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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

CRUISE LINES INTERNATIONAL
ASSOCIATION ALASKA, *et al.*,

Plaintiffs,

v.

THE CITY AND THE BOROUGH OF
JUNEAU, ALASKA, *et al.*,

Defendants.

Case No. 1:16-cv-00008-HRH

PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs Cruise Lines International Association Alaska and Cruise Lines International Association submit this *Statement of Facts in Support of Motion for Summary Judgment*, together with citations to the record, concerning which there are no genuine disputes and which establish Plaintiffs' right to judgment as a matter of law.

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PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Cruise Lines International Association Alaska, et al. v. City and Borough of Juneau, et al.

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Definitions

- A. “AFC” means CBJ’s Assembly Finance Committee.
- B. “Assembly” means the CBJ Assembly.
- C. “CAFR” means CBJ’s Comprehensive Annual Financial Report.
- D. “CBJ Code” means the Code of Ordinances of the City and Borough of Juneau.
- E. “CBJ Res.” and “Res.” mean a resolution of the City and Borough of Juneau.
- F. “CBJ,” “Juneau,” and “the City” mean Defendant City and Borough of Juneau.
- G. “CLIA Alaska” means Plaintiff Cruise Lines International Association Alaska.
- H. “CLIA Global” means Plaintiff Cruise Lines International Association.
- I. “CLIA” or “Plaintiffs” mean CLIA Global and CLIA Alaska.
- J. “CPV Tax” means the State Commercial Passenger Vessel Tax.
- K. “Cruise Lines” means CLIA’s member cruise lines in the Alaska trade: Carnival Cruise Lines, Celebrity Cruises, Crystal Cruises, Disney Cruise Line, Holland America Line, Norwegian Cruise Line, Oceania Cruises, Ponant Yacht Cruises and Expeditions, Princess Cruises, Regent Seven Seas Cruises, Royal Caribbean International, Seabourn Cruise Line, Silversea Cruises, and Windstar Cruises.
- L. “CY” means Calendar Year.
- M. “Defendants” means CBJ and Defendant Rorie Watt.
- N. “Entry Fees” means the MPF and the PDF.
- O. “FY” means Fiscal Year.
- P. “MPF Ordinance” means the ordinance provisions enacting the MPF (CBJ Code, Ch. 69.20).
- Q. “MPF” or “Marine Passenger Fee” mean the \$5.00 fee imposed by CBJ Code, Ch. 69.20.

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- R. “PDF Resolution” means the multiple resolutions enacting the PDF (CBJ Res. Nos. 2150, 2163, 2294(b)am, 2423(b)am, and 2552).
- S. “PDF” or “Port Development Fee” mean the fee previously imposed by CBJ Res. Nos. 2150, 2163, 2294(b)am, and 2423(b)am, and the current \$3.00 fee imposed by CBJ Res. 2552.
- T. “State” means the State of Alaska.

Parties

1. CLIA Global is a “unified global organization” and cruise industry trade association that has as members: 51 cruise lines representing more than 95 percent of global cruise capacity, 340 executive partner companies, 15,000 travel agencies, and 25,000 travel agents. CLIA Global has 15 offices worldwide. (Ex. 072 p. 1)
2. CLIA Alaska is an Alaska-based nonprofit organization that operates in collaboration with CLIA Global. (Ex. 072 p. 1)
3. CLIA Alaska represents the interests of the Cruise Lines. (Ex. 072 p. 1; Ex. 134 p. 1)
4. The Cruise Lines operate vessels registered in the following locations, among others: the United States, the United Kingdom (including England, North Ireland, Wales and Scotland), Australia, Canada, Germany, Italy, Spain, Scandinavia, the Netherlands, Switzerland, Austria, France, Brazil, Panama, the Bahamas, and Portugal. (Ex. 105 p. 6)
5. The Cruise Lines operate vessels on the navigable waters of the U.S. and that enter Alaska waters while engaged in the interstate and international commerce of the U.S. (ECF No. 28, ¶ 20; ECF No. 40, ¶ 20)
6. CBJ is a duly authorized Alaska home rule municipality. (ECF No. 28, ¶ 6; ECF No. 40, ¶ 6)
7. Rorie Watt is the City Manager of CBJ. (Ex. 099 p. 1)

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8. The City Manager is the chief administrative officer of CBJ with responsibility for executing the provisions of the CBJ Code, all ordinances, and all applicable laws and particular responsibility for administering the MPF Ordinance. (Ex. 010 p. 1)
9. CBJ owns and operates the Cruise Ship Terminal Dock and the Alaska Steam Ship Dock, which are two of the four cruise ship docks located in the downtown Juneau waterfront. (Ex. 053 p. 2)

History of CBJ's Marine Passenger Fee and Port Development Fee

10. In February 1990, CBJ enacted a port dues ordinance, Ordinance No. 89-52, which charged vessels¹ \$0.05 per ton per vessel to fund capital improvements to port facilities. Ordinance No. 89-52 expired in 2002. (ECF No. 28, ¶ 15; ECF No. 40, ¶ 15; Ex. 003 pp. 1-7)

Marine Passenger Fee

11. On October 5, 1999, CBJ voters approved the MPF initiative, Proposition 1, which charged cruise lines a \$5.00 fee per cruise vessel passenger in addition to port dues. (ECF No. 28, ¶ 16; ECF No. 40, ¶ 16; Ex. 098 pp. 1-2) A memorandum authored by CBJ attorney John R. Corso addressed constitutional issues raised by the MPF under the Commerce Clause and the Tonnage Clause of the U.S. Constitution. (Ex. 120 pp. 1-39)
12. Following the passage of the MPF initiative, CBJ adopted Ordinance No. 2000-01am to codify the MPF and to provide for the administration and collection of the MPF. (*See generally* Ex. 011 pp. 1-7; *see also* Ex. 005 pp. 1-7)
13. CBJ assesses the MPF against marine passenger ships not otherwise exempt under the CBJ Code. (Ex. 011 pp. 2-3)

¹ The MPF Ordinance and PDF Resolution use the terms “marine passenger ship,” “ship,” and “vessel” to denote the type of vessel subject to the Entry Fees. In each instance, the chosen term refers to a vessel carrying passengers for compensation. CLIA uses the forgoing terms interchangeably.

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14. CBJ exempts from the application of the MPF (1) ships having accommodations for 20 or fewer passengers, (2) ships without overnight berths or overnight accommodations for passengers (*i.e.*, day-trip excursion vessels), (3) non-commercial ships or ships operated by nonprofit entities as determined by the U.S. Internal Revenue Service, and (4) ships operated by the State, the U.S. government, or a foreign government. (Ex. 011 p. 3)
15. The MPF is calculated based on passenger manifests submitted by marine passenger ships calling at CBJ. (Ex. 011 p. 2)
16. The MPF is paid to CBJ by the owner or agent of the marine passenger ship. (Ex. 011 p. 2)
17. Individual marine passengers do not pay the MPF to CBJ and are not personally liable for non-payment of the MPF. (Ex. 011 p. 2)
18. Owners or agents of marine passenger ships subject to the MPF are required to preserve and maintain passenger manifests, forms and supporting records, and other records for a period of three years. (Ex. 011 pp. 4-5)
19. An owner or agent of a marine passenger ship who fails to remit the MPF to CBJ or otherwise to comply with a lawful request or demand made under the MPF code provisions is guilty of a class A misdemeanor. Further, any marine passenger ship delinquent in the payment of the MPF and any lightering craft carrying passenger to or from such a ship is prohibited from mooring at any port facility owned by CBJ. (Ex. 011 p. 6)
20. As originally enacted, the MPF's stated purpose is "to address the costs to the City and Borough for services and infrastructure usage by cruise ship passengers visiting the City and Borough, including emergency services, transportation impacts and recreation infrastructure use, and to mitigate impacts of increased utilization of City and Borough services by cruise ship passengers." (Ex. 005 p. 2)

