

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

DEPARTMENT: International Bridges Department

AGENDA DATE: Public Hearing: December 10, 2018

CONTACT PERSON/PHONE: David A. Coronado, (915) 212-7505,
CoronadoDA@elpasotexas.gov

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

That the Mayor be authorized to sign the Section 559 Reimbursable Fee Agreement and the MOU to the Section 559 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 \$1.65 million.

BACKGROUND/DISCUSSION:

The Public-Private Partnership (P3) program is a reimbursable services program that allows the City of El Paso to pay for Customs and Border Patrol overtime, ensuring all lanes of City-owned ports are staffed during peak hours in an effort to reduce wait times. The City Council authorized Section 560, which covered the P3 reimbursable fee agreement, in December 2013.

The City supplements CBP overtime to staff all lanes during peak hours to help reduce or stabilize wait times at the Paso Del Norte and Ysleta/Zaragoza bridges for all modes (privately-owned vehicles, commercial trucks and pedestrians). Since the beginning of the P3 program, the City and CBP have worked on a pre-defined and approved overtime schedule at these two border crossings (see Exhibit A below). This overtime schedule includes the number of lanes open at primary and secondary inspection points. The hours covered by the P3 program work in conjunction with CBP's All Lanes Open Initiative. The City Council will receive an update from staff on the progress, current impacts and the proposed renewal of the P3 program under Section 559.

The International Bridges Department is recommending renewing the P3 program to ensure a holistic approach for facilitating cross-border flow and reducing wait times. The P3 program, if renewed, will continue supporting various interventions including CBP's all-lanes-open initiative, Unified Cargo Processing program, Intelligent Transportation Systems, bridge redesigns, infrastructure improvements and traffic management to name a few.

PRIOR COUNCIL ACTION:

December 3, 2013 – CC approval of the Section 560 "P3" reimbursable fee agreement w/CBP
September 23, 2014 – 1st extension
September 22, 2015 – 2nd extension
July 12, 2016 – CC approval of latest extension through December 18, 2018
February 6, 2018 – BOTA addition to P3 for POE improvement projects

AMOUNT AND SOURCE OF FUNDING:

1. Funding Source – International Bridges Restricted Fund (3360) – Reimbursable Fee Agreement "P3"

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

LEGAL: (if required)

FINANCE: (if required)

DEPARTMENT HEAD: Monica Lombraña
Managing Director of Aviation and International Bridges



APPROVED FOR AGENDA:

CITY MANAGER: _____ DATE: _____

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 559 Reimbursable Fee Agreement and the MOU to the Section 559 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 \$1.65 million.

ADOPTED this the _____ day of _____, 2018.


THE CITY OF EL PASO

Dee Margo
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Managing Director of Aviation and
International Bridges

U.S. CUSTOMS AND BORDER PROTECTION
“SECTION 559” REIMBURSABLE SERVICES AGREEMENT
BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION AND CITY OF EL PASO, TEXAS

I. General

Under the provisions of Section 559 of Division F of the *Consolidated Appropriations Act, 2014* (Public Law 113-76) as amended by Section 552 of the *Department of Homeland Security Appropriations Act, 2015* (Public Law 114-4) (collectively hereinafter, “the Act”) the Commissioner of U.S. Customs and Border Protection (“CBP”) is authorized to enter into agreements to provide CBP services to requesting parties on a reimbursable basis. However, CBP is prohibited by law from entering into any agreement that would unduly and permanently impact other services funded by an appropriations act or any other account derived by the collection of fees.

The purpose of this document is to establish a partnership and agreement 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 costs incurred in providing any requested services, which may include additional or expanded services at existing CBP facilities or the provision of services at new facilities. 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 Requestor shall be considered a private sector or government entity requesting CBP services as the term is used in the Act. The party requesting to enter into this Agreement with CBP is:

Requestor Name: City of El Paso

Location(s) covered by this Agreement:

- 1. Paso Del Norte Bridge**
- 2. Ysleta Bridge**
- 3. Stanton Street Bridge**

Locations covered by this Agreement may be reduced or expanded upon mutual agreement in writing by both parties pursuant to Section XI, and in accordance with the Act and other applicable laws and regulations.

