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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

**CRUISE LINES INTERNATIONAL
ASSOCIATION ALASKA, and CRUISE
LINESINTERNATIONAL
ASSOCIATION,**

Plaintiffs,

v.

**THE CITY AND BOROUGH OF
JUNEAU, ALASKA, a municipal
corporation, RORIE WATT, in his
official capacity as City Manager,**

Defendants.

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

**THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S RESPONSES
TO PLAINTIFF CRUISE LINES INTERNATIONAL ASSOCIATION ALASKA
AND CRUISE LINES INTERNATIONAL ASSOCIATION'S FIRST SET OF
REQUESTS FOR ADMISSION TO ALL DEFENDANTS**

Pursuant to Federal Rules of Civil Procedure 34, the Defendants, The City and Borough of Juneau and Rorie Watt (hereafter collectively CBJ), by and through their counsel of record, hereby provides their responses to Plaintiff Cruise Lines International

Association Alaska and Cruise Lines International Association's First Set of Requests for Admission to All Defendants.

General Objections: CBJ objects to the definitions and instructions on pages 1-3 of the Plaintiff's First Set of Requests for Admission. CBJ has no obligation to comply with instructions and directions from the Plaintiff. CBJ will prepare these responses in accordance with the applicable Federal Rules of Civil Procedure and has no other obligation to the Plaintiff.

REQUESTS FOR ADMISSION

1. Admit that CBJ allocated Marine Passenger Fees to build a man-made recreational island, elevated walkways, and infrastructure to support a whale statue. *See* CBJ's Comprehensive Annual Financial Reports ("CAFRs") (2000-2016), available at http://www.juneau.org/financeftp/controller_CAFR.php; <http://www.juneauseawalk.com/main-3.html>; CLIA006309-CLIA010127.

RESPONSE: Objections: not in compliance with Fed. Rule of Civ. Proc. 36 which requires "each matter must be separately stated"; not in compliance with Fed. Rule of Civ. Proc. 36 as it does not relate to "facts;" the request purports to be a statement as to the Plaintiffs' belief as to the purpose of the use of Marine Passenger Fees, and not as to the fact of the use of the fees, and CBJ has no obligation to "admit or deny" a non-factual request for admission; vague as to "recreational island," "elevated walkways," and "infrastructure." Without waiving any objections: Denied

that the Marine Passenger Fees allocated to some portion of the sea walk and sea walk related improvements were used solely for the purpose of “supporting a whale structure.” Denied that any Marine Passenger Fees were allocated for a whale structure. The Manager’s Reports for each year detail the allocation of Marine Passenger Fees. The Plaintiffs are directed to those reports for the use of the fees.

2. Admit that, since fiscal year 2000, CBJ allocated at least \$22 million of Marine Passenger Fees to the General Fund. *See* CAFRs (2000-2016), available at http://www.juneau.org/financeftp/controller_CAFR.php; CLIA006309-CLIA010127.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence. Without waiving any objections: Denied as stated. A certain portion of the total Marine Passenger Fees collected each year was allocated to the departments providing services to cruise ships, crew and passengers, for services which cannot be tracked with invoices or billable hours, and after those amounts were properly determined for each department using a constitutionally permissible allocation formula and procedure, that amount of the fees as determined by the allocation procedure, were deposited in the general fund.

3. Admit that, since fiscal year 2000, CBJ allocated at least \$11 million of Marine Passenger Fees to the Roded Service Area Special Revenue Fund. *See* CAFRs

(2000-2016), available at http://www.juneau.org/financeftp/controller_CAFR.php; CLIA006309-CLIA010127.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; vague as to “at least,”; Without waiving any objections, admit that the Manager’s Reports each year and the CBJ budget documents have an amount of Marine Passenger Fees allocated for the cost of services provided to cruise ships, crew and passengers, through the Police Department, emergency medical services of Fire Department, Streets, and Parks and Recreation, which are part of the Roded Service Area.

