

U.S. CUSTOMS AND BORDER PROTECTION
“SECTION 481” SERVICE FEE AGREEMENT

BETWEEN

U.S. CUSTOMS AND BORDER PROTECTION AND PORT OF SEATTLE
FOR CBP SERVICES

I. General

Under the provisions of Sections 481 and 484 of the *Homeland Security Act of 2002* (hereinafter “the Act”) the Commissioner of U.S. Customs and Border Protection (“CBP”) is authorized to enter into fee agreements to provide CBP services to requesting parties. The Commissioner of CBP has delegated the authorities under the Act to the Executive Assistant Commissioner of CBP’s Office of Field Operations.

The purpose of this document is to establish a partnership and agreement (“Agreement”) between CBP and the party requesting such services (“Requestor”) that will generate an offsetting funding source for the provision of certain services in order to promote the United States economy and border security. Under this Agreement, the funding received by CBP shall be used to pay CBP for the costs incurred in providing any requested services, which includes 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 or governmental 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: Port of Seattle

Location(s) covered by this Agreement: Seattle–Tacoma International Airport

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

A determination has been made by the Executive Assistant Commissioner of CBP’s Office of Field Operations (“OFO”) that the Requestor named above has met the requirements for entering into this 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 Executive Assistant Commissioner of CBP's Office of Field Operations. With respect to CBP's authority under this Agreement, the Executive Assistant Commissioner hereby delegates to 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 and to enter into the separate MOU covered by this Agreement on CBP's behalf. The DFO may delegate this authority to the Port Director for the location(s) covered by this Agreement. The Port Director may delegate this authority to the 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 official for the Requestor with the authority to request (and cancel requests for) CBP services is the Executive Director of the Port of Seattle. For purposes of this Agreement, the Executive Director of the Port of Seattle hereby delegates his/her authority to request (and cancel requests for) CBP services to the Managing Director, Seattle Tacoma International Airport, and/or the Director, Airport Operations. This delegated authority will also reside in any person acting in the capacity of the Senior Manager, Airport Operations and/or 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 locations covered by the Agreement 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 certain locations. Regardless of any fee 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 (except employees of the U.S. Border Patrol) or Office of Field Operations (OFO) contractors that are authorized to provide the services outlined in this Agreement.
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. “Fee agreement costs” means the costs of CBP services that are to be provided according to this Agreement and for which CBP will seek payment 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 and contractors 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 not considered “Small airports” (as defined by Section 481(e)(2) of the Act), the term “fee agreement costs” is limited to mean “overtime pay” for

CBP Officers and the costs related to the salaries and expenses of CBP personnel (other than OFO contractors) supporting those CBP Officers in their performance of CBP Services.

6. "Services" or "CBP Services" means any activities of any employee (except employees of the U.S. Border Patrol) or Office of Field Operations contractor of CBP pertaining to or in support of customs, agricultural processing, border security, and/or immigration inspection-related matters at ports of entry or any other facility at which CBP provides or will provide services.

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 481(a)(3) 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 pay 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 X's second paragraph.

IV. 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, or 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 these reviews, including 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 and contractors covered by this Agreement. The Requestor shall not exercise any control or authority over CBP employees and contractors, methods of operation, policies or training of employees and contractors.

V. 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 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.

VI. Requestor Responsibilities

The Requestor agrees to pay CBP for all costs associated with services provided under this Agreement. Requestor also agrees to remit all such 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 costs relating to such approved requests that cannot be reasonably avoided.

The Requestor should maintain liquid assets sufficient to pay all of CBP's costs anticipated to be owed by the Requestor for a two-month period. The Requestor agrees to notify CBP promptly if it expects to become unable to pay the 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 X's second paragraph. The further dissemination of any CBP-provided information that is not subject to an NDA, but was received pursuant to this Agreement, requires the advance approval in writing of CBP.

VII. Unanticipated Service Adjustments

The Requestor acknowledges that during emergency situations, contingency operations, sudden changes in workload, unanticipated operational impacts, or changes to CBP's budget and/or resource allocations for the locations 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 the foregoing list of events is not exhaustive. CBP shall promptly notify the Requestor when any such event 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 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 pay CBP for the additional costs incurred by CBP as a result of 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.

VIII. Payment of Costs

All 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.

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 must 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 X's second paragraph, 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 481(j)(2) of the Act provides CBP with certain other 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.

IX. Service Commencement Date

Services will become available on a date mutually determined by CBP and the Requestor.

X. 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 to other remedies available to CBP under law.

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

XI. 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.

XII. 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 costs to CBP while the consultation process continues.

XIII. 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.

XIV. 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.

XV. 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.

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

Stephen P. Metruck
Executive Director
Port of Seattle, WA
Date: