Transport Canada and
Infrastructure Canada

Transports Canada et
Infrastructure Canada

Associate Deputy Minister
of Transport, Infrastructure
and Communities

Sous-ministre déléguée des
Transports, de l'infrastructure
et des Collectivités

Place de Ville
Ottawa ON K1A 0N5

February 18, 2015

Mr. Karl Calvo, U.S. Customs and Border Protection

Mr. Michael Gelber, U.S. General Services Administration

Mr. Andy Doctoroff, Advisor to the Governor of Michigan

Mr. Michael Cautillo, Windsor-Detroit Bridge Authority

Dear Colleagues:

U.S. Federal Plaza Arrangement

I am pleased to provide you with a copy of the fully executed U.S. Plaza Arrangement. I wish to thank you and your teams for the excellent collaboration in completing this very important milestone for the NITC/DRIC project.

We look forward to your continued cooperation as we move ahead with the preparations for the launching of the procurement process for the public-private partnership.

Looking forward to seeing you soon and please receive my very best regards,

(b) (6)

(b) (6)

Canada

U.S. FEDERAL PLAZA ARRANGEMENT

Among:

Transport Canada

-and-

Windsor-Detroit Bridge Authority

-and-

State of Michigan

-and-

United States Government, as Represented by the U.S. General Services Administration and U.S. Customs and Border Protection

INTRODUCTION

Key terms used in this Arrangement are defined in the Key Terms section beginning on page 2.

The Crossing Agreement dated as of June 15, 2012, between Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport, the Windsor-Detroit Bridge Authority, an entity established by Canada pursuant to the laws of Canada, and the State of Michigan, in its own right, as represented by its Governor, and by and through the Michigan Department of Transportation, a department of Michigan, and the Michigan Strategic Fund, a public body corporate and politic and public agency of Michigan, provides a framework as described in the Crossing Agreement for the Crossing Authority:

(a) to design, construct, finance, operate, and maintain the International Crossing between Canada and Michigan through the life-cycle of the International Crossing and design, construct and finance the Michigan Interchange prior to the International Crossing Opening Date, under the oversight of a jointly established International Authority with three members appointed by Canada and the Crossing Authority and three members appointed by the Michigan Participants; and

(b) to design, construct, finance, Operate, and Maintain the U.S. Federal Plaza and the U.S. Federal Plaza Facilities, subject to the agreement of the U.S. Federal Agencies and subject to funding as approved by Canada, initially through one Public-Private Agreement with one private sector Concessionaire procured through a competitive procurement process.

This Arrangement is intended by Canada, the Crossing Authority and Michigan to satisfy the requirement in Article IX, section 4 of the Crossing Agreement for the Crossing Authority to

enter into discussions with the U.S. Federal Agencies to determine whether and the extent to which the U.S. Federal Agencies or the Crossing Authority will be responsible for one or more of the design, construction, finance and maintenance of the U.S. Federal Plaza.

On March 25, 2013, the U.S. Department of State approved the Crossing Agreement. USG was not a party to the Crossing Agreement. On April 12, 2013, the U.S. Department of State issued the Presidential Permit.

To facilitate meeting broader project delivery milestones and to govern the development and post-delivery operation of the U.S. Federal Plaza, the Participants have agreed to establish this non-binding Arrangement. This Arrangement describes the bi-national/interagency strategy for delivering the U.S. Federal Plaza and defines the expected development and post-delivery roles and responsibilities of the Participants.

This Arrangement is not intended by any of the Participants to satisfy the requirement in Article 10, paragraph 2 of the Presidential Permit for an agreement between Michigan and CBP and other U.S. Federal Agencies on provision of suitable facilities for officers to perform their duties.

KEY TERMS

Where used in this Arrangement, except Appendices A and B, the following words and terms have the following meanings:

(a) **"Arrangement"** means this U.S. Federal Plaza Arrangement, with the exception of Appendices A and B.

(b) **"Canada"** means Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport.