4. Admit that, since fiscal year 2000, CBJ allocated at least \$2 million of Marine Passenger Fees to the Capital Transit Special Revenue Fund. *See* CAFRs (2000-2016), available at http://www.juneau.org/financeftp/controller_CAFR.php; CLIA006309-CLIA010127.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; vague as to “at least,”; Without waiving any objections, denied as stated. For some years, ending in FY18, the CBJ Manager Reports and CBJ budget documents have an amount of Marine Passenger Fees allocated for the cost of services provided to cruise ships, crew and passengers, as related to the CBJ Capital Transit services.

5. Admit that, since fiscal year 2000, CBJ allocated at least \$594,000 of Marine Passenger Fees to the Juneau International Airport Fund. See CAFRs (2000-2016), available at http://www.juneau.org/financeftp/controller_CAFR.php; CLIA006309-CLIA010127.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; vague as to “at least,”; Without waiving any objections, denied as stated. For some years, between FY09-FY12, the CBJ Manager Reports and CBJ budget documents have an amount of Marine Passenger Fees allocated for the cost of services provided to cruise ships, crew and passengers, as related to the use of the Juneau International Airport.

6. Admit that, since fiscal year 2000, CBJ allocated at least \$447,000 of Marine Passenger Fees to fund upgrades to a private dock that large cruise line vessels do not use. See CAFRs (2000-2016), available at http://www.juneau.org/financeftp/controller_CAFR.php; CLIA006309-CLIA010127.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; vague as to “at least,”; vague as to “large cruise ships,”; vague as to “private dock,”; vague as to “upgrades”: Without waiving any objections, denied as stated. For FY10, the CBJ Manager Reports and CBJ budget documents have an amount of Marine Passenger Fees allocated for improvements or other services provided to cruise ships, crew and passengers, as related to the use of the private

Franklin Dock. For FY10-FY17 the CBJ Manager Reports and CBJ budget documents have an amount of Marine Passenger Fees allocated for improvements or other services provided to cruise ships, crew and passengers, as related to the use of two private docks by cruise ships, those docks being the AJ Dock and the Franklin Dock, including cruise ships owned and/or operated by member companies of the Plaintiffs. CBJ understands that Holland America Line, Inc., a plaintiff member company, is a 50% owner of A.J. Juneau Dock, LLC, the owner of the AJ Dock. For FY14 and FY16, Manager Reports and CBJ budget documents have an amount of Marine Passenger Fees allocated for improvements or other services provided to cruise ships, crew and passengers, as related to the use of the private Goldbelt dock, used by cruise ships that pay the Marine Passenger Fee and who may not be CLIA members.

7. Admit that the document attached hereto as Exhibit A (bates labeled CBJClerks00299):

(a) is a genuine, true, correct, and accurate copy of Juneau Ordinance Serial No. 2015-20(AJ)(b);

(b) is a document recorded in a public office as authorized by law; and

(c) may be offered into evidence for the truth of the matter(s) asserted therein because it is a public record with the meaning of Federal Rule of Evidence (“FRE”) 803(8), and/or the record of a regularly conducted business pursuant to FRE 803(6),

and/or is excluded from the hearsay rule as an opposing party's statement pursuant to FRE 801(d)(2).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as section (c) is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit sections (a) and (b).

8. Admit that the document attached hereto as Exhibit B:

(a) is a genuine, true, correct, and accurate copy of Juneau Ordinance Serial No. 2015-20(AL);

(b) is a document recorded in a public office as authorized by law; and

(c) may be offered into evidence for the truth of the matter(s) asserted therein because it is a public record with the meaning of FRE 803(8), and/or the record of a regularly conducted business pursuant to FRE 803(6), and/or is excluded from the hearsay rule as an opposing party's statement pursuant to FRE 801(d)(2).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as section (c) is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit sections (a) and (b).

9. Admit that the document attached hereto as Exhibit C:

(a) is a genuine, true, correct, and accurate copy of Juneau Ordinance Serial No. 2015-20(AV);

(b) is a document recorded in a public office as authorized by law; and

(c) may be offered into evidence for the truth of the matter(s) asserted therein because it is a public record with the meaning of FRE 803(8), and/or the record of a regularly conducted business pursuant to FRE 803(6), and/or is excluded from the hearsay rule as an opposing party's statement pursuant to FRE 801(d)(2).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as section (c) is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit sections (a) and (b).

