

Exhibit A¹

MATERIAL FACT	CLIA ASSERTED FACT	CBJ ASSERTED FACT, ORDINANCE, OR RESOLUTION
CBJ assesses the MPF against the vessels, not against the individual passengers.	<p>“CBJ assesses the MPF against marine passenger ships...” (ECF No. 68 at ¶ 13.)</p> <p>“The MPF is paid to CBJ by the owner or agent of the marine passenger ship.” (<i>Id.</i> at ¶ 16.)</p>	<p>“The CBJ ordinance only requires that the owner of the ship or its agent remit the fee, such that the individual passengers have no liability directly to CBJ.” (ECF No. 118-3 at p. 7.)</p> <p>“The passenger fee shall be paid by the owner or agent of the ship...” (CBJ Ordinance 69.20.040, ECF No. 68-12.)</p>
CBJ assesses the PDF against the vessels, not against the individual passengers.	<p>“The PDF is paid by vessel owners or their agents to the CBJ municipal government.” (ECF No. 68 at ¶ 27.)</p>	<p>“[E]very vessel carrying passengers for compensation on port calls in the City and Borough and not otherwise exempted ... shall pay ... a Port Development Fee of \$3.00 per arriving passenger per day for all vessels ... The fee shall be paid by the owner or agent of the vessel...” (CBJ Res. No. 2552, ECF No. 69-1.)</p>
CBJ assesses the MPF and the PDF based on the total number of passengers on board irrespective of whether those passengers disembark.	<p>“The MPF is calculated based on passenger manifests submitted by marine passengers ships calling at CBJ.” (ECF No. 68 at ¶ 15.)</p>	<p>“The passenger fee shall be calculated based on the passenger manifest for the ship upon entry into any port within the City and Borough.” (CBJ Ordinance 69.20.030(a), ECF No. 68-12.)</p> <p>“[E]very vessel carrying passengers for compensation on port calls in the City and Borough ... shall pay ... a Port Development Fee of \$3.00 per arriving passenger per day for all</p>

¹ “CBJ” refers collectively to Defendants City and Borough of Juneau and Rorie Watts, and “CLIA” refers collectively to Plaintiffs Cruise Lines International Association and Cruise Line International Association Alaska.

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<p>The MPF and PDF are assessed in addition to standard port fees for services such as docking and wharfage.</p>	<p>“Beyond Entry Fees, vessels ... are assessed other fees for docking at CBJ’s public ports.” (ECF No. 68 at ¶ 49.)</p> <p>“CBJ’s Docks and Harbors Board is authorized to impose fees and charges for the use of CBJ’s ports and harbors.” (<i>Id.</i> at ¶ 50.)</p> <p>“Among others, CBJ’s Docks and Harbors Board is authorized to assess the following vessel fees and charges: [d]ockage charges ... [and] [w]harfage fees...” (<i>Id.</i> at ¶¶ 50-51.)</p>	<p>vessels.” (CBJ Res. No. 2552, ECF No. 69-1.)</p> <p>“The [CBJ Docks and Harbors Board] shall, by regulations adopted pursuant to CBJ 01.60, impose a schedule of fees and charges for use of ports and harbors, and facilities designated by the assembly by resolution.” (CBJ Ordinance 85.02.100(a), ECF No. 68-13 at p. 8.)</p>
<p>Vessels that do not pay the MPF will be denied moorage at CBJ’s ports and owners or agents who do not pay the fees are guilty of a class A misdemeanor.</p>	<p>N/A</p>	<p>“Any person violating any of the provisions of this chapter or failing or refusing to comply with a lawful request or demand of the manager authorized or made under this chapter is guilty of a class A misdemeanor.” (CBJ Ordinance 69.20.110(a).)</p> <p>“No ship delinquent in the payment of passenger fees, nor any lightering craft carrying passengers to or from such ship shall be allowed to moor at any port facility owned by the City and Borough.” (CBJ Ordinance 69.20.110(b).)</p>
<p>The MPF and PDF are imposed on vessels engaged in</p>	<p>“The Entry Fees are imposed on vessels engaged in the interstate and foreign commerce of the U.S.” (ECF No. 68 at ¶ 46.)</p>	<p>See CBJ’s Responses, not disputing this statement. (ECF No. 118-1 at p. 14.)</p>