(c) **"Canadian Crossing"** means the bridge, plaza and approach in Canada included in the International Crossing Alignment, but not including the Windsor-Essex Parkway.

(d) **"Concessionaire"** means a Private Entity that is party to a Public-Private Agreement contemplated by this Arrangement.

(e) **"CBP"** means U.S. Customs and Border Protection, a component of the U.S. Department of Homeland Security.

(f) **"Crossing Agreement"** means the agreement dated as of June 15, 2012, between Canada, the Crossing Authority and the Michigan Participants, attached as Appendix A to this Arrangement.

(g) **"Crossing Authority"** means the WDBA.

(h) **"Furniture, Fixtures & Equipment"** means the information technology infrastructure, furniture, security, voice/data, CBP inspection-related equipment,

and other needs that are not a part of or an extension of the shell facilities that CBP or any other U.S. Federal Agency requires to operate at full capacity.

(i) "**GSA**" means the U.S. General Services Administration, an independent agency in the executive branch of the USG.

(j) "**International Authority**" means a public body corporate and legal entity established by the Crossing Agreement.

(k) "**International Crossing**" means the Canadian Crossing and the Michigan Crossing.

(l) "**International Crossing Alignment**" means the location of the Canadian Crossing in Canada and the location of the Michigan Crossing, the Michigan Interchange and the U.S. Federal Plaza in Michigan substantially consistent with the Detroit River International Crossing Environmental Assessment Study, Environmental Assessment Report W.O. 04-33-002, dated December 2008, approved by the Ontario Minister of Environment on August 11, 2009, and substantially consistent with the Record of Decision for the Proposed Detroit River International Crossing, Wayne County, Michigan, FHWA-MI-EIS-05-01-R, dated January 14, 2009.

(m) "**International Crossing Opening Date**" means the date the International Crossing is open to transportation by the public.

(n) "**Maintain**" and "**Maintenance**" means the regular, recurring work, activities and materials that preserve or sustain the ability of a property asset to continue to carry out its intended function or preserve its established level of performance, including facility preventive maintenance, general repairs (including capital repairs) and necessary replacements (including capital replacements).

(o) "**MDOT**" means the Michigan Department of Transportation, a department of Michigan.

(p) "**Michigan**" means the State of Michigan, in its own right, as represented by its Governor.

(q) "**Michigan Crossing**" means the bridge and approach, including the plaza, in Michigan, included in the International Crossing Alignment, but not including the Michigan Interchange and the U.S. Federal Plaza.

(r) "**Michigan Interchange**" means the interchange between Interstate 75 and the Michigan Crossing or the U.S. Federal Plaza, included in the International Crossing Alignment.

(s) "**Michigan Participants**" means Michigan, MDOT and MSF.

(t) **"Michigan Strategic Fund"** or **"MSF"** means the Michigan Strategic Fund, a public body corporate and politic and public agency of Michigan.

(u) **"Operate"** and **"Operations"** means facility management activities associated with the day-to-day occupancy and use of a facility, including custodial services, purchase of water, electricity, natural gas, sewage disposal, and other utilities, landscape and grounds upkeep, snow removal, waste disposal and recycling, and pest control.

(v) **"P3 Procurement Process"** means the public-private-partnership procurement process described in Appendix C to this Arrangement.

(w) **"Participants"** means Transport Canada, the Crossing Authority, Michigan, and the USG.

(x) **"Presidential Permit"** means the Presidential Permit issued by the U.S. Department of State to Michigan on April 12, 2013, to construct, connect, operate, and maintain at the border of the United States a bridge linking Detroit, Michigan and Windsor, Ontario attached as Appendix B to this Arrangement. *See* 78 Fed. Reg. 23327 (April 18, 2013); 78 Fed. Reg. 25521 (May 1, 2013).

(y) **"Presidential Permit Application"** means Michigan's June 18, 2012, application for a Presidential Permit.

(z) **"Private Entity"** means any non-governmental business entity.

(aa) **"Proponent"** means a respondent to the RFP.

