



# USVI Services and Memorandum of Agreement

*October 7, 2015*

Fiscal Year 2015 Report to Congress



Homeland  
Security

*U.S. Customs and Border Protection*

# Message from the Deputy Commissioner of CBP

October 7, 2015

I am pleased to submit the following Report, "USVI Services and Memorandum of Agreement," prepared by U.S. Customs and Border Protection.



This document has been compiled pursuant to requirements set forth in Senate Report 113-198 that accompanies the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (P.L. 114-4). The report provides a report on the scope of CBP services performed for the U.S. Virgin Islands (USVI), their financing, and the steps taken toward a new memorandum of agreement with the USVI.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John R. Carter  
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven  
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001 or the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, appearing to read "K. McAleenan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin K. McAleenan  
Deputy Commissioner  
U.S. Customs and Border Protection

# Executive Summary

CBP is America's frontline, protecting the Nation from threats to our safety and economy and preventing terrorist and terrorist weapons from entering the United States and its territories. At the ports of entry (POE), CBP's Office of Field Operations secures the flow of people and goods into and out of the country while facilitating legitimate travel and trade. OFO also operates at the POEs in the USVI to include the islands of St. Thomas, St. Croix, and St. John.

CBP performs a number of law enforcement functions within the USVI, including pre-departure operations, sea and air passenger operations, trade and cargo operations, enforcement operations, and international mail operations. Despite the varied and increasing CBP workload in the USVI, resources from the U.S. Virgin Islands Deposit Fund (VIDF), the sole source for reimbursing the cost of customs inspections in the USVI, have either remained stagnant or have been reduced. In 2014, the CBP Commissioner and the USVI Governor signed a new memorandum of agreement that established an agreement on the administration of the VIDF. It also addresses the declining funds and increasing costs of CBP operations in the USVI by seeking alternative funding sources, increasing cost efficiencies in operations, and providing reimbursable services.



# USVI Services and Memorandum of Agreement

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# I. Legislative Language

This document was compiled pursuant to the legislative language set forth in Senate Report 113-198 that accompanies the *Fiscal Year 2015 Department of Homeland Security Appropriations Act* (P.L. 114-4).

Senate Report 113-198 states:

## U.S. VIRGIN ISLANDS

The Committee understands CBP and its legacy agencies have been performing both statutorily required services as well as additional services requested by the Government of the U.S. Virgin Islands [USVI] on a fully reimbursable basis, for nearly 100 years. A 1994 Memorandum of Agreement [MOA] between CBP and the USVI memorializes operational details regarding services requested by the USVI and the financing of those services. The Committee further understands that, due to fiscal constraints in recent years, CBP has been implementing cost savings measures without reducing services in the territory and is pursuing a new MOA with the Government of the USVI. The Committee directs CBP to report to the Committee on the scope of services performed, their financing, and the steps taken toward a new MOA with the USVI.

## II. Background

The U.S. Virgin Islands (USVI) is an unincorporated territory of the United States that was purchased from Denmark in 1917. Although a U.S. territory, the USVI is expressly excluded by statute from the customs territory of the United States. Therefore, the USVI Legislature has the power to establish its own customs duties applicable to merchandise imported into the USVI. The current customs duties are an *ad valorem* rate with eligibility for exemption.

Congress also required the former United States Customs Service, now U.S. Customs and Border Protection (CBP), to collect any such customs duties on behalf of the USVI. The primary statutes governing this arrangement are the Organic Acts of 1917, 1936, and (revised) 1954. Section 36 of the 1936 Organic Act, codified as 48 U.S.C. § 1406i, provides to CBP the authority and broad discretion to administer the customs laws of the USVI. As the USVI is outside of the customs territory of the United States, the authority granted via 48 U.S.C. § 1406i and 48 U.S.C § 1469c expands CBP's authority to enforce USVI customs laws and to perform other activities to be funded by the Virgin Islands Deposit Fund (VIDF). All USVI customs duties are deposited into the VIDF and CBP costs then are reimbursed by the VIDF. CBP may not supplement the costs associated with collecting and enforcing the USVI's customs duties and laws with its general appropriations. The VIDF is the sole funding source for these statutorily required activities.

48 U.S.C § 1469c provides CBP (or any U.S. Government agency or instrumentality) the authority to provide additional services to the USVI, at its behest, on a reimbursable basis. This authority has been used by CBP to fund pre-departure operations in the USVI.

In addition to customs inspections and customs duty collection, CBP also provides immigration and agriculture inspection services as authorized by various statutes and funded by each activity's respective user fee funding source. CBP currently is the largest law enforcement presence in the USVI, a territory positioned in a narcotics source and transit zone in the Caribbean.

### III. Services to the USVI

#### A. Scope of Services

Since CBP was established in 2003, its Office of Field Operations' mission requirements have expanded to meet changing security objectives and accommodate fluctuations in global trade and international travel. Since 2008, there have been significant increases in inbound travel and trade volumes. CBP processed nearly 375 million passengers in the land, sea, and air environments in Fiscal Year (FY) 2014, up from 362 million in FY 2013. International air passenger volume increased by more than 17 percent between FY 2009 and FY 2014 and is currently at a record level. CBP estimates more than 115 million international air passenger arrivals in FY 2016 (comprised of 43 percent U.S. citizens and 57 percent foreign nationals). In FY 2014, \$2.46 trillion worth of goods were processed through the ports of entry (POE). Inbound trade volume grew by more than 24 percent between FY 2010 (\$1.99 billion) and FY 2014 and is expected to exceed previous records in the air, land, and sea environments in FY 2016.

When these trends are analyzed in the USVI, the amount of outbound pre-inspected passengers destined for the continental United States (CONUS) locations also has increased 9.5 percent in St. Thomas and 2.5 percent in St. Croix since FY 2010. In the sea passenger environment, arriving passengers and crew volume alone has seen a 13-percent increase in St. Thomas since FY 2011. These increases are a significant economic driver in the USVI.

#### **1. Air Passenger Operations**

CBP Officers (CBPO) and CBP Agriculture Specialists are assigned permanently to Cyril E. King Airport in St. Thomas, USVI, and Henry E. Rohlsen Airport in St. Croix, USVI, to provide adequate and expeditious inspection process for airport passengers arriving to the USVI. This inspection process is mandated by federal statute and can be done only by CBP personnel stationed in the USVI.

All persons arriving at a POE (air and sea) in the USVI from a foreign country are subject to inspection by CBPOs. CBPOs are responsible for ensuring that arriving passengers comply with all immigration, customs, and agriculture laws and regulations. Each arriving traveler from a foreign location must complete a CBP declaration as well as other entry forms required by federal law. Currently, foreign arrivals and departures to and from the USVI are processed in the same manner as any other POE in the CONUS.

## **2. Seaport Passenger Operations**

Seaport operations consist of the processing of cruise-line vessels, ferries, charter vessels, and private boats (and their passengers and crew) arriving into any of the three islands (St. Thomas, St. John, and St. Croix) from foreign locations.

Several ferry boats and charter vessels currently are operating between the British Virgin Islands and the Edward Wilmoth Blyden Marine Terminal in St. Thomas or the St. John CBP Terminal. More than 100,000 passengers per year use these modes of transportation. These charter vessels conduct daily excursions for tourist travelers to and from the British Virgin Islands. The ferries serve as a mode of transportation for daily commuters to the USVI, as well as for students of the University of the West Indies. CBPOs and CBP Agriculture Specialists are assigned permanently at these two facilities to provide adequate and expeditious inspection process to ferry commuters. There are no foreign ferry operations being performed by CBP in St. Croix.

Private boaters arriving from foreign countries must report their arrival to CBP in the USVI. As part of the CBP comprehensive effort to improve the security of our Nation's borders while enhancing legitimate travel, including boaters, CBP has implemented the Small Vessel Reporting System to facilitate the reporting process for arriving boaters and to expedite the clearance of their vessels. The Small Vessel Reporting System is a Web-based, automated online reporting system that has significantly transformed and simplified the report requirements for this sector; however, the law still requires CBPOs to be available at the various POEs to perform face-to-face inspections of certain boaters based on risk and also to comply with immigration admissibility and customs clearance requirements. As a major tourist location, the USVI receives a significant number of private boat visitors arriving daily to private marinas and public seaport terminals.

Private boats are processed at the St. John facility, the Blyden Terminal, the Yacht Heaven Marina, and the Gallows Bay Station in St. Croix.

Another important CBP mission is the inspection of cruise-line passengers and crew arriving in the USVI. St. Thomas is considered an important port of call for cruise ships traveling in the Caribbean. CBP has processed close to 30,000 cruise ship passengers per week during high season. Cruise-line companies such as Carnival, Norwegian, Disney, Royal Caribbean, Seaborne, Celebrity, and Princess currently are operating in the Caribbean and listing St. Thomas as a port of call. These vessels may carry between 2,000 to 3,000 passengers (not including crew) per trip to visit the port of St. Thomas.



### **3. Pre-departure Operations**

CBP also provides pre-departure inspection of passengers traveling to the CONUS. Travelers destined to the CONUS locations on nonstop flights constitute the majority of the air passengers currently being processed in the two international airports located in the USVI. This process is called “pre-departure inspection” and is conducted by CBPOs and CBP Agriculture Specialists before passengers board the aircraft heading to the CONUS at both St. Thomas and St. Croix.

Based on a 1966 request from the Government of the U.S. Virgin Islands, CBP performs pre-departure inspections in the USVI prior to air passenger departure. This service was requested and is performed on a fully reimbursable basis under U.S. law applicable to U.S. territorial governments. However, since 2012, some of these costs have been absorbed by CBP due to collections in the VIDF being insufficient to cover the full cost of pre-departure inspections. Under a new agreement, CBP will not seek any reimbursement from the VIDF for pre-departure operations in the USVI in FY 2015 and FY 2016.

Pre-departure operations are unique to the USVI based on its legal status as outside of the customs territory of the United States. Pre-departure is a unique service that is utilized by many U.S. citizens returning to the CONUS, but it can be considered analogous to preclearance operations in the Caribbean only in terms of the outcome for the passenger (i.e., arrival at a domestic terminal).

### **4. Cargo and Trade Operations**

Cargo Operations consists of the processing of all cargo arriving into any of the three islands (St. Thomas, St. John, and St. Croix). It covers airport and seaport cargo.

The processing of cargo in the USVI is unique because it operates under the USVI’s legal status as outside of the customs territory of the United States. In short, the customs laws of the United States, e.g., the Harmonized Tariff Schedule of the United States, do not apply to goods entering the USVI. As a result, the USVI customs duty is different from the one applicable in the CONUS. Also, many of the trade-related automation applications used by CBP in the CONUS cannot be used in the USVI. As such, most cargo and trade transactions are performed manually by CBP staff to ensure compliance with national and local requirements. CBPOs, Import Specialists, and Entry Specialists have to process manually almost all documentation and data related to the entry process.

## **5. International Mail Operations**

All incoming international mail that is intended for delivery in the customs territory of the United States and the USVI is subject to CBP inspection and release. Along with the mail inspection and release process, CBP is responsible for assessing duties on informal mail entries and directing addressees to file formal entries on high-value shipments or as otherwise required by law. CBP also is responsible for examining mail for contraband or other illegally imported articles as well as restricted or prohibited merchandise. There is a CBP international mail facility (IMF) located in St. Thomas (Sugar Estate Post Office, USVI), which processes all international mail arriving from Caribbean neighbor islands. Having an IMF in the USVI facilitates the processing of foreign mail from the eastern Caribbean. Were it not for this facility, this mail would have to be processed at an IMF in the CONUS before arriving in the USVI.

## **6. Enforcement Operations**

CBP operates various enforcement teams, both in St. Thomas and St. Croix, that are responsible for performing traditional enforcement duties similar to other CONUS locations, including anti-smuggling operations in the air and sea environment, the canine program in all environments, the operation of nonintrusive inspection technology (such as X-ray vans), vessel and aircraft searches, emergency response, special operations with other local and federal agencies, and assistance to other agencies when solicited.

In addition, these teams are responsible for implementing increased security and enforcement posture operations, which consist of enhancing CBP presence at seaport terminals and marinas and responding to calls related to the landing of illegal immigrants.

The USVI's (mainly St. John's) proximity to other foreign nation islands makes it approachable on all sides and the geographical location facilitates island hopping by traffickers and illegal aliens who wish to minimize exposure to law enforcement entities.

The main characteristic of CBP's enforcement teams is their capability to mobilize assets quickly to respond to all kind of threats. For example, CBP enforcement teams periodically participate in joint DHS operations. Local and federal law enforcement agencies partner with the enforcement teams' assets, resources, and authorities to perform a series of surge operations that have an effective impact on criminal and smuggling organizations. The operations have resulted in the apprehension of illegal aliens in the USVI and a significant number of drug seizures.

## B. Financing

Despite the varied and increasing CBP workload in the USVI, resources either remain stagnant or have been reduced with decreasing economic activity through imports slowing collections below even revised projections. This means that the workload is increasing dramatically but resources from the VIDF are not increasing at the same rate and are, in fact, decreasing funding power. In order to offset the decrease in collections, CBP has been reducing staff and shifting the remaining workforce to maintain the most highly prioritized missions.

<b>VIDF COLLECTIONS</b>							
	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Actuals</b>	\$ 12,017	\$ 11,671	\$ 11,621				
<b>Projected**</b>	\$ 12,219	\$ 12,407	\$ 12,656	\$ 11,789	\$ 11,867	\$ 11,925	\$ 11,983
*In thousands							
**Based on OMB Submissions							

CBP does not receive an annual appropriation from the United States Congress specifically for its operations in the USVI. CBP must use the VIDF to reimburse the cost of customs inspections in the USVI and may not use any additional sources of funding for these activities. Agriculture inspections and immigration inspections are funded through their respective user fees, the Agriculture Quarantine Inspection User Fee and the Immigration Inspection User Fee.

## IV. Memorandum of Agreement with USVI

### A. 1994 Memorandum of Agreement (MOA)

CBP and the Government of the U.S. Virgin Islands (GVI) signed an MOA in 1994 to outline the statutorily governed arrangement for services to be performed by (now) CBP in the USVI and the funding source for these required customs inspection activities, namely the VIDF. The 1994 MOA specifically identified two reimbursable services that CBP has performed at the USVI's request under 48 U.S.C. § 1469c, in addition to the collection of customs duties. One reimbursable service is the pre-departure inspection of air passengers departing the USVI for locations in the continental United States; the other is the collection of "wharfage and tonnage" port user fees. This user fee is no longer relevant as it was abolished.

In 2012, the GVI sought to renegotiate the 1994 MOA. CBP's first official in-person negotiations with the USVI took place in September 2012. The genesis of these multi-year discussions centers around three primary factors: the USVI's declining economic state<sup>1</sup>; CBP's perceived increasing costs due to the creation of DHS and significant presence in the islands; and increased crime in the islands due to their location in a very active drug trafficking zone in the Caribbean.

CBP and the GVI engaged in negotiations between September 2012 and December 2014. Final in-person negotiations took place in St. Thomas on December 16-17, 2014. These meetings resulted in a finalized MOA and Annex (regarding current services). The MOA and the Annex were signed by the USVI Governor on December 31, 2014, and by the CBP Commissioner on January 2, 2015.

### B. 2014 MOA

The primary purpose of the 2014 MOA is to establish an agreement on the administration of the VIDF. However, during negotiations, CBP and the GVI discussed numerous other initiatives that informed the final MOA.

#### 1. Pre-departure Operations in the USVI

Based on a GVI request made in 1966 and under 48 U.S.C § 1469c authority, the VIDF was used to offset the cost of pre-departure operations in the USVI. The final 2014 MOA

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<sup>1</sup> According to the U.S. Department of Commerce, Bureau of Economic Analysis, the estimates of Gross Domestic Product (GDP) for the U.S. Virgin Islands show that real GDP – GDP adjusted to remove price changes – decreased 13.2 percent in 2012 after decreasing 6.6 percent in 2011. (Available at: [http://www.bea.gov/newsreleases/general/terr/2013/vigdp\\_080213.pdf](http://www.bea.gov/newsreleases/general/terr/2013/vigdp_080213.pdf))

relies on an agreement between the GVI and the CBP Commissioner that CBP will fund pre-departure operations in the USVI in Fiscal Year (FY) 2015 and FY 2016. During this time, GVI and CBP will partner to explore alternative sources of funding for pre-departure operations in the USVI.

## **2. Cost Efficiencies in the USVI**

CBP has robust business transformation initiatives, automation, and modernization efforts at most of the POEs where CBP operates. CBP's efforts to achieve efficiencies are designed to facilitate lawful trade and travel while implementing cost-saving measures. The USVI, wherever feasible, committed to partner with CBP in efforts to improve services and achieve cost efficiencies in the USVI.

## **3. CBP Reimbursable Services**

Under the 2014 MOA, the USVI may request additional services from CBP on a reimbursable basis. The additional services may not include the current services as detailed in the MOA nor CBP's costs to provide customs pre-departure inspections commensurate with current service levels at the existing USVI locations. The MOA also outlines the scope of the additional services that may be requested as well as the mechanism by which the USVI will request and pay for these additional services.

## V. Conclusion

CBP is currently the largest law enforcement presence in the U.S. Virgin Islands (USVI), a territory that is well-positioned for the tourist industry but also within a narcotics source and transit zone in the Caribbean. As part of its duties, CBP provides an array of services in the USVI, from customs inspections and customs duty collection to immigration and agriculture inspection services.

The renegotiated memorandum of agreement (MOA) between CBP and the Government of the U.S. Virgin Islands (GVI) establishes an agreement on the administration of the U.S. Virgin Islands Deposit Fund. It addresses the declining funds and increasing costs of CBP operations in the USVI by seeking alternative funding sources, increasing cost efficiencies in operations, and providing reimbursable services. Going forward, CBP and the GVI will continue to work together to implement the provision of the 2014 MOA.

## VI. Appendices

### Appendix A – List of Acronyms and Abbreviations

<b>Acronym/Abbreviation</b>	<b>Definition</b>
<b>CBP</b>	U.S. Customs and Border Protection
<b>CBPO</b>	CBP Officer
<b>CONUS</b>	Continental United States
<b>DHS</b>	Department of Homeland Security
<b>FY</b>	Fiscal Year
<b>GVI</b>	Government of the U.S. Virgin Islands
<b>IMF</b>	International Mail Facility
<b>MOA</b>	Memorandum of Agreement
<b>OFO</b>	Office of Field Operations
<b>POE</b>	Port of Entry
<b>USVI</b>	U.S. Virgin Islands
<b>VIDF</b>	U.S. Virgin Islands Deposit Funds

## Appendix B – USVI MOA

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES VIRGIN ISLANDS  
AND  
U.S. CUSTOMS AND BORDER PROTECTION  
REGARDING THE  
VIRGIN ISLANDS DEPOSIT FUND  
IN AND FOR  
THE UNITED STATES VIRGIN ISLANDS  
December, 2014**

**WHEREAS, the United States Virgin Islands (“USVI”) is an unincorporated Territory of the United States;**

**WHEREAS, the USVI is located outside of the customs territory of the United States;**

**WHEREAS, the USVI is authorized to assess its own customs duties on certain foreign imports and under certain conditions;**

**WHEREAS, federal law requires the Secretary of Homeland Security and U.S. Customs and Border Protection (“CBP”) to designate the several ports and sub-ports of entry in the USVI and to make such rules and regulations and appoint such officers and employees as is deemed necessary for the administration of the customs laws in the USVI, and to fix the compensation of all such officers and employees;**

**WHEREAS, federal law separately allows CBP to provide certain services to the USVI upon the USVI’s request on a reimbursable basis;**

**WHEREAS, CBP is required to retain from its collection of the USVI customs duties its costs of collecting such customs duties and is required to transfer remaining proceeds to the USVI Treasury;**

**WHEREAS, CBP deposits the USVI customs duty collections into a CBP-administered U.S. Treasury account known as the Virgin Islands Deposit Fund (20X6157) (“VIDF”);**

**WHEREAS, the United States Customs Service, a predecessor agency to CBP, and the Government of the USVI entered into a Memorandum of Agreement, MOA No. 2X940276, effective August 8, 1994 (the “1994 MOA”), the purpose of which, as set forth in Article I thereof, was “[t]o establish a formal agreement on the methodology for determining the costs chargeable to Virgin Islands Deposit Fund 20X6157, ‘Duties Collected for the Virgin Islands Government, United States Customs Service, Treasury Department’ for operating various U.S. Customs Service (‘Customs’) activities in and for the U.S. Virgin Islands”;**

**WHEREAS, since the 1994 MOA was executed, the scope of federal activities and responsibilities performed by CBP in the USVI has changed:**



- Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296 (Nov. 25, 2002), effective March 1, 2003, certain functions of the United States Customs Service (“U.S. Customs” or “USCS”), functions of the United States Department of Agriculture, Animal and Plant Health Inspection Service (“APHIS”), and functions of the Immigration and Naturalization Service (“INS”) were transferred to the Department of Homeland Security (“DHS”) and consolidated within CBP;
- In addition to the transfer of responsibilities into DHS, the user fees and general appropriation funding sources which fund CBP’s activities to perform those additional functions and responsibilities under immigration and agriculture law have, to date, been available to defray a portion of CBP’s costs for those additional functions;
- Effective March 1, 2011, the Virgin Islands Port Authority (“VIPA”) amended its port tariff to rescind the tonnage and wharfage user fees previously collected by CBP and addressed in the 1994 MOA; and,
- CBP no longer collects these VIPA user fees; and

WHEREAS, the USVI continues to request that CBP perform pre-departure inspection of certain passengers traveling from the USVI to certain locations, and CBP continues to perform that function at the request of the USVI;

THEREFORE, the parties hereto agree to enter into this new Memorandum of Agreement (this “MOA”) as a successor agreement to the 1994 MOA.

**ARTICLE I. PURPOSE**

The purpose of this MOA is to establish an agreement on the administration of the VIDF, specifically: (i) identifying the USVI customs duties (“USVI Customs Duties”) as the source of the revenue that shall be deposited into the VIDF; (ii) identifying the CBP costs of collecting USVI Customs Duties as the costs for which CBP may be reimbursed from the VIDF; (iii) describing the methodology for determining, calculating, and allocating the costs for which CBP may be reimbursed from the VIDF; (iv) providing for CBP reporting and accounting of VIDF deposits, uses, reimbursements, and payments to the USVI; and (v) providing a mechanism for agreeing upon and providing additional CBP services requested by the USVI to be performed on a reimbursable basis.

**ARTICLE II. CBP COLLECTION OF USVI CUSTOMS DUTIES**

CBP collects the USVI Customs Duties and CBP deposits the collections into the VIDF in a timely fashion.

**ARTICLE III. REIMBURSEMENT FROM THE VIDF**

1. **CBP reimburses itself from the VIDF for its costs of collecting the USVI Customs Duties. The following categories of activities constitute reimbursable direct costs of collecting such duties (“VIDF Reimbursable Activities”):**
  - (i) **Pay and compensation costs for the portion of the following activities incurred to collect USVI Customs Duties:**
    - a. **Customs processing of international air passengers (inbound foreign arrivals from outside the U.S., Puerto Rico, and other U.S. territories), their goods, and their conveyances;**
    - b. **Customs processing of international ferry passengers (inbound foreign arrivals from outside the U.S., Puerto Rico, and other U.S. territories), their goods, and their conveyances;**
    - c. **Customs processing of international private boats;**
    - d. **Customs processing of international cruise ship passengers (inbound foreign arrivals from outside the U.S., Puerto Rico, and other U.S. territories), their goods, and their conveyances;**
    - e. **Customs processing of inbound foreign and domestic sea and air cargo and their conveyances;**
    - f. **Customs processing of international mail and its conveyances arriving directly into the USVI;**
    - g. **Customs enforcement operations to ensure USVI duties are not evaded; and,**
    - h. **Customs processing of outbound passengers, conveyances, and cargo, if necessary to enforce compliance with USVI customs laws.**
  - (ii) **Non-pay costs for the portion of the activities in Article III (1)(i) incurred to collect USVI Customs Duties.**
  - (iii) **Pay and compensation and non-pay costs to perform services in accordance with Article VII of this MOA and as set forth and memorialized from time to time in specific Addenda to this MOA (defined below):.**
    - a. **These services may also be funded by other sources as identified in applicable Addenda.**
    - b. **Although the activities contemplated in this section do not involve the cost of collecting USVI Customs Duties, where the USVI requests that CBP reimburse its costs of these activities, CBP will reimburse itself from the VIDF prior to remitting remaining balances of the collections to the USVI Treasury for the sake of convenience.**
2. **CBP calculates the reimbursable costs of VIDF Reimbursable Activities as follows (“VIDF Reimbursable Costs”):**
  - (i) **For pay and compensation costs, by using supporting cost data provided by CBP’s activity-based costing (“ABC”) systems and methodologies to affirmatively identify costs of VIDF Reimbursable Activities.**
  - (ii) **ABC assigns both direct and indirect costs to VIDF Reimbursable Activities. CBP uses a process that leverages aggregate data for each location.**

- (iii) For non-pay costs, by affirmatively identifying and allocating the portion of such costs that are costs of VIDF Reimbursable Activities. CBP uses supporting cost data provided by ABC systems and methodologies to identify costs of VIDF Reimbursable Activities.
  - (iv) For costs for services requested by the USVI on a reimbursable basis, in accordance with specific cost provisions in applicable reimbursable service Addenda, or, in the absence of specific cost provisions, using supporting cost data provided by CBP's ABC systems and methodologies to identify costs for reimbursement.
3. In accordance with federal law, CBP does not use the VIDF to fund non-VIDF Reimbursable Activities or for reimbursement of any costs other than VIDF Reimbursable Costs as described in this document. CBP does not use the VIDF to set off or secure unliquidated obligations that are not in support of the collection of USVI Customs Duties or other USVI requested reimbursable services, pursuant to Article VII.
  4. CBP, taking into account its fixed costs, will continue to utilize business transformation initiatives, automation, modernization, and other efforts to achieve cost efficiencies and prevent excessive costs with regard to USVI Customs Duties collections in providing customs services to the USVI. The USVI, whenever feasible, will continue to partner with CBP in these efforts to improve services and achieve cost efficiencies.
  5. CBP's current ABC systems employ, among other things, codes designed to accurately account for time spent on specific activities. During the first full fiscal quarter following the signing of this MOA (January 2015- March 2015) CBP will conduct a detailed review of the codes in use in the USVI as they pertain to the USVI Reimbursable Activities and Costs in this MOA, including the appropriateness and accuracy of the codes in practice. CBP will provide the USVI the opportunity to observe an actual representative sample of the field review on site (absent the inclusion of information that may be designated as sensitive and not subject to disclosure) and CBP will provide the resulting evaluation report to the USVI.

#### **ARTICLE IV. TRANSFER TO USVI TREASURY**

1. After deducting amounts described by Article III, CBP transfers the balance of the VIDF to the USVI Treasury within 90 days of the conclusion of each fiscal quarter.
  - (i) Due to the close of the federal fiscal year on September 30, CBP may use estimates for pay and compensation costs in the final month of the fiscal year, depending on the timing of costs posting in its financial systems. If CBP uses such estimates, CBP provides both its methodology for calculating such estimates and the calculations themselves to the USVI in advance and provides USVI reconciled information within 90 days after the end of the applicable quarter.
  - (ii) In the second quarter of the fiscal year following the signing of this agreement, CBP and the USVI will evaluate the feasibility of remittances on a more frequent basis.

*CBP*

## **ARTICLE V. PAYMENT FOR VIDF REIMBURSABLE COSTS**

CBP does not subsidize any USVI operations or activities that represent VIDF Reimbursable Costs as described in this document. In the event that the total VIDF Reimbursable Costs in a fiscal year show that an over-remittance of VIDF collections was made to the USVI in the first three quarters of that fiscal year, the USVI will endeavor to return the over-remittance to CBP within 75 days of the conclusion of that fiscal year and, in all events, the return will be complete within 90 days of the conclusion of that fiscal year.

## **ARTICLE VI. REPORTING**

CBP accounts for and reports all collections, disbursements, and costs described herein, and ensures the proper, accurate, and timely recording and reporting of all transactions related to VIDF Reimbursable Costs described herein.

1. **Quarterly Reports.** Within 90 days of the close of each fiscal quarter, CBP prepares a Quarterly VIDF Report that includes the following information:
  - (i) monthly and year-to-date USVI Customs Duties actual collections and projected collections, to include any change in projected collections as identified in the course of a fiscal year;
  - (ii) current monthly and fiscal year actual and projected VIDF Reimbursable Cost data, including:
    - o VIDF Reimbursable Costs;
    - o funds transferred to the USVI Treasury;
    - o available funds at quarter-end; and
    - o any additional explanatory statements.
  - (iii) current monthly and fiscal year actual ABC percentage allocations and costs between customs, immigration, agriculture, and pre-departure related activities.
  - (iv) the USVI may request additional details or supporting information related to VIDF Reimbursable Costs and CBP provides such information in a reasonable time, subject to such protections for sensitive confidential information as CBP deems necessary.
  - (v) a listing of unliquidated obligations, listed by category, year of obligation/aging, and with designations/explanations as to why the obligations remain.

The Quarterly VIDF Report is distributed, through the CBP National Finance Center to the USVI Department of Finance and the USVI Office of Management and Budget.

2. **Use of Trend Analysis.** CBP uses trend analysis in conjunction with economic indicators

to forecast future collections. Trend analysis is principally used to determine the periods within the fiscal year where travel volumes are affected by seasonal fluctuations. In developing forecasts, CBP uses numerous sources and focuses mainly on demand side factors, such as anticipated economic growth and inflation. These factors are weighted and applied against trade and travel, Gross Domestic Product, and anticipated economic vitality of a region. The USVI designates a representative to communicate with a CBP collections projection representative to coordinate regarding trend analyses and economic indicators and/or changes or anomalies in USVI tourism and trade that enables CBP to continue to refine the projections for the collection of USVI Customs Duties and VIDF Reimbursable Costs.

3. If at any time CBP becomes aware that the VIDF may be insufficient to fund projected or actual VIDF Reimbursable Costs, CBP promptly notifies the USVI.
4. Not less than 5 days after each Quarterly VIDF Report is completed, CBP distributes the ACSR-CL-134 Monthly Report of Collections to the USVI Bureau of Audit and Control (national and OFO totals), and the DFO, San Juan Field Office (national totals).
5. CBP regularly monitors unliquidated obligations for VIDF Reimbursable Costs between the quarterly reporting cycles and liquidates obligations established for CBP collection of USVI Customs Duties in a timely manner and in accordance with federal accounting statutes and regulations governing unliquidated obligations. In the event of external factors outside of CBP's control that prevent or delay prompt liquidation, CBP promptly informs the USVI of the delay and provides an explanation for the delay in the next Quarterly Report.
6. The parties acknowledge that the allocation of CBP activity costs among activities previously performed by USCS, INS, and APHIS varies based upon workload, enforcement activity, threat profiles, and other factors. In order to respond to developing threats or workload requirements, the allocation of CBP resources is subject to change over time; however, the percentage allocations of these activities are reported in the Quarterly Reports and, in the event that they begin to change significantly, changes can be addressed by the Parties as provided for in this MOA.
7. CBP retains all Quarterly VIDF Reports and their supporting documentation for the period required by applicable U.S. statutes governing federal retention of documents, but in any case for not less than 3 years. This obligation is noted herein to acknowledge that the retention of these documents in accordance with U.S. law will also facilitate any future reviews and audits of the VIDF by the CBP/USVI Consultative Group (as defined in Article IX below).
8. CBP and the USVI cooperatively review the matters referenced in this Article via the mechanisms set forth in Article IX.

## **ARTICLE VII. CBP REIMBURSABLE SERVICES**



1. This article is intended to mutually define the expected relationship, scope, and procedures for the Government of the USVI through the Governor or designee, the "Requestor", to request reimbursable services under 48 U.S.C § 1469c, for CBP to consider such requests through CBP's San Juan Field Office, and the mechanism for the parties to memorialize the terms of agreed upon requests, as may be agreed upon from time to time in addenda to this MOA. Each party may, from time to time, appoint additional designees to act on its behalf for purposes of requesting services pursuant to this article by sending advanced written notice to the other party.
2. 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 under existing resource, budget, and operating conditions ("New or Additional CBP Services"). The New or Additional CBP Services to be provided may not include those current services as detailed in the Annex and CBP's costs to provide customs pre-departure inspections commensurate with current service levels, at the existing locations in the USVI where such services are provided at the request of the USVI as of the date of this agreement, as further detailed in an annex to this MOA stating current service levels ("Annex"). New or Additional CBP Services may not include CBP's costs to collect USVI Customs Duties as required by federal law and deducted from collections deposited into the VIDF.
3. The New or Additional CBP Services to be provided under this MOA 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 MOA. Services may be performed in any area of the designated port of entry or any place where CBP personnel have the authority to perform their duties. Such services may even include the hiring and training of new CBP employees required as a result of any requested services. The New or Additional CBP Services may also include new or enhanced pre-departure inspection of air passengers departing the USVI for the Continental United States or Puerto Rico.
4. CBP will not provide New or Additional CBP Services that would unduly or permanently impact other services funded by an appropriations act or any other account derived by the collection of U.S. federal fees. CBP will not provide New or Additional CBP Services where adequate facilities do not exist.
5. The agreed upon New or Additional CBP Services will be promptly memorialized in addenda to this MOA (each "Addendum" and collectively "Addenda"). The Requestor agrees to obtain the advance written concurrence of the relevant port authority (or other entity with control over the facility where the New or Additional CBP Services are being requested) before requesting any such services of CBP and further agrees to include a copy of such concurrence in its request to CBP. The Requestor agrees to reimburse CBP for all reimbursable costs authorized and agreed in such Addenda and agrees to CBP's deduction of such reimbursable costs from the VIDF when requested in Addenda hereto. In the event that a reimbursement from the VIDF is issued, but the full eligible costs of



Article VII reimbursements for the entire fiscal year exceed the available balance in the VIDF, the USVI reimburses CBP within 90 days of such notification by CBP.

6. The following procedures apply to all requests for reimbursable services:
  - (i) The Requestor will provide CBP with a request for reimbursable services at least three (3) calendar days prior to the date of commencement of services.
  - (ii) The Requestor will submit requests for reimbursable services to the Director, Field Operations, San Juan Field Office, Assistant Director, Mission Support, San Juan Field Office, Area Port Director, USVI, and Port Director, St. Croix, as soon as the nature of the service request is known.
  - (iii) CBP will review and evaluate each request based on the availability of resources and mission priorities. CBP will return an electronic response with an estimate of expected cost and means of providing the requested service and an approval or denial to the USVI Governor or designee. The Requestor may respond to CBP's estimates and may resubmit revised requests and/or proposals, including requests to initiate service subject to an interim and/or periodic cost re-evaluation process.
  - (iv) In the event it is necessary for the Requestor to make an urgent request, the Requestor will submit such a request as soon as practicable. If CBP is not given adequate time to consider a request, CBP may not be able to approve the request for services.
  - (v) In the event it is necessary for the Requestor to reduce or cancel any previously approved request for services for any reason, the Requestor will make every effort to notify CBP of its desire to cancel or reduce at least 24 hours prior (or as specifically identified in the applicable Addenda) to the commencement of services under the previously approved request. Notifications by the Requestor and responses by CBP will be completed using the designated contacts noted above.

CBP mission-related emergencies may require adjustments and/or interruption of previously agreed-upon New or Additional CBP Services.

#### **ARTICLE VIII. CBP ACTIVITIES AND COLLECTION OF CBP FUNDS UNRELATED TO THE VIDF**

1. Outside of those collections referenced in this document, CBP also collects other fees under a host of other statutes and regulations governing CBP fees, revenue, and operations, including, but not limited to: fines and penalties, Agriculture and Quarantine Inspection fees, Immigration Inspection User Fees, customs user fees required by the Consolidated Omnibus Budget Reconciliation Act of 1985, Electronic System for Travel Authorization, Global Entry Enrollment, and Land Border Inspection Fees. These funds may be utilized in the USVI in accordance with those statutes and regulations which

govern their use. However, CBP's use of these other fees is in no way described within this agreement. CBP currently provides a general reporting of all of its user fees and reimbursable accounts to the United States Congress on an annual basis and provides a courtesy copy of this document to the USVI as well, once formally delivered to Congress, so long as any information designated as sensitive is redacted; though in the event that law enforcement sensitive information is included a sanitized version is provided.

2. CBP fees collected under these statutes are not be deposited into the VIDF, and the funds in the VIDF are not be utilized to fund non-VIDF Reimbursable Activities or Costs. CBP Activities in the USVI are funded in accordance with the federal statutes and regulations which govern CBP's funding and the use of applicable user fees.

#### **ARTICLE IX. COOPERATION AND DISPUTE RESOLUTION**

1. A CBP/USVI Consultative Group will consist of representatives designated by each party that, whether individually or collectively for such party, have sufficient authority to resolve issues or disputes not requiring amendment of this MOA.
  - (i) Each party designates a primary and secondary point of contact, either of which may change at any time with notice to the other party. The secondary point of contact is responsible for serving in the place of the primary point of contact should the latter be unavailable for any reason.
2. In the event that an issue or disagreement arises under this MOA, the parties work cooperatively to resolve it, as follows:
  - (i) Initially, representatives of the CBP field office and the USVI endeavor to cooperatively resolve such issues or disagreements at the local level.
  - (ii) If, upon the determination of either party, an issue or disagreement first raised at the CBP field office level cannot be resolved at that level, then upon request of that party the issue or disagreement is addressed by the CBP/USVI Consultative Group.
  - (iii) The CBP/USVI Consultative Group endeavors to commence consultations within 20 days of the receipt of a request by either party to convene the Consultative Group.
  - (iv) If the CBP/USVI Consultative Group fails to resolve a matter within the earlier of (i) 30 days from commencement of the consultations pursuant to Article IX(2)(iii), or (ii) 50 days from receipt of the request to convene pursuant to Article IX(2)(ii), unless otherwise mutually agreed, the affected party may request in writing a meeting of signatories of this MOA within 30 days, which the parties will not unreasonably delay or deny.



**ARTICLE X. AMENDMENTS**

Any change, modification, or amendment of this MOA will be documented in writing and signed by both parties. Reimbursable services Addenda contemplated by this MOA may be entered into and rescinded from time to time as provided for in this MOA. Where a conflict between this MOA and the Annex and/or any Addenda emerges, the terms of this MOA will govern.

**ARTICLE XI. IMPLEMENTATION AND REVOCATION**

This MOA supersedes the 1994 MOA in its entirety. This MOA is effective upon the signatures of the duly authorized representatives of CBP and the USVI. This MOA terminates (i) 180 days following written notice of termination by either party to the other party, or (ii) 130 days following a written meeting request to resolve a matter pursuant to Article IX(2)(ii) that remains unresolved 130 days after such request. This MOA sets forth the understanding of the parties with respect to the matters set forth herein. This MOA does not obligate funds or create a financial or legal obligation between the parties. This MOA does not create or confer any right or benefit on any person or party, private or public. All activities contemplated by this MOA are subject to the availability of funds and the necessary resources to the parties.

**ARTICLE XII. COUNTERPARTS**

This MOA may be signed by the parties in separate counterparts (by original or facsimile signature) each of which so signed and delivered shall be an original, but all such counterparts shall together constitute one and the same agreement.

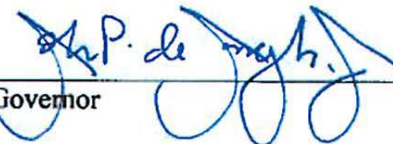
IN WITNESS WHEREOF, the undersigned have executed this MOA as of the dates indicated by each signature.

United States Department of Homeland Security  
U.S. Customs and Border Protection

  
\_\_\_\_\_  
Commissioner

2 JAN 15  
\_\_\_\_\_  
Date

Government of the United States Virgin Islands

  
\_\_\_\_\_  
Governor

12/31/2014  
\_\_\_\_\_  
Date

ANNEX TO THE  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES VIRGIN ISLANDS  
AND  
U.S. CUSTOMS AND BORDER PROTECTION  
REGARDING THE  
VIRGIN ISLANDS DEPOSIT FUND  
IN AND FOR  
THE UNITED STATES VIRGIN ISLANDS  
December 2014

**I. INTRODUCTION**

U.S. Customs and Border Protection (“CBP”) is America’s frontline, protecting the nation from threats to our safety and economy and preventing terrorist and terrorist weapons from entering the United States and its territories. At the ports of entry, CBP’s Office of Field Operations (“OFO”) secures the flow of people and goods into and out of the country while facilitating legitimate travel and trade.