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21. In 2012, CBJ amended the “purpose and intent” section of the MPF Ordinance to delete the phrase “mitigate impacts,” among other things, because of the passage of the Maritime Security Act of 2002, “which limited the ways that any fees could be spent.” The Maritime Security Act of 2002 did not provide for spending to mitigate impacts, and the presence of that language in the CBJ Code was “a glaring invitation to misuse [] those funds.” (Ex. 035 pp. 1-2; *see also* Ex. 036 p. 1)
22. The MPF is not imposed under section 208 of the Water Resources Development Act of 1986 (33 U.S.C. § 2236). (ECF No. 28, ¶ 44; ECF No. 40, ¶ 44; *see* Ex. 021 pp. 1-5)

Port Development Fee

23. In April 2002, CBJ adopted Res. No. 2150, which imposed a fee of \$1.73 per arriving passenger per day on vessels carrying passengers for compensation and not otherwise exempt. (*See* Ex. 035 pp. 1-12) Res. No. 2150 exempted from the fee three categories of vessels: (1) vessels having accommodations for 12 or fewer passengers, (2) vessels traveling only between CBJ and points within 100 miles of CBJ port facilities, and (3) noncommercial vessels or vessels owned and operated by the State, the U.S. government, or a foreign government. (*See* Ex. 034 pp. 3-4)
24. In July 2002, CBJ adopted Res. No. 2163, which repealed Res. No. 2150 and imposed a temporary fee of \$0.18 per arriving passenger per day for all vessels and an additional \$2.00 per arriving passenger per day for vessels docking at or lightering to a CBJ port facility, through December 31, 2006. (*See* Ex. 014 pp. 1-2) Res. No. 2163 exempted from the fee three categories of vessels: (1) vessels having accommodations for 12 or fewer passengers, (2) noncommercial vessels or vessels owned and operated by the State, the U.S. government,

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or a foreign government, and (3) vessels operated by federally recognized Indian tribes. (Ex. 014 pp. 1-2)

25. In March 2005, CBJ adopted Res. No. 2294(b)am, which increased the fee imposed by Res. No. 2163 from \$0.18 to \$1.18 per arriving passenger per day for all vessels and an additional \$2.00 per arriving passenger per day for vessels docking at or lightering to a CBJ port facility until December 31, 2006. (*See* Ex. 034 p. 3) Then, beginning January 1, 2007, Res. No. 2294(b)am increased the fee to \$3.00 per arriving passenger per day for all vessels not exempt. (Ex. 034 p. 3) Res. No. 2294(b)am retained the exemptions set forth in Res. No. 2163. (Ex. 034 p. 3) Res. No. 2294(b)am provided for expiration three years after its effective date unless extended or terminated earlier by the Assembly. (Ex. 034 p. 3)
26. In January 2008, CBJ adopted Res. No. 2423(b), wherein CBJ repealed Res. No. 2294(b)am and imposed a fee of \$3.00 per arriving passenger per day on all vessels except for (1) vessels under 200 tons, (2) noncommercial vessels or vessels owned and operated by the State, the U.S. government, or a foreign government, and (3) vessels operated by federally recognized Indian tribes. (*See* Ex. 015 pp. 1-3) Res. No. 2423(b) provided for an automatic repeal three years after its adoption unless extended or terminated earlier by the Assembly. (Ex. 015 pp. 2-3) In November 2010, CBJ adopted Res. No. 2552, wherein CBJ repealed Res. No. 2423(b)am and imposed a fee of \$3.00 per arriving passenger per day on all vessels except for (1) vessels under 200 tons, (2) noncommercial vessels or vessels owned and operated by the State, the U.S. government, or a foreign government, and (3) vessels operated by federally recognized Indian tribes. (*See* Ex. 016 pp. 1-3) Res. No. 2552 did not provide for a sunset, expiration, or automatic repeal of the fee. (*See* Ex. 015 pp. 1-3)

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27. The PDF is paid by vessel owners or their agents to the CBJ municipal government. (Ex. 016 p. 2)
28. The PDF's stated purpose is to "provid[e] funding for capital improvements to the downtown waterfront." (Ex. 016 p. 1)
29. The stated purposes of the PDF, apart from dock improvements, are unrelated to providing any service to vessels. (*See* Ex. 016 pp. 1-3)
30. The PDF is not imposed under section 208 of the Water Resources Development Act of 1986 (33 U.S.C. § 2236). (ECF No. 28, ¶ 44; ECF No. 40, ¶ 44; *see* Ex. 021 pp. 1-5)

Revenues Generated by the Entry Fees

31. By ordinance and resolution, revenues from the Entry Fees are to be placed in non-major special revenue funds and segregated from CBJ's general revenues. (Ex. 011 pp. 6-7; Ex. 016 pp. 1-3)
32. Revenues from the MPF are placed in the Marine Passenger Fee Special Revenue Fund. (Ex. 011 p. 6) The Marine Passenger Fee Fund "[a]ccounts for revenues approved by the voters to mitigate the cost of tourism and tourism development." (Ex. 097 p. 11)
33. Revenues from the PDF are placed in the Port Development Special Revenue Fund. (Ex. 014 p. 1) The Port Development Fund "[a]ccounts for revenue obligated for major port improvements." (Ex. 097 p. 11)
34. Monies in the Marine Passenger Fee Fund and the Port Development Fund are transferred to other general, special revenue, or enterprise funds. (*See* Ex. 097 p. 11)
35. CBJ Code § 69.20.120(a) provides that the MPF established by initiative shall be appropriated in support of the marine passenger ship industry including:
 - a) Design, construction, enhancement, operation, or maintenance of capital improvements;

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- b) Operating funds for personnel, training, commodities, rentals, services and equipment for services provided, made available to, or required as a result of marine passenger ships and marine passengers;
- c) Projects and programs that promote safety, environmental improvements efficiency of interstate and international commerce, or enforcement of laws caused or required by marine passenger ships and marine passengers;
- d) Acquisition of land required to execute the activities listed in this section;
- e) Reserved;
- f) Surveys, analyses, polls, plans, monitoring, and similar efforts to measure, describe or predict, or manage marine passenger ships and marine passengers, for items listed in subsections (a)(1)–(a)(4) of this section.

(Ex. 011 pp. 6-7)

36. CBJ has developed an allocation formula based on measurements and estimates of time spent by cruise passengers in Juneau. This formula is used to allocate MPF revenues to Juneau municipal government departments whose operations CBJ deems to be affected by cruise activities. (Ex. 025 p. 1)
37. The amount of MPF revenues transferred to the General Government Fund is based in part on the number of hours cruise ship passengers spend in Juneau as compared to the number of hours residents, independent visitors, conventioners and embarking/disembarking passengers spend in Juneau on an annualized basis. (Ex. 025 p. 1)
38. The specific formula adopted by the AFC consists of the following:
- The number of hours residents spend in Juneau annually = The population X 24 hours X 365 days
 - The number of hours cruise passengers spend in Juneau annually = The number of passengers X 9.5 hours X 1 (the numbers of days spent in Juneau per year)
 - The number of hours embarking/disembarking passengers spend in Juneau annually = The number of embarking/disembarking passengers X 24 hours X 1.5 days
 - The number of hours independent visitors spend in Juneau annually = The number of independent visitors X 24 hours X 3.8 days
 - The number of hours conventioners spend in Juneau annually = The number of conventioners X 24 hours X 5.7 days.

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(Ex. 025 p. 1)

39. Currently, there are nine CBJ departments allocated MPF revenues. The departments and number of departments has changed throughout the years for various reasons. According to CBJ, only those functions that are available for use by cruise ship passengers are allocated MPF revenues, including but not limited to: Emergency Medical Services, Libraries, Police, Parks and Recreation, Streets, Finance, and Manager's Office. (Ex. 025 p. 1)
40. CBJ allocates funds to CBJ departments pursuant to the allocation formula described in Paragraph No. 38 above. (Ex. 025 p. 1)
41. Support to the School District and Debt Service are not included in the calculation for allocating MPF revenues. (Ex. 025 p. 1)
42. Also excluded from the calculation for allocating MPF revenues are any functions that are directly funded by the MPF, such as: Tourism, Crossing Guards, Park Rangers, a portion of the City Museum, and a portion of Capital Transit. (Ex. 025 p. 1)
43. The yearly operating budget of every CBJ department comes out of the General Government Fund, and the MPF revenues for the CBJ departments are allocated through the General Government Fund. (*See, e.g.*, Ex. 025 p. 1; Ex. 078 pp. 10-14)
44. The downtown cruise vessel berths feature four docks available for use by the large cruise vessels: South Franklin Street Dock; Cruise Ship Terminal; Alaska Steam Ship Dock; and AJ Juneau Dock. (*See generally* Ex. 102 pp. 1-6)
45. Two of these docks, AJ Juneau Dock and Franklin Dock, are privately owned. Users pay a separate fee to the dock owners for access to, dockage and wharfage at these private facilities. (Ex. 107 pp. 1-2)

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Non-Assessment of the Entry Fees

46. The Entry Fees are imposed on vessels engaged in the interstate and foreign commerce of the U.S. (*See* Ex. 011 pp. 1-7; Ex. 014 pp. 1-2; Ex. 015 pp. 1-3; Ex. 016 pp. 1-3; Ex. 034 pp. 3-4)
47. CBJ does not assess any fees similar to the Entry Fees, for the purpose of supporting local government services, on passengers arriving in Juneau by air or ferry transportation. (*See, e.g.*, Ex. 097 pp. 5-9, 12-39)
48. State Ferry vessels normally dock within CBJ geographical limits, but at some distance from the central downtown docks used by CLIA Cruise Lines' vessels. Even if State Ferries were to dock at facilities in the central Juneau area, however, they are exempt from imposition of the Entry Fees by the express language of the MPF Ordinance and the PDF Resolution. (*See* Ex. 011 pp. 1-7; Ex. 014 pp. 1-2; Ex. 015 pp. 1-3; Ex. 016 pp. 1-3; Ex. 034 pp. 3-4)

CBJ Assesses Additional Fees to the Cruise Lines Beyond the Entry Fees

49. Beyond the Entry Fees, vessels, including cruise vessels of CLIA's Cruise Lines, are assessed other fees for docking at CBJ's public ports. These charges are computed based on vessel size (tonnage or length). (Ex. 012 pp. 8-9; Ex. 013 p. 2; Ex. 066 p. 1)
50. CBJ's Docks and Harbors Board is authorized to impose fees and charges for the use of CBJ's ports and harbors. (Ex. 012 pp. 3-4, 8; Ex. 013 p. 2) Among others, CBJ's Docks and Harbors Board is authorized to assess the following vessel fees and charges:
 - Dockage charges for berthing at the Steamship Wharf, the Cruise Ship Terminal, the Intermediate Vessel Float, and the Marine Park Lightering Float;
 - Port maintenance fees for use of the Steamship Wharf, the Cruise Ship Terminal, the Intermediate Vessel Float, and the Marine Park Lightering Float to provide for maintenance, replacement, and improvement of these facilities;
 - Potable water fees for taking on potable water through a metered connection at the port at percent of the CBJ Water Utility Rate for the metered commercial customer class;

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- Loading permit fees for obtaining a loading permit;
- Electricity fees for the use of electrical outlets at the Steamship Wharf, the Cruise Ship Terminal, the Intermediate Vessel Float, and the Marine Park Lightering Float and adjacent facilities; and
- Other fees for the use of CBJ's Docks and Harbors Department facilities that are not specifically identified in CBJ Administrative Code Title 05, Chapter 15.

(Ex. 012 pp. 3-4, 8; Ex. 013 pp. 2-3; *see* Ex. 059 pp. 1-3; Ex. 061 pp. 1-3; Ex. 062 pp. 1-3)

51. Wharfage fees (port maintenance fees) are \$3.00 per linear foot at the docks and a flat fee of \$600 per day at tendering docks. (Ex. 111 pp. 1-2)
52. In the aggregate, dockage fees total approximately \$800,000 to \$900,000 annually. (Ex. 056 p. 2) And overall, in FY 2016, CBJ collected \$1.4 million in revenues for charges for services and licenses, permits, and fees. (Declaration of Jim Calvin ("J. Calvin Decl.") ¶ 52, filed herewith)

Port Fees Outside Juneau

53. Beyond Juneau, vessels, including vessels operated by the Cruise Lines, are assessed fees at other ports in Alaska and outside of Alaska, some of which are calculated on a per passenger basis. (Ex. 001,² pp. 20-22)

² In support of this Statement of Facts, CLIA attaches Exhibit 001, which is *Cruise Lines International Association Alaska's Objections and Responses to CBJ's First Requests for Admission to Cruise Lines International Association Alaska*. In attaching CLIA's responses as an exhibit, CLIA relies on the content of CBJ's requests for purposes of certain factual statements herein and in doing so, does not waive its objections and responses to CBJ's requests for admissions, including CLIA's objections based on, among other things, burden, the compound nature of the requests, the need for expert testimony, and violation of the best evidence rule. CBJ should have no reason to dispute facts that CBJ itself asked CLIA to admit. *See Laryngeal Mask Co. v. Ambu A/S*, No. 07CV1988-DMS NLS, 2009 WL 9530359, at *13 (S.D. Cal. Sept. 23, 2009) ("The goal of Requests for Admission is to eliminate from the trial issues as to which there is no genuine dispute and, therefore, Requests for Admissions are not intended to be used as means of gathering evidence. Instead, Rule 36 presupposes that the party propounding the request already knows the facts sought to be admitted") (citing *Safeco of America v. Rawston*, 181 F.R.D. 441, 445 (C.D. Cal. 1998)).

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The State CPV Tax

54. The State levies a CPV Tax of \$34.50 per passenger on passengers traveling on ships spending more than 72 hours in the State's marine waters. (Ex. 017 p. 1)
55. Per State statute, the proceeds from the CPV Tax are to be deposited in a special "commercial vessel passenger tax account" in the general fund. The State legislature may appropriate the CPV Tax revenues to ports of call (\$5.00 per passenger) for port facilities, harbor infrastructure, and other services provided to the commercial passenger vessels and the passengers on board those vessels and to projects that improve port and harbor infrastructure, provide services to commercial passenger vessels and the passengers on board those vessels, or improve the safety and efficiency of the interstate and foreign commerce activities in which the vessels and the passengers on board those vessels are engaged. (Ex. 019 p. 1)
56. Passengers subject to the CPV Tax are liable for the payment of the tax. The statute obligates the ship owner or agent to collect the CPV Tax from the passenger and pay it to the State. (Ex. 018 p. 1)
57. The State permits vessels to offset, subject to a cap of \$17.50, their passengers' obligation to the State by the total amount of a tax that is imposed and collected by home rule or general law municipalities under a law enacted before December 17, 2007. (Ex. 020 p. 1)
58. The enactment of the statutory provision providing for the offset of local passenger levies referenced in Paragraph No. 57 above was intended to ensure that CPV Tax revenues are used to benefit vessels. (Ex. 050 p. 1)

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59. CBJ's Entry Fees are home rule or general law municipality levies that offset the liability of a passenger to the State for payment of the CPV Tax. (*See* Ex. 011 pp. 1-7; Ex. 014 pp. 1-2; Ex. 015 pp. 1-3; Ex. 016 pp. 1-3; Ex. 020 p. 1; Ex. 034 pp. 3-4)
60. The State distributes funds collected from the CPV Tax to ports of call in the State, including CBJ. CBJ receives \$5.00 per passenger visiting CBJ from the State each year. (ECF No. 28, ¶ 19; ECF No. 40, ¶ 19; *see also* Ex. 019 p. 1)
61. Along with PDF revenues, the CPV Tax funds are intended to fully fund CBJ's cruise ship terminal project and offshore-floating cruise ship dock improvements. (Ex. 106 p. 2)
62. From CY 2010 to 2013, the number of passengers subject to the CPV Tax and the total amounts generated by the CPV Tax for the State rose from 869,438 passengers and total CPV Tax of \$39,994,148 in CY 2010 to 909,672 passengers and total CPV Tax of \$31,383,684, not including the \$13,406,768 reduction for local levies, in CY 2013. (*See* Ex. 069 p. 2)
63. In CY 2012, CBJ's share of the CPV Tax was \$4,151,020. In CY 2013, CBJ's share of the State CPV Tax was \$4,547,635. (*See* Ex. 069 p. 4)
64. From FY 2012 to 2016, CBJ received on average in excess of \$4 million per year via the CPV Tax. (ECF No. 28, ¶ 29; ECF No. 40, ¶ 29; *see also* Ex. 019 p. 1)
65. In addition, CBJ has received \$14,300,000 in direct legislative appropriations from the State between 2010 and 2015 for cruise ship dock improvements (\$2,500,000; 2010), Auke Bay seawalk construction (\$800,000; 2010), cruise ship dock improvements (\$9,000,000; 2011), Last Chance Basin well field (\$1,350,000; 2015), and Salmon Creek water treatment (\$650,000; 2015). (Ex. 100 p. 20)

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Geography of Juneau

66. The geographic boundaries of downtown Juneau are represented on the map attached hereto as Exhibit 118.
67. The geographic boundaries of the entire CBJ are represented on the maps attached hereto as Exhibit 117 and Exhibit 119.
68. Gastineau Channel qualifies as navigable water of the U.S., within Rivers and Harbors Act jurisdiction (as defined by 33 C.F.R. Part 329) because it is a water body subject to the ebb and flow of the tide. Gastineau Channel further qualifies as a Traditional Navigable Water because it is a water body subject to the ebb and flow of the tide. (Ex. 076 pp. 1-2)

Cruise Industry in Juneau

69. For FY 2016, Juneau's population was 33,277. (Ex. 097 p. 40)
70. In the late 1990s, cruise vessel passengers landing in Alaska averaged a little under 600,000 annually. (Ex. 113 p. 1)
71. CBJ receives approximately 1,000,000 cruise ship passengers per year during a period from approximately May 1 through September 15. The number has on occasion been lower than 1,000,000, but has been steadily at 1,000,000 or more for several years. (See Ex. 075 pp. 1-2)
72. The table included at Exhibit 001, page 7 shows rankings of U.S. Cruise Ship Ports based on passenger counts for the period 2011-2015.
73. In the 2016 cruise season, more than 1,000,000 cruise passengers disembarked in Juneau. (See Ex. 075 p. 1)
74. These passengers come from all areas of the U.S. and from many foreign countries. (See Ex. 075 p. 1)

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75. Voyages to Juneau originate both in the U.S. and in foreign ports, most commonly Seattle, Washington and Vancouver, British Columbia. (*See, e.g.*, Ex. 103 p. 1)
76. Cruise vessels generally stay in Juneau several hours. (*See, e.g.*, Ex. 101 pp. 1-2; Ex. 102 pp. 1-6; Ex. 104 pp. 1-3)
77. During this time, cruise passengers can disembark, travel throughout the Juneau city limits, and take excursions outside the immediate port and central Juneau area to locations like Mendenhall Glacier and Statter Harbor, both of which are approximately 10 to 12 miles from the cruise ship docks. (Ex. 049 p. 6)
78. The cruise season lasts from May through September. (*See, e.g.*, Ex. 101 pp. 1-2; Ex. 102 pp. 1-6; Ex. 104 pp. 1-3)
79. The cruise ship industry provides numerous sources of revenue for CBJ. These revenue sources are not limited to the MPF, PDF, and CPV Tax revenues. (J. Calvin Decl. ¶ 57)
80. CBJ collects sales taxes on sales of goods and services by individuals, businesses, and companies within CBJ. (J. Calvin Decl. ¶ 13)
81. Cruise passengers have a significant economic impact on businesses in Juneau, purchasing millions of dollars in goods and services and generating sales tax revenues in excess of \$7 million annually. (J. Calvin Decl. ¶ 18; *see also* Ex. 031 p. 11)
82. According to CBJ's official webpage, cruise ship passenger spending helps Juneau's economy. (Ex. 106 p. 2)
83. CBJ collects a 5 percent sales taxes on purchases of goods and services within Juneau. Those funds are used for general CBJ operations and capital projects. (J. Calvin Decl. ¶¶ 13, 15)

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84. CBJ sales tax revenue is generated by cruise ship passenger, crew, and cruise line purchases in Juneau of goods and services. (J. Calvin Decl. ¶ 14)
85. CBJ's 5 percent sales tax is also charged on all cruise ship tariffs charged by private dock owners (Franklin Dock, Goldbelt Seadrome Marina, and AJ Juneau Dock). This charge is separate from the Entry Fees. (J. Calvin Decl. ¶ 17)
86. In FY 2016, CBJ collected \$46.1 million in general sales tax. (J. Calvin Decl. ¶ 16)
87. An estimated 17 percent, or \$8.0 million, of the \$46.1 million that CBJ collected in sales tax in FY 2016 resulted from taxable spending by cruise ship passengers, crew, and the cruise lines. (J. Calvin Decl. ¶ 18)
88. In summer 2016, cruise ship passenger purchases generated an estimated \$6.9 million in sales tax revenue for CBJ, with an additional estimated \$400,000 in sales tax revenue generated from purchases by cruise ship crew members. (J. Calvin Decl. ¶¶ 23, 26)
89. Based on an estimated \$600,000 in spending on accommodations by passengers and cruise lines, CBJ collected an estimated \$42,000 in hotel tax revenue in 2016. (J. Calvin Decl. ¶ 38)
90. In total, for FY 2016, cruise-related activities generated an estimated \$23 million in revenue for CBJ. Of that \$23.2 million, approximately \$13.7 million was generated by the MPF, PDF, port dues, and State CPV Tax. Sales and property tax payments made by workers employed in cruise-dependent enterprises are not included in the \$23.2 million total. (J. Calvin Decl. ¶ 57)

PROPOSED

Uses of CBJ Portion of the State CPV Tax

Statter Harbor

91. Statter Harbor (also known as Don D. Statter Harbor) is located in Auke Bay, Alaska, approximately 35 nautical miles from downtown Juneau and 12 miles by road. (Ex. 122 p. 1)
92. According to CBJ's official webpage, "Statter is primarily a transient harbor that gets all kinds of patrons: fishermen, charter operators, local boat-owners, live-aboards that call Statter home, and larger sailing and pleasure yachts." (See Ex. 122 p. 1)
93. Statter Harbor is also used by local residents, tourists, fishermen, kayakers, neighborhood residents, and tourism businesses. (Ex. 116 p. 1)
94. Some cruise vessel passengers visiting CBJ, either through their own arrangements or as part of group excursions arranged by the cruise lines, travel from downtown CBJ to Statter Harbor to participate in whale watching. (Ex. 051 p. 2)
95. CBJ has allocated a portion of its share of the CPV Tax revenues to fund improvements at Statter Harbor. (See Ex. 048 p. 5; see also Ex. 073 p. 3)
96. The bulk of the funding for improvements at Statter Harbor comes from CPV Tax revenues allocated to CBJ (approximately 85 percent). (See, e.g., Ex. 047 p. 1; Ex. 048 p. 5; Ex. 073 p. 3)
97. The remainder of the funding comes from CBJ docks and harbors fees. (See, e.g., Ex. 074 pp. 5-6)
98. Improvements to Statter Harbor include, but are not limited to, a proposed facility that would provide approximately 800 linear feet of additional moorage specifically for the whale watching and fishing charter industry and a bus/coach staging area. (Ex. 047 p. 1)

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99. Other improvements include replacing a boat launch ramp and expanding an existing parking area to accommodate large vehicles with boat trailers. (Ex. 028 p. 4)
100. According to a grant to CBJ by the State's Department of Commerce, Community and Economic Development, the finished improvements will accommodate both commercial users and local residents, as well as reduce conflicts between the two groups. (Ex. 116 p. 1)

Uses of CBJ's Revenues from the Entry Fees

Recommendations for Use of Revenues from the Entry Fees

101. CBJ accepts proposals for, and public comments to, projects to be funded by the MPF revenues. (Ex. 011 pp. 6-7)
102. CBJ's City Manager issues recommendations for MPF spending through memoranda to the Assembly. (*See, e.g.*, Ex. 044 pp. 1-7, Ex. 046 pp. 1-7)
103. CLIA has objected to the City Manager's recommendations for use of the MPF revenues. (*See, e.g.*, Ex. 042 p. 1)
104. CBJ plans to use – and has used – the MPF revenues for a number of open capital projects, including, but not limited to, the Waterfront Seawalk, the Downtown Cruise Ship Berth Enhancement, Cruise Berth Improvements, the Juneau Douglas City Museum, the Juneau Arts & Cultural Center Improvements, and the Aurora Harbor Rebuild. (*See, e.g.*, Ex. 039 p. 30; Ex. 054 p. 1-4)

Special Revenue Funds

105. As set forth in Paragraph Nos. 32 and 33 above, CBJ uses "Special Revenue Funds" to account for revenues from specific sources, including grants, service fees, rental charges, and sales taxes. (*See* Ex. 097 p. 11)

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106. “Non-major special revenue funds” includes revenues from the MPF and PDF. (*See Ex. 097 p. 11*)
107. The balance of the Special Revenue Funds are reported annually in CBJ’s CAFRs. The CAFRs are prepared for each FY (July 1 through June 30). (*See Ex. 097 p. 11*)
108. Each CAFR is a “financial report on all assets, liabilities, revenues, and expenditures” of CBJ and is “comprehensive picture on the City’s financial condition.” The CAFR is a “follow-up document to the [CBJ] budget” and “describes what was actually spent, and the status of assets and liabilities, at the end of the fiscal year.” (Ex. 121 p. 1)
109. The CAFRs are prepared by CBJ’s Finance Department as part of the annual financial audit, and responsibility for the accuracy of the data and the completeness and fairness of the presentation, including all disclosures, rests with CBJ. The CAFR for each FY since FY 1998 is publicly available on CBJ’s website. (*See Ex. 121 p. 1*) Exhibits 079 through 097 are excerpts from the CAFRs that include the “Special Revenue Funds” for each of FY 1998 through FY 2016. Beginning in FY 2000, the CAFRs reflect a special revenue fund for MPF revenues. (*See Ex. 081 p. 11*) Since FY 1998, the CAFRs have reflected a special revenue fund for port revenues. (*See Ex. 079 p. 15*)
110. For example, for FY 2010, the “Combining Balance Sheet” of the “Non-Major Special Revenue Funds” lists the following revenues: \$2,856,882 for “Marine Passenger Fee,” and \$4,785,035 for “Port Development” in “Licenses, permits and fees” revenues. In FY 2016, the “Combining Balance Sheet” of the “Non-Major Special Revenue Funds” lists the following revenues: \$4,957,205 for “Marine Passenger Fee” in “Licenses, permits and fees” revenues and \$2,940,285 for “Port Development” in “Charges for services” revenues. (Ex. 091 p. 9) (Beginning in FY 2011, CBJ changed its method for recording PDF revenues,

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moving the revenues from “Licenses, permits and fees” to “Charges for services.” (*See, e.g.*, Ex. 092 p. 9)) For FY 2016, the total revenues for the MPF and PDF were \$7,897,490.³ (*See* Ex. 097 p. 10)

General Government Fund

111. Since 2000, CBJ has allocated MPF revenues to the General Government Fund. (*See, e.g.*, Ex. 078 p. 19; *see* Ex. 025 p.1) Between FY 2006 and FY 2016, CBJ’s actual allocations of MPF revenues per FY ranged from a low of \$1,080,200 to a high of \$2,209,000. (Ex. 124 p. 6; Ex. 125 p. 7; Ex. 126 p. 6; Ex. 127 p. 6; Ex. 128 p. 6; Ex. 129 p. 6, Ex. 130 p. 6; Ex. 131 p. 6, Ex. 078 p. 19; Ex. 132 p. 7; Ex. 133 p. 7) (showing FY actuals as follows: FY 2006, \$1,161,000; FY 2007, \$1,080,200; FY 2008, \$1,133,900; FY 2009, \$1,391,500; FY 2010, \$1,401,000; FY 2011, \$1,492,400; FY 2012, \$2,209,000; FY 2013, \$1,574,100; FY 2014, \$1,852,800; FY 2015, \$1,569,800; FY 2016, \$2,042,700)

Government Operations

112. CBJ allocates a portion of the MPF revenues annually to support general government operations. (Ex. 024 p. 2) The Entry Fees fund some, but not the entire, operational expenses of the CBJ. (*See* Ex. 052 p. 1)

113. General government operations include the following department or divisions within CBJ: Mayor and Assembly, Law, Administration, Libraries, Finance, Community Development, Capital City Fire Rescue, General Engineering, Building Maintenance, Parks and Recreation, Police, Streets, and Capital Transit. (*See* Ex. 078 p. 6)

³ By referencing particular FYs and expenditures herein, Plaintiffs do not suggest these FYs and expenditures represent the whole of CBJ’s collection and use of the Entry Fees at issue in this case.

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114. In FY 2012 through 2017, CBJ budgeted \$1,400,000 in MPF revenues each year to support identified general government operations. (Ex. 001 p. 46)

Law Department Funding and Attorney's Fees

115. CBJ has allocated portions of the MPF revenues to pay attorneys' fees and/or costs for outside counsel engaged to represent CBJ in matters related to this litigation. (Ex. 002 pp. 16-17)

116. CBJ transferred \$55,777 of FY 2015 MPF revenues from the General and/or Roaded Service Area Funds to the Open Space Waterfront Land Acquisition Capital Improvement Project, (*see* Ex. 006 p. 1), and then transferred \$42,233 to CBJ's Manager as FY 2016 Supplemental Funding for the Law Department, from the Open Space Waterfront Land Acquisition Capital Improvement Project. (*See* Ex. 008 pp. 1-2)

117. CBJ also transferred \$50,000 to CBJ's Manager as Funding for the Law Department, from the Open Space Waterfront Land Acquisition Capital Improvement Project. (*See* Ex. 007 pp. 1-2)

118. CBJ also transferred \$155,892 of unexpended FY 2016 MPF revenues from the General Fund to the Open Space Waterfront Land Acquisition Capital Improvement Project. (*See* Ex. 009 p. 1)

119. In May 2016, KTOO Public Media reported that CBJ is using MPF revenues "coming out of the waterfront acquisition fund" to pay for legal counsel to defend itself in this lawsuit. (Ex. 071 pp. 1-2)

Docks and Facilities Operations

120. In May of 2008, CBJ established an Advisory Group to assist the Docks and Harbors Board in "[laying out] a decision making process the Assembly can use to review cruise ship dock

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alternatives in downtown Juneau.” John Binkley was the “Cruise Lines” representative of the Advisory Group. (Ex. 030 p. 1)

121. In each of FY 2012 and 2013, CBJ budgeted \$154,000 in MPF revenues to fund docks and facilities operations. In each of FY 2014 through 2017, CBJ budgeted \$154,100 in MPF revenues to fund docks and facilities operations. (Ex. 001 p. 46)

122. In each of FY 2013 through 2017, CBJ budgeted \$133,500 in MPF revenues to fund port-customs building maintenance. (Ex. 001 pp. 50-51)

123. In FY 2013, CBJ budgeted \$500,000 in MPF revenues to fund cruise dock cathodic protection. (Ex. 001 p. 51)

124. CBJ has budgeted in MPF revenues to fund the real time monitoring and communications system project (FY 2014, \$75,000; FY 2017 \$97,500). (Ex. 001 p. 51)

125. In FY 2014, CBJ budgeted \$60,000 in MPF revenues for the electrical winches – cruise vessel terminal project. (Ex. 001 p. 51)

126. As of FY 2017, CBJ budgeted \$858,402 in MPF revenues and \$1,110,835.92 in PDF revenues to Downtown Cruise Ship Berth Enhancements. (Ex. 001 p. 44)

127. As of FY 2017, CBJ budgeted \$3,913,018 in MPF revenues and \$19,122,331 in PDF revenues to Cruise Berth Improvements. (Ex. 001 p. 44)

Wireless Internet Expansion

128. CBJ has budgeted a portion of the MPF revenues to support a project to expand wireless internet service at the Marine Park Downtown Public Library. (Ex. 045 p. 1)

129. The project allows the Downtown Public Library to purchase networking equipment and build out the infrastructure necessary to provide wireless internet access to users in Marine Park from May 1st through the end of the tourist season each year. (Ex. 045 p. 1)

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130. The project was proposed due to demand for wireless internet service at the Downtown Public Library increasing significantly each year during the summer months. Annual costs after the first year would consist of maintenance and Internet Service Provider fees. (Ex. 045 p. 1)

131. The anticipated reach of the wireless internet service is from the Marine Park pavilion to and around the Marine Park parking garage, with possible expanded reach in the future. (Ex. 045 p. 1)

Transit Buses and Parking

132. CBJ residents and visitors – including cruise vessel passengers – pay individual fares or purchase passes to use CBJ's Capital Transit bus service. A one-way fare is \$2.00 for individuals age 19 and older, \$1.00 for youths age 18 and younger, and free for children age 5 and younger. The one-way fare is free for local senior citizens. (See Ex. 077 pp. 1-2)

133. According to CBJ, the project allows Capital Transit to provide a safe, clean, and cost effective way for visitors to view the glacier and other areas of Juneau. The fare revenue from summer tourists also offsets the cost of the transit bus service. (Ex. 055 pp. 14-23)

134. In each of FY 2012 and 2013, CBJ budgeted \$278,000 in MPF revenues to fund transit public bus service. In each of FY 2014 through 2017, CBJ budgeted \$300,000 in MPF revenues to fund transit public bus service. (Ex. 001 p. 50)

135. In FY 2016, CBJ budgeted \$30,000 in MPF revenues to fund the Marine Park bus parking lot brick repair. (Ex. 001 p. 52)

Improvements and Additions to Tourism-Related Infrastructure

136. As of April 2014, CBJ had budgeted \$44,200 to the Juneau Douglas City Museum and \$368,600 to improvements for the Juneau Arts & Cultural Center. (Ex. 039 p. 30)

PROPOSED

137. A portion of the fees budgeted for the Juneau Douglas City Museum are to fund additional staff positions at the museum. (Ex. 023 pp. 1-2)
138. According to CBJ, the additional staffing allows the museum to plan long-term exhibits that will change on a yearly basis; to provide more community outreach; to offer additional educational programs to enhance the current school curriculum; to provide better management and collection records; to enhance museum acquisitions; to provide for better oversight and security of current exhibits; and to allow for expanded local access by increasing operating hours such that the museum would operate six days a week, with flexible hours to meet community needs and events. (Ex. 023 pp. 1-2)

Downtown Maintenance and Improvement Projects

139. For FY 2018, CBJ has allocated \$1,827,780 in MPF revenues, among other funding sources, to support a number of Capital Improvement Projects. (Ex. 123 p. 1)
140. For FY 2018, CBJ's Capital Improvement Projects include downtown street reconstruction at Front Street, N. Franklin Street from Front Street to Second Street, and a portion of First Street. (Ex. 110 p. 6) For FY 2018, CBJ's Capital Improvement Projects also include reconstruction and repairs to area wide stairs and sidewalks to promote pedestrian safety. (Ex. 110 p. 6)
141. In FY 2017, CBJ budgeted \$900,000 in MPF revenues to fund the Front Street and Franklin Street reconstruction. (Ex. 001 p. 52)
142. Every year since FY 2012, CBJ has budgeted MPF revenues to downtown sidewalk cleaning (FY 2012, \$89,000; FY 2013, \$89,000; FY 2014, \$95,000; FY 2015, \$109,500; FY 2016, \$109,500; FY 2017, \$109,500). (Ex. 001 p. 50)

PROPOSED

143. Another FY 2018 Capital Improvement Project includes locating the need for, designing, and providing maintenance to, adequate restroom facilities in the downtown waterfront area.

(Ex. 110 p. 3)

144. CBJ has allocated a portion of the MPF revenues to fund a crossing guard program. The crossing guard program is designed to address both vehicular and pedestrian congestion along S. Franklin Street and the Marine Park Plaza area. (*See Ex. 067 p. 1*)

145. CBJ has allocated a portion of the MPF revenues to fund downtown foot and bike patrol. According to the MPF Proceeds Committee, the purpose of this allocation is to alleviate the need for officers, including school officers, to sign up for volunteer overtime hours. (*See Ex. 027 p. 2*)

Beautification Projects and CBJ's Waterfront Seawalk Project

146. Monies collected from the Entry Fees have been used for some of the costs related to CBJ's Waterfront Seawalk Project in the downtown waterfront. (Ex. 026 p. 1)

147. The downtown waterfront is an area approximately that stretches from the Juneau Douglas Bridge at the north end along the Gastineau Channel to the Little Rock Dump at the south end, and apart from the cruise ship docks, encompasses a variety of facilities and amenities accessible to all tourists visiting CBJ, to residents of CBJ, and by other vessels that do not pay the Entry Fees. (*See Ex. 068 p. 4*)

148. The Waterfront Seawalk Project is part of CBJ's Long Range Waterfront Plan, the goals of which include enhancing community quality of life, strengthening tourism product offerings and downtown retail entertainment, residential, and service activities, and improving CBJ's image and attractiveness for investment. (*See Ex. 109 p. 2*)

PROPOSED

149. The graphic on Exhibit 109, page 2 depicts CBJ's Downtown Waterfront 2025 Concept Plan.
150. The Waterfront Seawalk consists of approximately 1,000 feet of elevated deck and 350 feet of pathway across a recreational island. (Ex. 114 p. 1)
151. CBJ has budgeted MPF revenues to fund the Waterfront Seawalk Project every year since FY 2012 (FY 2012, \$603,900; FY 2013, \$971,800; FY 2014, \$833,100; FY 2015, \$64,100; FY 2016, \$650,200; FY 2017, \$237,200). (Ex. 001 p. 50)
152. According to CBJ, MPF revenues will provide funding to continue the design, examination of right-of-way issues, pedestrian access and safety, and construction of the Waterfront Seawalk in accordance with the Long Range Waterfront Plan. (*See* Ex. 068 p. 72)
153. As of FY 2017, CBJ budgeted \$525,000 in PDF revenues to the Waterfront Seawalk Project. (Ex. 001 p. 44)

Hospital and Public Health

154. MPF revenues are budgeted to support hospital and emergency services and to fund additional hospital staff hired during the summer months at Bartlett Regional Hospital. (Ex. 041 pp. 1-4)
155. In December of 2009, the Bartlett Regional Hospital, which services Juneau, requested CBJ to use some of the MPF revenues "[t]o cover costs associated with providing timely medical care to cruise ship passengers." According to its CEO, Bartlett Regional Hospital "provide[s] medical services to cruise ship passengers from April to October each year" and must "offset the direct impact of the increase in patient load caused by the cruise ship industry to hospital staffing requirements and revenue shortfalls." (Ex. 032 p. 2) According to Bartlett Regional Hospital, "[c]ruise ship passengers accounted for 13% of inpatients

PROPOSED

from May through September in 2009 [and] [t]he case management department spent 616 hours providing services to these patients.” (Ex. 032 p. 4)

156. According to CBJ, appropriations of MPF revenues allows the hospital to hire a dedicated part time case manager in the summer to service the logistical and financial needs of cruise ship passengers; to increase overtime staffing in the emergency department; and to contract with a passenger liaison to interface with the cruise ship industry and to expedite cruise ship passenger patient care. (Ex. 041 pp. 1-4)

157. A portion of the fees budgeted to support hospital and emergency services fund Airlift Northwest’s provision of air ambulance services for visitors and residents of Juneau and surrounding communities. (Ex. 038 p. 1)

158. CBJ has budgeted MPF revenues for Bartlett Regional Hospital in FY 2012 and every year since FY 2014 (FY 2012, \$29,400; FY 2014, \$54,500; FY 2015, \$61,500; FY 2016, \$86,000; FY 2017, \$131,600). (Ex. 001 p. 48)

