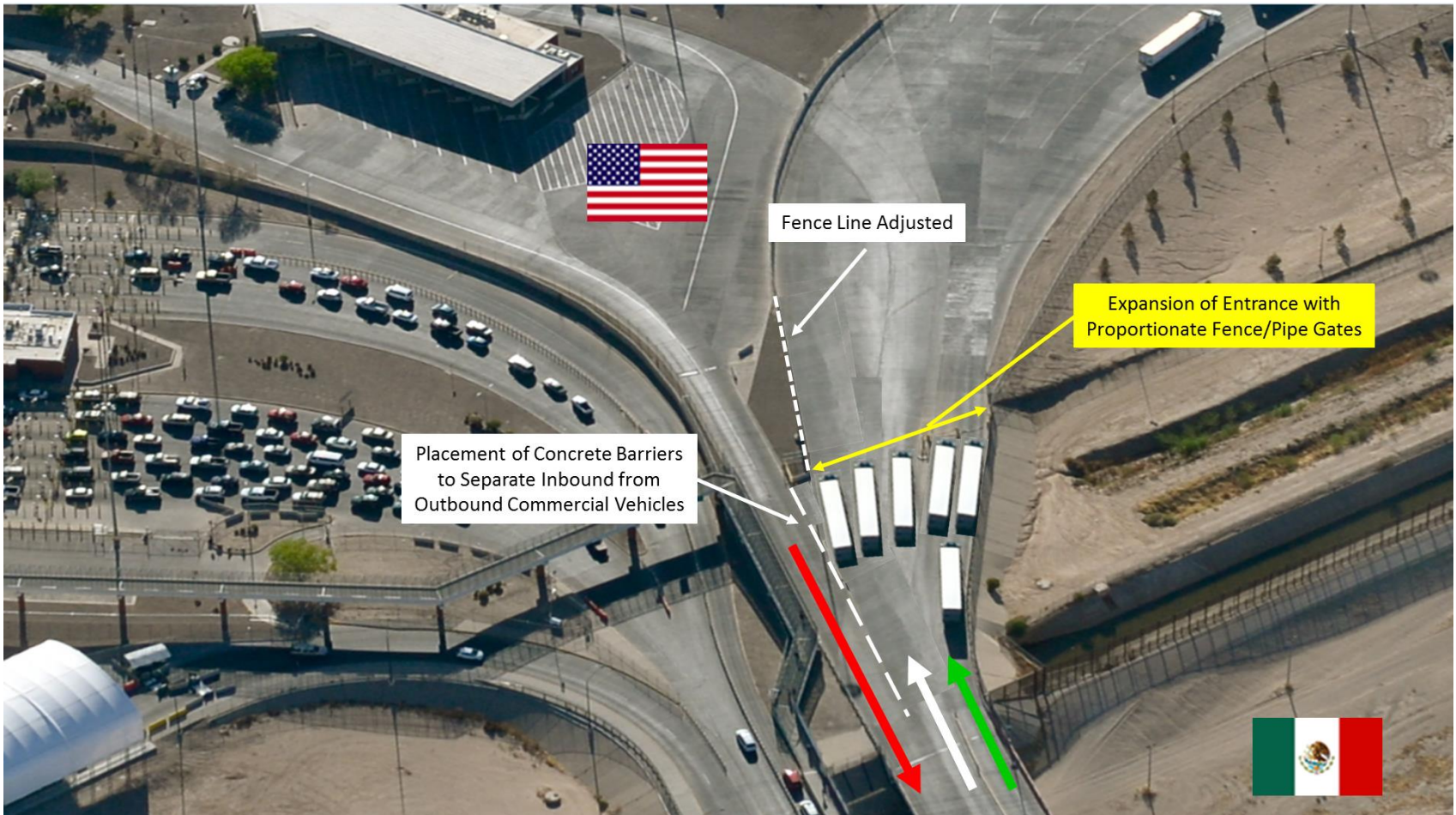
Improvements



“Delivering Outstanding Services”



Improvements



“Delivering Outstanding Services”



Timeline

- Council Approval Jan. 2017
- GSA license 33 days est.
- GSA Notice to Proceed 2 weeks
- Contractor Coordination and Security Requirements 30 days
- Start Construction April 2017
- Completion Sept. 2017



Requested Action

- City Council authorize the Mayor to sign a Donations Acceptance Agreement by and between U.S. Dept. of Homeland Security, U.S. Customs and Border Protection, and U.S. General Services Administration for the City's removal of traffic medians and reconstruction of the affected commercial lanes through the Sec. 559 program which allows for donation of infrastructure improvements.