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 (collectively, “the parties”) will also develop and mutually agree upon the terms of a separate Memorandum of Understanding (“MOU”) that will contain further details about the specific services, schedules, and other conditions for the location(s) covered by this Agreement. The MOU will not be a legally binding document, like the terms of this Agreement, and the terms of the MOU will not affect or in any way override the terms of this Agreement. Although the MOU may be amended by the parties, such an amendment will have no effect on the terms of this Agreement.

Any part of this Agreement found to be unlawful or unenforceable in any respect shall be construed so as to give it the maximum effect permitted by law and, where such a construction is not permitted by law, that part of this Agreement shall be deemed severable from the rest of the Agreement, which will remain in full force and effect.

Designated Representatives:

The Requestor and CBP each name and designate the following officials as having respectively the authority, for the Requestor, to request or cancel services for the location(s) under this Agreement and, for CBP, the authority to approve or deny services.

The party entering into this Agreement on behalf of CBP is the Commissioner of CBP. With respect to CBP’s authority under this Agreement, the Commissioner hereby designates the Director of Field Operations (“DFO”) with jurisdiction over the location(s) covered by this Agreement the authority to review and approve requests for CBP services under this Agreement. In the absence of the DFO, this official for CBP will be the Port Director for the location(s). In the absence of the Port Director, this official for CBP will be an Assistant Port Director for the location(s) covered by this Agreement. This designation will also apply to any person acting in the capacity of the applicable DFO, Port Director, and/or Assistant Port Director.

The party entering into this Agreement on behalf of the Requestor and who is also the deciding and approving official for the Requestor is the Mayor of the City of El Paso. For purposes of this Agreement, the Mayor of the City of El Paso hereby delegates his/her authority as the reviewing and approving official to City Manager. This delegated authority will also reside in any person Acting in the capacity of the City Manager and their designee.

Additional Designees: Each party may, from time to time, appoint additional designees to act on its behalf by sending advanced written notice to the other party.

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, for example, CBP may determine to adjust overtime allocations for ports of entry. Regardless of any reimbursements received by CBP from the Requestor for overtime services, CBP may, within its sole discretion, expend its baseline overtime amounts in a reasonable manner so as to maximize the total amount of overtime services it provides.
2. “CBP personnel” or “employees” means employees of CBP, such as CBP Officers, CBP Agriculture Specialists, mission support personnel, or any other CBP employees or contractors that are authorized to provide the services outlined in this Agreement on a reimbursable basis.
3. “Overtime services” means services for which CBP personnel, pursuant to applicable law, are entitled to receive overtime pay that are in excess of services payable from the baseline overtime amount.
4. “Overtime pay” means the compensation that a CBP employee, pursuant to applicable law, is entitled to receive, in excess of the employee’s base pay, for performing officially-assigned work in excess of the 40 hours of the employee’s regularly-scheduled administrative workweek or in excess of 8 hours in a day. This term also includes the compensation which CBP personnel, pursuant to applicable law, are entitled to receive in excess of the employee’s base pay for performing officially-assigned work on holidays, Sundays, evenings, and/or any other purpose authorized by law, as well as any benefits and indirect costs incurred by CBP related to overtime services.
5. “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, but not limited to, overtime pay) and benefits of CBP employees as well as other direct and indirect costs incurred by CBP related to those services, such as hiring, training, and equipping costs, program administration, additions of facilities, alterations or expansions of facilities (where appropriate), technology and equipment, travel and transportation expenses, and any temporary or permanent relocation expenses incurred as a result of the services requested. For CBP-serviced air ports of entry, the term “reimbursable costs” is limited to mean “overtime pay” for CBP Officers and CBP Agriculture Specialists performing “overtime services,” as defined above, and the reimbursable costs related to the salaries, training and benefits of CBP personnel supporting

those CBP Officers in performing their law enforcement functions, including primary and secondary processing of passengers.