10. Admit that the document attached hereto as Exhibit D:

(a) is a genuine, true, correct, and accurate copy of Juneau Ordinance Serial No. 2016-09(L);

(b) is a document recorded in a public office as authorized by law; and

(c) may be offered into evidence for the truth of the matter(s) asserted therein because it is a public record with the meaning of FRE 803(8), and/or the record of a regularly conducted business pursuant to FRE 803(6), and/or is excluded from the hearsay rule as an opposing party's statement pursuant to FRE 801(d)(2).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as section (c) is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit sections (a) and (b).

11. Admit that Juneau Ordinance Serial No. 2015-20(AJ)(b) is an appropriation transferring \$55,777 of unexpended fiscal year 2015 Marine Passenger Fees from the General and/or Roaded Service Area Funds to the Open Space Waterfront Land Acquisition Capital Improvement Project.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of the document and as such is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

12. Admit that Juneau Ordinance Serial No. 2015-20(AV) is an appropriation transferring to the City Manager the sum of \$42,233 as fiscal year 2016 Supplemental Funding for the Law Department from the Open Space Waterfront Land Acquisition Capital Improvement Project.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of the document and as such is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

13. Admit that Juneau Ordinance Serial No. 2015-20(AL) is an appropriation transferring to the City Manager the sum of \$50,000 as Funding for the Law Department from the Open Space Waterfront Land Acquisition Capital Improvement Project.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of the document and as such is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

14. Admit that Juneau Ordinance Serial No. 2016-09(L) is an appropriation transferring \$155,892 of unexpended fiscal year 2016 Marine Passenger Fees from the

General Fund to the Open Space Waterfront Land Acquisition Capital Improvement Project.

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of the document and as such is beyond the scope of requesting to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

15. Admit that CBJ enacted Ordinances Serial No. 2015-20(AJ)(b) to pay attorneys' fees and/or costs for outside counsel engaged to represent CBJ in matters related to this litigation, captioned *Cruise Lines International Association, et al., vs. City and Borough of Juneau, Alaska, et al.*, Case No. 1:16-cv-00008-HRH (Apr. 12, 2016).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of or purported purpose of the document and as such is beyond the scope of requesting an admission as to facts or to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

16. Admit that CBJ enacted Ordinance Serial No. 2015-20(AL) to pay attorneys' fees and/or costs for outside counsel engaged to represent CBJ in matters related to this litigation, captioned *Cruise Lines International Association, et al., vs. City and Borough of Juneau, Alaska, et al.*, Case No. 1:16-cv-00008-HRH (Apr. 12, 2016).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of or purported purpose of the document and as such is beyond the scope of requesting an admission as to facts or to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

17. Admit that CBJ enacted Ordinance Serial No. 2015-20(AV) to pay attorneys' fees and/or costs for outside counsel engaged to represent CBJ in matters related to this litigation, captioned *Cruise Lines International Association, et al., vs. City and Borough of Juneau, Alaska, et al.*, Case No. 1:16-cv-00008-HRH (Apr. 12, 2016).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of or purported purpose of the document and as such is beyond the scope of requesting an

admission as to facts or to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

18. Admit that CBJ enacted Ordinance Serial No. 2016-09(L) to pay attorneys' fees and/or costs for outside counsel engaged to represent CBJ in matters related to this litigation, captioned *Cruise Lines International Association, et al., vs. City and Borough of Juneau, Alaska, et al.*, Case No. 1:16-cv-00008-HRH (Apr. 12, 2016).

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document but to admit a characterization of or purported purpose of the document and as such is beyond the scope of requesting an admission as to facts or to admit the genuineness of a document. Without waiving any objections, admit only that the document speaks for itself.