(bb) **"Public-Private Agreement"** means any agreement between the Crossing Authority and a Concessionaire (i) prior to the International Crossing Opening Date providing for the design, construction, financing, operation, and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date providing for the design and construction of the Michigan Interchange; (iii) prior to the International Crossing Opening Date providing for the design, construction, financing, Operation, and Maintenance of the U.S. Federal Plaza Facilities; and (iv) after the International Crossing Opening Date providing for the improvement, Operation and Maintenance of one or more of the International Crossing and the U.S. Federal Plaza Facilities.

(cc) **"Redevelopment"** or **"Redeveloping"** means demolishing and rebuilding the U.S. Federal Plaza Facilities in whole or in majority part for purposes of improving their operational capabilities.

(dd) **"RFP"** means the request for proposals for the Public-Private Agreement for the International Crossing, the Michigan Interchange and the U.S. Federal Plaza Facilities.

(ee) **"RFQ"** means the request for qualifications for the Public-Private Agreement for the International Crossing, the Michigan Interchange and the U.S. Federal Plaza Facilities.

(ff) **"Transport Canada"** means the Department of Transport, a department of the Government of Canada.

(gg) **"U.S."** means the United States of America.

(hh) **"U.S. Federal Agencies"** means CBP, GSA and any other U.S. Federal Government agency, as applicable in the context.

(ii) **"U.S. Federal Inspection Services"** means customs, immigration, agricultural inspections, and other international border inspection-related services performed by U.S. Federal Agencies.

(jj) **"U.S. Federal Plaza"** means the plaza in Michigan consistent with the location defined in the International Crossing Alignment.

(kk) **"U.S. Federal Plaza Facilities"** means all structures, facilities and improvements on the U.S. Federal Plaza for use by one or more U.S. Federal Agencies for U.S. Federal Inspection Services consistent with the structure, facilities and improvements at comparable U.S. international border crossings

(ll) **"U.S. Federal Plaza Lands"** means all land, rights-of-way, property, rights, easements, and interests, if any, determined by the Crossing Authority (in consultation with Michigan) and the appropriate U.S. Federal Agencies, to be necessary for the U.S. Federal Plaza.

(mm) **"U.S. Federal Plaza Lands Lease"** or **"Land Lease"** means the lease by the Michigan Participants to the Crossing Authority of the U.S. Federal Plaza Lands owned by Michigan, at no cost, for a term commencing on the date of execution and expiring or otherwise terminating upon the expiration or other termination of the Crossing Agreement, and in form and substance satisfactory to the Crossing Authority.

(nn) **"U.S. Federal Plaza Sublease"** or **"Sublease"** means the sublease by the Crossing Authority to USG of the U.S. Federal Plaza Lands and the U.S. Federal Plaza Facilities, at no cost, for the original term of 20 years commencing upon occupancy of the U.S. Federal Plaza Facilities, and on other terms and conditions mutually agreed upon by the Crossing Authority and USG; renewable for successive 20-year renewal terms and a final renewal term of less than 20 years expiring upon the expiration of the U.S. Federal Plaza Lands Lease; with each renewal term to be on the same terms and conditions as the original term, except for the renewal rights; exercisable at the option of USG.

(oo) **"USG"** means the U.S. Government, acting by and through GSA or CBP, as appropriate.

(pp) **"Windsor-Detroit Bridge Authority"** or **"WDBA"** means a Crown corporation established by Canada pursuant to the *International Bridges and Tunnels Act* (Canada).

PURPOSE OF THE ARRANGEMENT

This Arrangement is intended to provide a framework for the on-going coordinated delivery of the U.S. Federal Plaza. In doing so, this Arrangement is expected to foster a mutual understanding of forthcoming solicitation, planning, design, construction, operations, and maintenance activities, as well as the high-level expectations concerning roles and responsibilities of the Participants. This Arrangement also references a legally binding U.S. Federal Plaza Sublease to be entered into in the future between USG and WDBA that is considered in furtherance of the Presidential Permit.