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interstate and foreign commerce of the U.S.		<i>See also</i> CBJ Ordinance 69.20.040 (ECF No. 68-12), CBJ Res. No. 2552 (ECF No. 69-1).
CBJ has used MPF revenues to fund the local government.	“CBJ allocates a portion of the MPF revenues annually to support general government operations.” (ECF No. 68 at ¶ 112.)	“... [T]he amount [of MPF revenues] allocated represents about 2% of the annual City Budget for all government and department operations.” (ECF No. 118-3 at p. 44.)
CBJ has used MPF revenues to fund the defense of this lawsuit.	“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.” (ECF No. 68 at ¶ 115.)	“The CBJ stopped using [MPF revenues] to defend the lawsuit on June 30, 2017.” (ECF No. 133 ² at ¶ 46.)
CBJ has used MPF revenues to fund the City Museum and the Arts & Cultural Center.	“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.” (ECF No. 68 at ¶ 136.)	<i>See</i> CBJ’s Objs. & Resps. to Pltffs.’ Smt. of Facts in Supp. Of Pltffs.’ Mtn. for Summ. J. (“CBJ’s Responses”), not disputing CLIA’s assertion of fact. (ECF No. 118-3 at pp. 53-54.)

² ECF No. 133 is the Affidavit of Bob Bartholomew in Support of CBJ’s Cross-Motion for Summary Judgment and Opposition to Plaintiffs’ Motion for Summary Judgment (the “Bartholomew Affidavit”). CLIA has filed a Motion to Strike the Bartholomew Affidavit in its entirety for failure to meet the requirements of Federal Rule of Civil Procedure 56 because it is not based on personal knowledge and for CBJ’s practice of citing to the entirety of Mr. Bartholomew’s Affidavit to support its cross-motion. CLIA has further moved to strike certain paragraphs of Mr. Bartholomew’s Affidavit as hearsay and conclusory statements. In the event this Court denies CLIA’s motion to strike, CLIA relies herein on certain identified paragraphs of the Bartholomew Affidavit.

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CBJ has used MPF revenues to expand wireless services at its library.	“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.” (ECF No. 68 at ¶ 128.)	<i>See</i> CBJ’s Responses, not disputing that funds were requested for this project but not appropriated until after the Complaint was filed. (ECF No. 118-3 at pp. 50-51.)
CBJ has used MPF revenues to fund public transportation.	“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.” (ECF No. 68 at ¶ 134.)	<i>See</i> CBJ’s Responses, not disputing that funds were used for public transportation. (ECF No. 118-3 at p. 25.)
The CBJ has used MPF revenues to repair, maintain, and construct stairs, sidewalks, and public restrooms.	“CBJ’s Capital Improvement Projects include downtown street reconstruction [and] ... reconstruction and repairs to area wide stairs and sidewalks to promote pedestrian safety.” (ECF No. 68, at ¶ 140) CBJ has also allocated funds for “locating the need for, designing, and providing maintenance to, adequate restroom facilities in the downtown waterfront area.” (ECF No. 68, at ¶ 143.)	<i>See</i> CBJ’s Responses, not disputing that funds were used for to construct, maintain, and repairs the street, sidewalks, and public restrooms. (ECF No. 118-3 at pp. 55-57.)
CBJ has used MPF revenues to pay for crossing guards.	“CBJ has allocated a portion of the MPF revenues to fund a crossing guard program.” (ECF No. 68, at ¶ 144.)	<i>See</i> CBJ’s Responses, not disputing that funds were used to hire crossing guards. (ECF No. 118-3 at pp. 62-64.)
CBJ has used MPF revenues to fund bicycle patrols.	“CBJ has allocated a portion of the MPF revenues to fund downtown foot and bike patrol.” (ECF No. 68, at ¶ 145.)	<i>See</i> CBJ’s Responses, not disputing that funds were used to hire crossing guards. (ECF No. 118-3 at pp. 64-65.)

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<p>CBJ has used MPF revenues to fund capital improvement projects.</p>	<p>“For FY 2018, CBJ has allocated \$1,827,780 in MPF revenues, among other funding sources, to support a number of Capital Improvement Projects.” (ECF No. 68 at ¶ 139.)</p> <p>“For FY 2018, CBJ’s Capital Improvement Projects include downtown street reconstruction..., reconstruction and repairs to area wide stairs and sidewalks[,] ... downtown sidewalk cleaning, ... restroom facilities, ... a crossing guard program, ... [and] downtown foot and bike patrol. (ECF No. 68 at ¶¶ 140-145.)</p>	<p><i>See</i> CBJ’s Responses, not disputing that funds were used for these purposes and alleging that CLIA, or its members, supported some of these projects and failed to object to the others. (ECF No. 118-3 at pp. 54-65.)</p>
<p>CBJ has used PDF revenues to fund improvements along Juneau’s downtown waterfront, including the Seawalk.</p>	<p>“CBJ has budgeted MPF revenues to fund the Waterfront Seawalk Project every year since FY 2012.” (ECF No. 68 at ¶ 151.)</p>	<p>“The [PDF] has only been used for capital projects on waterfront infrastructure along the downtown waterfront with the exception of \$48,000 spent between 2007 and 2016 ... for indirect CBJ support services costs for those projects.” (ECF No. 133 at ¶ 20.)</p> <p>“The development [of the Long Range Waterfront Plan] is accomplished though the imposition and expenditure of the MPF and PDF, as well as other sources.” (ECF No. 131³ at ¶ 33.)</p>