VIDF Reimbursable Activities are described in the Memorandum of Agreement signed by designated representatives of CBP and the USVI Government on December 31, 2014 (“MOA”). This Annex further describes current services and activities as conducted by OFO in the U.S. Virgin Islands (“USVI”), to include the islands of St. Thomas, St. Croix, and St. John, at the time of the signing of the MOA.

**II. CURRENT SERVICES DEFINITIONS**

“Current services” means the current operational capabilities of CBP in the USVI based upon staffing and financial resources, workload, and threat levels. These current services may be subject to change due to appropriations and budgeting conditions wherein, for example, CBP may need to make staffing and resource adjustments for ports of entry. As a result, all descriptions of current services in this document, including schedules and times, are subject to change at CBP’s sole discretion. CBP may expend, within its sole discretion, its resources in a reasonable manner.

**III. CURRENT SERVICES DESCRIPTIONS**

**A. Passenger Air – International Inbound**

All persons arriving at a port of entry (air and sea) in the USVI from a foreign country are subject to inspection by CBP Officers (“CBPOs”) and CBP Agriculture Specialists. CBPOs and CBP Agriculture Specialists are responsible for ensuring that arriving passengers comply with all U.S. Immigration, USVI Customs, and U.S.



**Agriculture laws and regulations.** Each arriving traveler from a foreign location must complete a CBP declaration as well as other entry forms required by applicable U.S. federal Customs, Agriculture, and Immigration laws. Currently, foreign arrivals and departures to and from the USVI are processed in the same manner as any other port of entry in a Continental United States (“CONUS”) location.

1. Cyril E. King Airport, St. Thomas  
Commercial Air Passengers/Crew in FY14 = 60,148
2. Henry E. Rholsen Airport, St. Croix  
Commercial Air Passengers/Crew in FY14 = 15,415

**B. Passenger Air Pre-departure**

Travelers destined to CONUS or Puerto Rico locations on non-stop flights are currently being processed at two international airports located in the USVI, in both St. Thomas and St. Croix. This process is called “pre-departure inspection” and is conducted by CBPOs and CBP Agriculture Specialists before passengers board aircraft heading to CONUS or Puerto Rico.

1. Cyril E. King Airport, St. Thomas  
Commercial Air Passengers/Crew in FY14 = 688,118
2. Henry E. Rholsen Airport, St. Croix  
Commercial Air Passengers/Crew in FY14 = 161,500

**C. Passenger Sea – International Inbound**

Seaport Operations consist of the processing of cruise-line vessels, ferries, and private boats (and their passengers and crew) arriving into any of the three islands (St. Thomas, St. John, and St. Croix) from foreign locations.

**1. Ferry**

Several ferry boats are currently operating between the British Virgin Islands (BVI) and the Edward Wilmoth Blyden Marine Terminal in St. Thomas or the St. John CBP Terminal. These ferries conduct daily excursions for tourist travelers to and from the BVI. They also serve as mode of transportation for daily commuters to the USVI, as well as students of the University of the Virgin Islands.

1. St. John, USVI  
Ferry Passengers in FY14: St. Thomas =137,125
2. Blyden Terminal, St. Thomas, USVI  
Ferry Passengers in FY14: St. John = 91,751

## **2. Private Boat**

Private boaters arriving from foreign countries must report their arrival to CBP in the USVI. As part of the CBP comprehensive effort to improve the security of our nation's borders while enhancing legitimate travel, including boaters, CBP has implemented the Small Vessel Reporting System (SVRS) to facilitate the reporting process for arriving boaters and expedite the clearance of their vessels. SVRS is a web-based, automated on-line reporting system that has significantly transformed and simplified the report requirements; however, the law still requires CBP personnel to be physically available at the various ports of entry for certain purposes.

1. St. John, USVI  
Vessels/Small Boats in FY14: St. Thomas = 2,580
2. Blyden Terminal, St. Thomas, USVI  
Vessels/Small Boats in FY14: St. John = 4,780
3. Yacht Heaven Marina, St. Thomas, USVI  
Gallows Bay, St. Croix, USVI  
Vessels/Small Boats in FY14: St. Croix = 656

## **3. Cruise**

CBP conducts inspections of cruise-line passengers and crew arriving in the USVI. Cruise-line companies such as Carnival, Norwegian, Disney, Royal Caribbean, Seaborne, Celebrity, and Princess are currently operating in the Caribbean and listing St. Croix and St. Thomas as ports of call.

1. St. Thomas, USVI  
Vessels/Small Boats Passengers in FY14: St. Thomas = 1,775,506
2. St. John, USVI  
Vessels/Small Boats Passengers in FY14: St. John = 21,506
3. St. Croix, USVI  
Vessels/Small Boats Passengers in FY14: St. Croix = 7,907

## **D. Trade, Cargo, and Conveyance – Inbound**

Cargo Operations consist of the processing of all cargo arriving into any of the three islands (St. Thomas, St. John, and St. Croix) from foreign and domestic. It covers airport and seaport cargo.

CBP's Reimbursable Activities are detailed in the MOA. CBP also processes this inbound trade, cargo, and conveyances for enforcement of U.S. Agriculture and Immigration laws upon arrival at ports of entry within the USVI.

Many of the trade-related automation applications used by CBP in CONUS cannot be used in the USVI. As such, most cargo and trade transactions are done manually by CBP staff to ensure compliance with national and local requirements such as specific federal agricultural quarantines. CBP Officers, Import Specialists, Entry Specialists and CBP Technicians have to manually process almost all documentation and data related to the entry process.

1. Sandfill Cargo Building, St. Thomas  
Containers in FY14 = 3,565; Entry Summaries = 20,954
2. HER Cargo Office, St. Croix  
Containers in FY14 = 5,487; Entry Summaries = 10,047