6. “Services” or “CBP Services” means any activities of any employee or contractor of CBP pertaining to customs, agricultural processing, border security, and/or immigration inspection-related matters at ports of entry.

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 in accordance with Section 559(e)(1)(C) of the Act. 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 a separate agreement, such as a nominal or no-cost lease. All facilities are required to meet relevant CBP safety and technical design standards. In addition, for any altered, expanded, or new 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 are met. The Requestor’s failure to meet these requirements 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

The CBP services to be reimbursed by the Requestor will only include those reimbursable costs in excess of that which CBP would have regularly provided at the location(s) covered by this Agreement 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, border security services, agricultural processing, and any enforcement or administrative functions necessary to support increased inspectional activities as requested under this Agreement. Such services may even include the hiring and training of new CBP employees required as a result of any requested services, where CBP deems appropriate.

V. Requests for CBP Services

The Requestor will initiate a request for services electronically in the manner required by CBP. 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, other service requests that may have been received, and/or any other relevant information, including the availability of necessary resources. 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.

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 requested services (e.g., work assignments for CBP personnel) and consultations about scheduling services will be further outlined in the MOU.

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. The Requestor shall not exercise any control or authority over CBP employees, methods of operation, policies or training of employees.

VI. CBP Responsibilities

CBP will consult with the Requestor to establish the length and frequency of services requested under this Agreement. The details of this process will be memorialized in the MOU.

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

CBP will provide monthly reports to the Requestor, which will include information on how the CBP services billed for under this Agreement are being utilized and additional metrics on how they may be 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.

CBP must adhere to the provisions of the CBP Collective Bargaining Agreement relating to CBP personnel and for overtime assignments which include, but are not limited to, least cost principles. Efforts will be made by CBP to accommodate requests for overtime, subject to such applicable constraints.

VII. Requestor Responsibilities

The Requestor 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.

The Requestor agrees to immediately notify CBP once the Requestor becomes aware of the need for any changes to requests made pursuant to this Agreement that have already been approved by CBP. 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 changes in workload, unanticipated operational impacts, changes to CBP's budget and/or resource allocations for the ports of entry affected by this Agreement, 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 the 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 and reimbursable costs 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 will 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 charges.

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, 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 date of posting 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, in addition to a reservation of 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 have been paid to CBP. Requestor further acknowledges that Section 559(e)(6) of the Act provides CBP with certain non-contractual remedies for non-payment in the form of a penalty, liquidated damages, and/or interest assessments. If all outstanding charges have been paid to CBP, CBP may consider mitigation of any penalty and/or liquidated damages 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 become available on a date mutually determined 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. 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 the transmission of any 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 upon 30-days prior written notice.

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

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 in advance of any such consultation.

The parties will first attempt to resolve any disputes arising under this Agreement through consultation with the other party at the CBP port level, i.e., with the Port Director and his/her staff at the affected location(s).

If an issue raised by the Requestor at the CBP port level cannot be resolved, the Requestor shall then seek resolution through the 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 obligations, stated in section IX, to continue to pay reimbursable costs to 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.

Commissioner
U.S. Customs and Border Protection
Date:

Dee Margo, Mayor
City of El Paso
Date:

**MEMORANDUM OF UNDERSTANDING BETWEEN U.S. CUSTOMS
AND BORDER PROTECTION AND THE CITY OF EL PASO, TEXAS
REGARDING REIMBURSABLE SERVICES**

I. PARTIES

This Memorandum of Understanding (“MOU”) between U.S. Customs and Border Protection (“CBP”) and The City of El Paso (“The City”) (collectively, “the parties”) supports the joint reimbursable services program at the Port of El Paso (“ELP”) as agreed upon in the “Section 559” Reimbursable Services Agreement (“Agreement”), effective as of January 2019 and as permitted under Section 559 of Division F of the *Consolidated and Further Continuing Appropriations Act, 2014* (Public law No. 113-76), *as amended*, as well as Section 483 of the *Homeland Security Act of 2002*.