This Arrangement does not obligate funds or create a financial obligation by any of the Participants. All activities contemplated by this Arrangement are subject to the availability of funds and sufficient budgetary resources. This Arrangement does not amend, alter, modify, or supersede the Presidential Permit or the Crossing Agreement and is not intended to create any rights or obligations under domestic or international law and does not create or confer any right or benefit on any person or party, private or public. The provisions of this Arrangement are not intended to prevent any Participant from cooperating with other countries or from granting assistance consistent with the provision of applicable international treaties, agreements or arrangements, or domestic laws and related policies.

U.S. FEDERAL PLAZA DELIVERY STRATEGY

The Michigan Participants, subject to funding by the Crossing Authority, have agreed pursuant to the Crossing Agreement to be responsible for the acquisition, including by condemnation, if necessary, of the U.S. Federal Plaza Lands.

The Crossing Authority, subject to funding by Canada, has agreed pursuant to the Crossing Agreement to be responsible for funding the acquisition of the U.S. Federal Plaza Lands by the Michigan Participants.

The Michigan Participants intend to acquire the U.S. Federal Plaza Lands consistent with the Presidential Permit Application and the requirements of the Presidential Permit.

The Crossing Authority intends to provide GSA with rights to review and approve the site selected for the U.S. Federal Plaza Facilities on the U.S. Federal Plaza Lands to ensure that the selected site is consistent with the Presidential Permit Application and the Presidential Permit and is adequate and acceptable for the Crossing Authority to construct and operate or cause to be constructed and operated the U.S. Federal Plaza Facilities on the U.S. Federal Plaza Lands.

The Michigan Participants intend to lease the U.S. Federal Plaza Lands owned by the Michigan Participants to the Crossing Authority, at no cost, for a term commencing on the date of execution and expiring or otherwise terminating upon the expiration or other termination of the Crossing Agreement, and in form and substance satisfactory to the Crossing Authority. The Michigan Participants and the Crossing Authority intend to execute the U.S. Federal Plaza Lands Lease prior to execution of the initial Public-Private Agreement.

The Crossing Authority, subject to funding approved by Canada, intends to design, construct, finance, Operate, and Maintain the U.S. Federal Plaza Facilities, initially through one Public-Private Agreement with one Concessionaire procured through a competitive procurement process for the International Crossing, the Michigan Interchange and the U.S. Federal Plaza Facilities, and after the expiration or earlier termination of the initial Public-Private Agreement, through one or more subsequent Public-Private Agreements with one or more Concessionaires, or through other means determined by the Crossing Authority, in consultation with USG.

The Crossing Authority intends to procure the initial Public-Private Agreement through the P3 Procurement Process. The Crossing Authority and the U.S. Federal Agencies intend that the Crossing Authority may rely upon the participation of the U.S. Federal Agencies to assist with the preparation of the RFQ and the RFP, with the evaluation of responses thereto and with the negotiation of the Public-Private Agreement, as a non-voting technical advisor, consistent with the P3 Procurement Process.

The Crossing Authority intends to sublease the U.S. Federal Plaza Lands and the U.S. Federal Plaza Facilities to USG, acting by and through GSA, at no cost, for the original term of 20 years commencing upon occupancy of the U.S. Federal Plaza Facilities, and on other terms and conditions mutually agreed upon by the Crossing Authority and USG; renewable for successive 20-year renewal terms and a final renewal term of less than 20 years expiring upon the expiration of the U.S. Federal Plaza Lands Lease; with each renewal term to be on the same terms and conditions as the original term, except for the renewal rights; exercisable at the option of USG. The Crossing Authority and USG intend to execute the U.S. Federal Plaza Sublease prior to the execution of the initial Public-Private Agreement. USG intends to exercise all of its options to renew pursuant to the U.S. Federal Plaza Sublease, subject to the availability of funds and sufficient budgetary resources.