159. CBJ also has budgeted MPF revenues to fund seasonal EMS transport programs every year since FY 2012 (FY 2012, \$129,700; FY 2013, \$184,000; FY 2014, \$166,100; FY 2015, \$195,800; FY 2016, \$225,900; FY 2017, \$232,400). (Ex. 001 p. 47)

160. In FY 2013, CBJ budgeted \$175,000 in MPF revenues for CCFR ambulance replacement. (Ex. 001 p. 47)

161. In each of FY 2012 through 2014, CBJ budgeted \$25,000 in MPF revenues to Capital City Fire/Rescue air medevac support. In FY 2015, CBJ budgeted \$15,000 in MPF revenues to Capital City Fire/Rescue air medevac support. (Ex. 001 p. 47)

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162. In each of FY 2012 through 2015, CBJ budgeted \$50,000 in MPF revenues to fund non-profit air medevac support. In FY 2016, CBJ budgeted \$25,000 in MPF revenues to fund non-profit air medevac support. (Ex. 001 pp. 47-48)

Airport

163. In FY 2012, CBJ budgeted \$159,100 in MPF revenues to airport operations. (Ex. 001 p. 46)

Private Dock Facilities – AJ Juneau Dock

164. AJ Juneau Dock is a private dock facility that accommodates cruise vessels and is located in the Port of Juneau. (*See* Ex. 029 p. 4; Ex. 037 pp. 1, 10-11; Ex. 038 p. 1)

165. On June 24, 2014, CBJ signed an Memorandum of Agreement with AJ Juneau Dock, LLC, to provide funding from MPF revenues to reimburse AJ Juneau Dock for certain projects and expenses. The projects included: restroom cleaning and maintenance supplies for cruise ship passengers restrooms at the dock; port security and short-range rescue boat; port security training; covered walkway side panels; and bear-proof dumpsters. (Ex. 040 pp. 1-2)

166. In August 2010, CBJ projected that Entry Fee revenues from vessels docking at AJ Juneau Dock would constitute approximately 26 percent of all Entry Fee revenues received for the 2010 cruise ship season. (Ex. 135 pp. 1, 4-6, 9-10) AJ Juneau Dock has operated in the port of Juneau since 2004 and had received 1,794,630 cruise vessel passengers assessed the Entry Fees, as of December of 2010. (*See, e.g.*, Ex. 057 pp. 1-2; Ex. 064 pp. 1-2; Ex. 065 pp. 1-2; *see also* Ex. 070 p. 1)

167. Vessels owned by the Cruise Lines dock at AJ Juneau Dock and are assessed the Entry Fees at each visit. (Ex. 033 p. 1)

168. In each of FY 2012, 2013, and 2015, CBJ allocated \$20,000 in MPF revenues for restroom cleaning and maintenance at AJ Juneau Dock. In FY 2014, CBJ allocated \$15,000 in MPF

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revenues for restroom cleaning and maintenance at AJ Juneau Dock. In each of FY 2016 and 2017, CBJ allocated \$26,000 in MPF revenues for restroom cleaning and maintenance at AJ Juneau Dock. (Ex. 001 p. 52)

169. In each of FY 2012 through 2017, CBJ allocated \$19,600 in MPF revenues for Juneau port security and a short-range response boat at AJ Juneau Dock. (Ex. 001 pp. 52-53)

170. In each year since FY 2012, CBJ has allocated MPF revenues for a port security guard, security training, and exercise at AJ Juneau Dock (FY 2012, \$44,000; FY 2013, \$44,000; FY 2014, \$26,000; FY 2015, \$36,000; FY 2016, \$93,800; FY 2017, \$93,800). (Ex. 001 p. 53)

171. In FY 2013, CBJ allocated \$28,000 in MPF revenues for security improvements at AJ Juneau Dock, even though CBJ does not own the dock. (Ex. 001 p. 53)

172. In FY 2013, CBJ allocated \$170,200 in MPF revenues for the dock entrance atrium project at AJ Juneau Dock. In FY 2014, CBJ allocated \$145,000 in MPF revenues for the dock entrance atrium project at AJ Juneau Dock. (Ex. 001 p. 54)

173. In FY 2012, CBJ allocated \$160,400 in MPF revenues for cathodic protection at AJ Juneau Dock. (Ex. 001 p. 54)

174. In FY 2012, CBJ allocated \$10,000 in MPF revenues for canvas replacement at AJ Juneau Dock. (Ex. 001 p. 54)

175. In FY 2012, CBJ allocated \$48,000 in MPF revenues for security gates at AJ Juneau Dock. (Ex. 001 pp. 54-55)

176. In FY 2012, CBJ allocated \$48,000 in MPF revenues for the permanent covered walkway project at AJ Juneau Dock. (Ex. 001 p. 55)

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177. In FY 2015, CBJ allocated \$120,000 in MPF revenues for covered walkway side panels at AJ Juneau Dock. (Ex. 001 p. 55)
178. In FY 2012, CBJ allocated \$32,000 in MPF revenues for the tour and information kiosk and shuttle kiosk at AJ Juneau Dock. In FY 2013, CBJ allocated \$35,000 in MPF revenues for the tour and information kiosk and shuttle kiosk at AJ Juneau Dock. (Ex. 001 p. 55)
179. In FY 2012, CBJ allocated \$318,000 in MPF revenues for Grey Water Connection and CBJ Lift Station improvements at AJ Juneau Dock. (Ex. 001 pp. 55-56)
180. In FY 2014, CBJ allocated \$30,000 in MPF revenues for the security camera expansion project at AJ Juneau Dock. (Ex. 001 p. 56)
181. In FY 2014, CBJ allocated \$58,000 in MPF revenues for electrical winches at AJ Juneau Dock. (Ex. 001 p. 56)
182. In FY 2015, CBJ allocated \$7,900 in MPF revenues for a bear-proof garbage dumpster and two bear-proof trash cans at AJ Juneau Dock. (Ex. 001 p. 56)
183. In FY 2016, CBJ allocated \$300,000 in MPF revenues for dock barge maintenance at AJ Juneau Dock. In FY 2017, CBJ allocated \$330,000 in MPF revenues for dock barge maintenance at AJ Juneau Dock. (Ex. 001 p. 57)
184. In FY 2017, CBJ allocated \$6,500 in MPF revenues for the wastewater monitoring system upgrade at AJ Juneau Dock. (Ex. 001 p. 57)

Private Dock Facilities – Franklin Dock

185. Franklin Dock is a private dock facility located in the Port of Juneau that accommodates cruise vessels. (*See* Ex. 037 pp. 1, 10-11)
186. Vessels of the Cruise Lines dock at Franklin Dock and are assessed the Entry Fees at each visit, even though CBJ does not own the dock. (*See, e.g.,* Ex. 058 pp. 1-2; Ex. 060 pp. 1-2;

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Ex. 063 pp. 1-2) In August 2010, CBJ projected that Entry Fee revenues from vessels docking at Franklin Dock would constitute approximately 29 percent of all Entry Fee revenues received for the 2010 cruise ship season. (Ex. 135 pp. 1, 4-6, 9-10) (Together with projected Entry Fee revenues from AJ Juneau Dock, CBJ projected that it would receive more than half of its Entry Fee revenues from vessels docking at the private, non-CBJ owned and operated cruise ship berths. (Ex. 135 pp. 1, 4-6, 9-10))

187. On June 29, 2015, CBJ signed a Memorandum of Understanding with Franklin Dock Enterprises to provide MPF revenues to reimburse Franklin Dock Enterprises for certain projects and expenses. These projects include: restroom cleaning and maintenance; security training; protective winch covers; and dock maintenance and refurbishment. (Ex. 043 pp. 1-2)

188. CBJ has allocated MPF revenues to fund restrooms at Franklin Dock every year since FY 2012 (FY 2012, \$20,000; FY 2013, \$12,000; FY 2014, \$15,000; FY 2015, \$20,000; FY 2016, \$25,000; FY 2017, \$25,000). (Ex. 001 p. 57)

189. CBJ has allocated MPF revenues to fund security personnel training at Franklin Dock each year since FY 2012 (FY 2012, \$100,000; FY 2013, \$55,000; FY 2014, \$75,000; FY 2015, \$85,000; FY 2016, \$85,000; FY 2017, \$85,000). (Ex. 001 pp. 57-58)

190. In FY 2013, CBJ allocated \$2,000 in MPF revenues for the purchase and installation of a weather transmitter station at Franklin Dock. (Ex. 001 p. 58)

191. In FY 2013, CBJ allocated \$83,000 in MPF revenues for security gates at Franklin Dock. (Ex. 001 p. 58)

192. In FY 2013, CBJ allocated \$10,000 in MPF revenues for a security camera system at Franklin Dock. (Ex. 001 p. 58)

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193. In FY 2012, CBJ allocated \$40,000 in MPF revenues for dock resurfacing at Franklin Dock.