II. PURPOSE

This document is intended to mutually define the expected relationship, scope and procedures for The City, to request reimbursable services at ELP and for CBP to adjudicate such requests. This MOU does not amend, adjust, cancel, or otherwise affect the Agreement. Further, this MOU’s statements of coordination and cooperation do not bind either party in any way. This MOU does not obligate funds or create a financial obligation between the parties. This MOU does not create or confer any right or benefit on any person or party, private or public.

III. TYPES OF REIMBURSABLE SERVICES TO BE REQUESTED

The services requested by The City pursuant to the Agreement and this MOU will be additional CBP resources and services (collectively, “Reimbursable Services”) at ELP. As is set forth in Section IV of the Agreement, Reimbursable Services include activities of any employee or contractor of CBP pertaining to customs, agricultural processing, border security, and/or immigration inspection related matters in excess of those which CBP would have regularly provided at ELP under existing resource, budget, and operating conditions. Such Reimbursable Services may include, but are not limited to:

- a) Additional services and resources provided prior to or after CBP’s normal service hours;
- b) Primary inspections processing;
- c) Secondary inspections processing;
- d) Agriculture processing;
- e) Enforcement functions;
- f) Administrative functions related to CBP services;
- g) Special service requests (requested in advance).

IV. PROCEDURES FOR REQUESTING SERVICES

The following procedures apply to all requests for Reimbursable Services:

- A. The City will submit all requests via the Service Request Portal accessible from <https://rsp.cbp.gov>. The City will enter its established email address in order to gain access to the service request form.
- B. The City will notify CBP via email using the following address: reimbursablefeeprogram-elpaso@cbp.dhs.gov, the official CBP email to manage such requests. The City will request services as soon as the nature of the service request is known but no later than three (3) calendar days prior to the date requested services are proposed to begin or, in the event of an ad hoc request, no later than 48 hours prior to the proposed time of the commencement of services.
- C. CBP will review and evaluate each service 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 via BridgesP3@elpasotexas.gov.
- D. In the event it is necessary for The City to make an urgent telephone request for services, The City will follow up with sending an email to reimbursablefeeprogram-elpaso@cbp.dhs.gov detailing the request made by telephone and entering the request via the Service Request Portal as soon as practicable.
- E. While The City may alter, reduce, or cancel any previously approved service request for any reason, The City will make every effort to notify CBP of its desire to alter, cancel, or reduce requested services at least three (3) calendar days prior to the date of services, or 48 hours prior to the time ad hoc service requests were proposed to begin. Notification by The City and responses by CBP will be completed using the designated email addresses noted above.

V. CBP ADMINISTRATIVE AND OPERATIONAL CONTROL

CBP retains sole and exclusive administrative, supervisory, and operational control and direction over the CBP personnel or its contracted employees. 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.

VI. 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 quarter to review 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 quarters and shall also discuss the Reimbursable Services anticipated for each upcoming month(s) based on information provided by CBP. The Committee may schedule meetings in addition to the quarterly meetings, as needed.
- B. CBP agrees to provide The City, as soon as possible, with the following:
 - 1. A report of the actual hours worked by CBP officers at inspection lanes and Reimbursable Services performed, provided separately for each crossing and to the extent possible by each type of service (i.e., vehicular, pedestrian, and cargo).
 - 2. Any adjustments made which impacted The City’s request of services.
- 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 MOU 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.

VII. LIMITATION OF LIABILITY

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 MOU, and not intended to be payments by The City to CBP employees.

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 MOU, 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 MOU, EXCEPT AS MAY BE PROVIDED BY LAW.

VIII. AMENDMENT OF THE MOU

- A. Any modification to this MOU 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 City or CBP may terminate this MOU for any reason upon 30-days prior written notice to the other party.

IX. SIGNATURES BY PARTIES

Agreement to the terms of this MOU 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 MOU. This MOU 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