The Crossing Authority and USG intend that the terms and conditions of the U.S. Federal Plaza Sublease provide the Crossing Authority and USG with the right to terminate the U.S. Federal Plaza Sublease in the event of default by the other, but only after providing sufficient notice and a reasonable period to cure or dispute the existence of the default, including good faith consultations between the Canadian and U.S. Governments to avoid the termination.

The Participants acknowledge that the U.S. Federal Plaza Lands Lease and the U.S. Federal Plaza Sublease will contain provisions that preserve USG's right to continue in possession and occupy and operate the U.S. Federal Plaza Lands and the U.S. Federal Plaza Facilities solely for U.S. Federal Inspection Services, during the term of the Crossing Agreement, in the event of termination of the U.S. Federal Plaza Sublease upon default by the Crossing Authority.

In the event of the expiration or earlier termination of the Crossing Agreement, the Participants intend to negotiate in good faith to permit USG to continue to use the U.S. Federal Plaza Lands and the U.S. Federal Plaza Facilities for U.S. Federal Inspection Services.

USG ROLES & ACTIVITIES

USG intends to:

1. Assign a single point of contact on behalf of USG to coordinate the activities of USG during the initial procurement, design and construction of the U.S. Federal Plaza Facilities, consistent with this Arrangement, the P3 Procurement Process and the initial Public-Private Agreement;

2. Assign a single point of contact for USG to coordinate Operations and Maintenance (including life-cycle capital and non-capital repairs) by the Concessionaire on behalf of the Crossing Authority during the term of the U.S. Federal Plaza Sublease, consistent with the U.S. Federal Plaza Sublease and the initial Public-Private Agreement;

3. During the procurement for the U.S. Federal Plaza Facilities prior to the execution of the initial Public-Private Agreement, consistent with the requirements of the P3 Procurement Process described in greater detail in Appendix C, and in consultation with Michigan, as appropriate:

(a) Provide to the Crossing Authority project specifications compliant with applicable federal laws, rules, regulations, policies, and codes for the U.S. Federal Plaza Facilities.

(b) Provide previously developed designs and related studies to inform the Public-Private Agreement to be procured by the Crossing Authority for the U.S. Federal Plaza Facilities.

(c) Provide to the Crossing Authority documents relating to the U.S. Federal Plaza Facilities for incorporation into the RFQ and RFP, including, but not limited to, the Land Port of Entry Design Standards and Operations and Maintenance Service Level Agreement templates, subject to USG's procedures for access to Sensitive But Unclassified Building Information and Controlled Unclassified Information.

(d) Provide review and input, as appropriate, to the Crossing Authority regarding project development and implementation milestones, including, but not limited to, for example, peer review of design concepts for the U.S. Federal Plaza Facilities.

(e) Coordinate with the Crossing Authority and other relevant stakeholders to establish a U.S. Federal Plaza master plan that could accommodate future facility improvements and expansions in anticipation of changing traffic volumes and workload.

(f) Assign the necessary subject matter experts to assist with the RFQ and the RFP development, proposal reviews, technical evaluations, bidder conferences/ meetings, and other solicitation-related activities;

4. During initial design and construction of the U.S. Federal Plaza Facilities after the execution of the initial Public-Private Agreement, consistent with the requirements of the P3 Procurement Process and the initial Public-Private Agreement, and in consultation with Michigan, as appropriate:

(a) Collaborate with the Crossing Authority to support design and construction document reviews and approvals, facilitate lease planning and execution activities and meet other key milestones consistent with the P3 Procurement Process.

(b) Outfit the completed U.S. Federal Plaza with the Furniture, Fixtures & Equipment in accordance with the P3 Procurement Process.

(c) Participate in construction walk-throughs, delivery inspections and punch list activities to confirm operational requirements and quality standards have been met; and

5. During the operation of the U.S. Federal Plaza Facilities after the International Crossing Opening Date, consistent with the U.S. Federal Plaza Sublease and the initial Public-Private Agreement:

(a) Subject to the U.S. Federal Agencies' completion of necessary regulatory actions prior to the commencement of the U.S. Federal Inspection Services at the International Crossing, availability of funds, sufficient budgetary resources, and in accordance with the operational policies of the U.S. Federal Agencies, as such policies may be revised from time to time, commence U.S. Federal Inspection Services at the International Crossing on the International Crossing Opening Date and continue U.S. Federal Inspection Services for the International Crossing during the original term of the U.S. Federal Plaza Sublease and all renewals, unless terminated pursuant to the terms of the U.S. Federal Plaza Sublease.