³ ECF No. 131 is the Affidavit of Bruce Botelho in Support of CBJ’s Cross-Motion for Summary Judgment and Opposition to Plaintiffs’ Motion for Summary Judgment (the “Botelho Affidavit”). CLIA has filed a Motion to Strike the Botelho Affidavit in its entirety for CBJ’s practice of

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<p>The Seawalk project includes a manmade island and a park housing a whale statue.</p>	<p>“The Waterfront Seawalk consists of approximately 1,000 feet of elevated deck and 350 feet of pathway across a recreational island.” (ECF No. 68 at ¶ 150.)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____ (CBJ Ex. LP at p. 1.)⁴</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____ (CBJ Ex. LP at p. 1.)</p> <p>“The Juneau island and whale foundation/bridge park project is an example of where industry feels the CBJ is reaching too far away from the ship (and further and further away from legal use of tax).” (CBJ Ex. KT at p. 2.)</p>	<p>“The Seawalk is easily seen all summer as a popular area and walk by the cruise ship passengers.” (ECF No. 133 at ¶ 26.)</p> <p>“The ‘man-made island’ is visited by a significant number of cruise passengers since its construction. Popular evidence is the photo and information posted by Oprah from the ‘man-made island’ during her trip to Juneau...” (ECF No. 118-1 at p. 5, ¶ 21.)</p> <p>“The 2003 Long Range Waterfront Plan for the [CBJ] is a guidebook to manage and focus waterfront change along four overarching goals identify by the CBJ in 2002: Enhance community quality of life; Strengthen tourism product offerings and as well as downtown retail, entertainment residential and service activities; Improve Juneau’s image and attractiveness for investment; and Recognize all current waterfront</p>

citing to the entirety of Mr. Botelho’s Affidavit to support its cross-motion. In the event this Court denies CLIA’s motion to strike, CLIA relies herein on certain identified paragraphs of the Botelho Affidavit.

⁴ CLIA redacts only those documents that are subject to CBJ’s Motion to Seal. CLIA directs the Court to the CBJ’s Motion as well as CLIA’s response thereto, which outline the basis for these redactions. Following the Court’s decision on the Motion to Seal, CLIA will lodge an unreacted copy of this document with the clerk.

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	<p>“Use of MPF proceeds in Statter Harbor is inappropriate.” (ECF No. 122-10, CBJ Ex. DJ at p. 1.)</p> <hr/> <p>_____ (ECF No. 118-2 at p. 35.)</p> <p>“Juneau’s \$10 million artificial island, whale sculpture foundation and bridge park fall well beyond [the] legal limits [of the U.S. Constitution].” (CBJ Ex. AT at p. 1.)</p>	
<p>CBJ repeatedly ignored objections lodged by CLIA, its members, and ACA, of the collection and various uses of MPF revenues and PDF revenues.</p>	<p>“I [John Binkley, President of CLIA Alaska] have previously communicated our concern to the City Manager and testified to the Assembly, our viewpoint that utilizing passenger fees for the bridge park project is not consistent with federal law.” (ECF No. 129-25, CBJ Ex. KY at p. 1.)</p>	<p>“More than once an executive argued that a particular expenditure was likely unconstitutional ... I [Bruce Botelho] disagreed and suggested that if there was no other alternative our dispute should be resolved in court...” (ECF No. 131 at ¶ 28.)</p>
<p>CBJ previously has eliminated projects funded with MPF revenues that violated federal law at various times.</p>	<p>N/A</p>	<p>“I [City Manager Rod Swope] eliminated projects that historically had been funded but which I felt did not comply with the federal law such as the city museum, downtown parking garage improvements, funding for a park ranger, funding for events planner, and airport security, to name a few.” (ECF No. 130-14 at p. 1.)</p>