(Ex. 001 p. 58)

194. In FY 2012, CBJ allocated \$60,000 in MPF revenues for corrosion control at Franklin Dock.

(Ex. 001 pp. 58-59)

195. In FY 2012, CBJ allocated \$150,000 in MPF revenues for retaining wall improvements at

Franklin Dock. In FY 2013, CBJ allocated \$25,000 in MPF revenues for retaining wall improvements at Franklin Dock. (Ex. 001 p. 59)

196. In FY 2012, CBJ allocated \$30,000 in MPF revenues for staging area improvements (canvas

top on the covered staging area) at Franklin Dock. (Ex. 001 p. 59)

197. In FY 2012, CBJ allocated \$75,000 in MPF revenues for parking area improvements at

Franklin Dock. (Ex. 001 p. 59)

198. In FY 2012, CBJ allocated \$25,000 in MPF revenues for staging area improvements (cover

for the passenger waiting area) at Franklin Dock. (Ex. 001 p. 59)

199. In FY 2014, CBJ allocated \$96,100 in MPF revenues for electrical winches at Franklin

Dock. (Ex. 001 p. 59)

200. In FY 2016, CBJ allocated \$3,500 in MPF revenues for protective winch covers at Franklin

Dock. (Ex. 001 pp. 59-60)

201. In FY 2014, CBJ allocated \$28,000 in MPF revenues for the tour information booth at

Franklin Dock. (Ex. 001 p. 60)

202. In FY 2015, CBJ allocated \$25,000 in MPF revenues for dock deck safety at Franklin Dock.

(Ex. 001 p. 60)

203. In FY 2015, CBJ allocated \$3,500 in MPF revenues for a bear-proof garbage dumpster at

Franklin Dock. (Ex. 001 p. 60)

PROPOSED

204. In FY 2015, CBJ allocated \$100,000 in MPF revenues for a total suspended solids monitoring system at Franklin Dock. (Ex. 001 pp. 60-61)

205. In FY 2016, CBJ allocated \$30,000 in MPF revenues for dock maintenance and refurbishment at Franklin Dock. In FY 2017, CBJ allocated \$29,000 in MPF revenues for dock maintenance and refurbishment at Franklin Dock. (Ex. 001 p. 61)

206. In FY 2017, CBJ allocated \$6,500 in MPF revenues for the TSS wastewater monitoring system upgrade at Franklin Dock. (Ex. 001 pp. 61-62)

207. In FY 2017, CBJ allocated \$70,000 in MPF revenues for tug assists at Franklin Dock. (Ex. 001 p. 62)

Private Dock Facilities – Goldbelt Seadrome Marina

208. The Goldbelt Seadrome Marina (“Goldbelt”) is a private cruise and private yacht mooring place in downtown Juneau. (See Ex. 112 pp. 1-2)

209. Goldbelt caters directly to boat-based shore excursions, the small cruise vessel market, and private yachts. It accommodates vessels ranging from 50 feet to 250 feet in length. (See Ex. 112 p. 1)

210. In FY 2014, CBJ allocated \$217,000 in MPF revenues for dock, piling, electrical and water upgrades at Goldbelt. (Ex. 001 p. 62)

211. In FY 2016, CBJ allocated \$230,000 in MPF revenues for replacement and installation of a new gangway at Goldbelt. (Ex. 001 pp. 62-63)

212. In FY 2016, CBJ allocated \$8,000 in MPF revenues for a guest staging area at Goldbelt. (Ex. 001 p. 63)

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Tourist Infrastructure Beyond Docks

213. In each of FY 2012 and 2013, CBJ allocated \$127,000 in MPF revenues to the Juneau Convention and Visitors Bureau. In FY 2014, CBJ allocated \$142,000 in MPF revenues to the Juneau Convention and Visitors Bureau. In FY 2015, CBJ allocated \$140,000 in MPF revenues to the Juneau Convention and Visitors Bureau. In FY 2016, CBJ allocated \$150,000 in MPF revenues to the Juneau Convention and Visitors Bureau. In FY 2017, CBJ allocated \$160,000 in MPF revenues to the Juneau Convention and Visitors Bureau. (Ex. 001 p. 63)
214. In each of FY 2012 through 2017, CBJ allocated \$15,000 in MPF revenues to the Tourism Best Management Practices effort. (Ex. 001 p. 63)
215. In each of FY 2014 through 2017, CBJ allocated \$12,700 in MPF revenues to downtown pay phones. (Ex. 001 pp. 63-64)
216. In each of FY 2012 through 2016, CBJ allocated \$75,000 in MPF revenues to downtown restroom maintenance. In FY 2017, CBJ allocated \$85,500 in MPF revenues to downtown restroom maintenance. (Ex. 001 p. 49)
217. CBJ has allocated MPF revenues to fund a crossing guard program every year since FY 2012 in amounts ranging from \$125,000 to \$180,000 per year. (Ex. 001 p. 48)
218. CBJ has allocated MPF revenues to fund a downtown foot/bike patrol every year since FY 2012 (FY 2012, \$122,600; FY 2013, \$87,000; FY 2014, \$87,000; FY 2015, \$87,000; FY 2016, \$171,200; FY 2017, \$189,700). (Ex. 001 p. 48)
219. In each of FY 2012 through 2015, CBJ budgeted \$56,300 in MPF revenues to the downtown security program/downtown business association. In each of FY 2016 and 2017, CBJ

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budgeted \$57,000 in MPF revenues to the downtown security program/downtown business association. (Ex. 001 pp. 48-49)

220. In each of FY 2014 and 2015, CBJ budgeted \$48,000 in MPF revenues to accessibility training and trip coordination. In FY 2016, CBJ budgeted \$24,000 in MPF revenues to accessibility training and trip coordination. (Ex. 001 p. 49)

221. In FY 2015, CBJ budgeted \$1,200,000 in MPF revenues to the Last Chance Basin well field project. (Ex. 001 pp. 51-52)

Grand Total of Uses of CBJ Revenues from the Entry Fees – FY 2012 through 2017

222. Between FY 2012 and FY 2017, CBJ budgeted MPF revenues as follows: \$4,639,000 for FY 2012; \$4,975,000 for FY 2013; \$4,635,000 for FY 2014; \$4,694,500 for FY 2015; \$4,600,000 for FY 2016; and \$5,087,100 for FY 2017. (Ex. 001 p. 64)

223. Assuming that approximately 1 million cruise vessel passengers visited CBJ in FY 2017, CBJ collected approximately \$5 million in MPF revenues (\$5.00 per passenger) for FY 2017 and approximately \$3 million in PDF revenues (\$3.00 per passenger), for a total of approximately \$8 million for FY 2017. (See Ex. 075 p. 1)

DATED: October 20, 2017

Respectfully submitted,

By: /s/ C. Jonathan Benner

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CERTIFICATE OF SERVICE

I certify that on October 20, 2017, I caused a true and correct copy of the foregoing document to be filed using the Court's Electronic Case Files System ("ECF"). The document is available for review and downloading via the ECF system, and will be served by operation of the ECF system upon all counsel of record.

/s/ Kathleen E. Kraft

Kathleen E. Kraft