(b) Subject to availability of funds, sufficient budgetary resources and in accordance with the operational policies of the U.S. Federal Agencies, as such policies may be revised from time to time, staff the U.S. Federal Plaza Facilities for the U.S. Federal Inspection Services to accommodate traffic volumes on the Michigan Crossing at a level consistent with staffing levels at comparable U.S. international border crossings.

(c) Maintain U.S. Federal Plaza Furniture, Fixtures & Equipment, as needed.

(d) Collaborate with Canadian inspection services authorities, as requested, in seeking operational efficiencies in Canadian inspection services and U.S. Federal Inspection Services for the International Crossing during the original term of the U.S. Federal Plaza Sublease and all renewals.

U.S. FEDERAL PLAZA SUBLEASE

The Participants intend for agreement to be reached between the Crossing Authority and USG:

(a) on the material terms of the U.S. Federal Plaza Sublease, consistent with the terms outlined in Appendix D, in principle, or as otherwise agreed by the Crossing Authority and USG, as soon as reasonably possible and not later than March 31, 2015;

(b) on the proposed form and content of the U.S. Federal Plaza Sublease, consistent with the terms outlined in Appendix D, or as otherwise agreed by the Crossing Authority and USG, prior to the issuance of the RFP; and

(c) on the final form and content of the U.S. Federal Plaza Sublease, consistent with the terms as outlined in Appendix D, or as otherwise agreed by the Crossing Authority and USG, for execution prior to the execution of the initial Public-Private Agreement.

FINAL DISPOSITIONS

This Arrangement comes into effect upon its signature by all the Participants and may be executed in counterparts, each of which when signed is an original but all of which taken together constitute one and the same instrument. The Participants may amend this Arrangement at any time upon their mutual written consent.

SIGNATORIES

For Transport Canada

(b) (6)

_____ DATE: FEV FEB 1 7 2015

Name:
Title:

For the Windsor-Detroit Bridge Authority

_____ DATE: _____

Name:
Title:

For the State of Michigan

_____ DATE: _____

Name:
Title:

For the U.S. General Services Administration

_____ DATE: _____

Name:
Title:

For U.S. Customs & Border Protection

_____ DATE: _____

Name:
Title:

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SIGNATORIES

For Transport Canada

_____ DATE: _____

Name:
Title:

For the Windsor-Detroit Bridge Authority

_____ DATE: February 4, 2015

Name: (b) (6)
Title:

For the State of Michigan

_____ DATE: _____

Name:
Title:

For the U.S. General Services Administration

_____ DATE: _____

Name:
Title:

For U.S. Customs & Border Protection

_____ DATE: _____

Name:
Title:

11795392-2

SIGNATORIES

For Transport Canada

_____ DATE:_____

Name:
Title:

For the Windsor-Detroit Bridge Authority

_____ DATE:_____

Name:
Title:

For the State of Michigan

_____ DATE: JAN 2 0 2015

Name: (b) (6)
Title:

For the U.S. General Services Administration

_____ DATE:_____

Name:
Title:

For U.S. Customs & Border Protection

_____ DATE:_____

Name:
Title:

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SIGNATORIES

For Transport Canada

_____ DATE: _____

Name:
Title:

For the Windsor-Detroit Bridge Authority

_____ DATE: _____

Name:
Title:

For the State of Michigan

_____ DATE: _____

Name:
Title:

For the U.S. General Services Administration

_____ DATE: January 21, 2015

Name: (b) (6)
Title: Commissioner, Public Buildings Service

For U.S. Customs & Border Protection

_____ DATE: 1/28/2015

Name: (b) (6)
Title:

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