19. Admit that the document attached hereto as Exhibit E (bates labeled CLIA0010766-CLIA0010771) is a genuine, true, correct, and accurate copy of a May 4, 2016 KTOO Public Media article by Elizabeth Jenkins, titled "CBJ defends itself in cruise ship tax lawsuit using this one weird trick" and available at <http://www.ktoo.org/2016/05/04/cbj-defends-itself-in-cruise-ship-tax-lawsuit-using-this-one-weird-trick/> (the "Article").

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence. Denied as the copy does not appear to be a true and accurate copy of a media article and does not appear to be limited to a media article at all.

CBJ reserves the right to assert any objection to any attempted use of Exhibit E in any motion practice, hearing or trial. A purported “media article” is hearsay and not admissible under any exception to Fed. Rule of Evid. 803.

20. Admit that the Article accurately quotes Deputy City Manager Mila Cosgrove’s statement that \$50,000 of CBJ’s legal counsel fees were or will be paid for “out of the waterfront acquisition fund and the majority of the money in that fund are marine passenger fees or have come through that source[.]”

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document and does not seek to admit facts; the purported quote is unreadable on the copy provided by Plaintiffs; the purported quote is not complete and has been removed from the context of the entire article. CBJ will evaluate whether to supplement this response upon being provided the tape of the interview and/or the actual notes of the reporter for review.

21. Admit that the statement in the Article from Deputy City Manager Mila Cosgrove that \$50,000 for CBJ’s legal counsel was paid for “out of the waterfront

acquisition fund and the majority of the money in that fund are marine passenger fees or have come through that source[.]” qualifies as an exclusion from the hearsay rule because it is an opposing party’s statement as defined by FRE 801(d)(2).

RESPONSE: See Objections and Responses to No. 20 above. Without waiving any objections, Denied as stated.

22. Admit that the Article accurately quotes Deputy City Manager Mila Cosgrove’s statement that “Regarding the fees for legal defense, again, because it’s directly related to how those funds are used, we thought it was an appropriate expenditure of funds[.]”

RESPONSE: Objection: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Civ. Proc. 36 as the request does not seek to admit the genuineness of a document and does not seek to admit facts; the purported quote is unreadable on the copy provided by Plaintiffs; the purported quote is not complete and has been removed from the context of the entire article. CBJ will evaluate whether to supplement this response upon being provided the tape of the interview and/or the actual notes of the reporter for review.

23. Admit that the statement in the Article from Deputy City Manager Mila Cosgrove that “Regarding the fees for legal defense, again, because it’s directly related to how those funds are used, we thought it was an appropriate expenditure of funds[.]”

qualifies as an exclusion from the hearsay rule because it is an opposing party's statement as defined by FRE 801(d)(2).

RESPONSE: See Objections and Responses to No. 20 and 22 above. Without waiving any objections, denied as stated.

24. Admit that CBJ allocated Marine Passenger Fees, whether directly or through the Open Space Waterfront Land Acquisition Capital Improvement Project, to pay attorneys' fees and/or costs for outside counsel engaged to represent CBJ in matters related to this litigation, captioned *Cruise Lines International Association, et al., vs. City and Borough of Juneau, Alaska, et al.*, Case No. 1:16-cv-00008-HRH (Apr. 12, 2016).

RESPONSE: Objections: not relevant and not likely to lead to the discovery of admissible evidence; not in compliance with Fed. Rule of Proc. 36 as it does not set out separately each matter to be admitted. Without waiving any objections, admit that CBJ has properly and constitutionally, under existing United States Supreme Court and all other federal court decisions, in the past used some funds collected as Marine Passenger Fees for costs and/or fees related to outside counsel in the defense of this litigation. Admit that the attorneys for the Plaintiffs agree that it is a constitutionally permissive use of passenger fees for the costs and/or fees related to outside counsel in the defense of litigation challenging the constitutionality of the use of the fees. (See, *Bridgeport and Port Jefferson Steamboat Company v. Bridgeport Port Authority*, 2004 U.S. Dist. LEXIS 6643 *; 2004 WL 840140, Dist.Ct. Conn., Thompson Coburn, Washington, D.C.

and St. Louis for Defendant). Denied that CBJ is currently using any portion of Marine Passenger Fees collected for costs and/or fees related to outside counsel in the defense of this litigation, although CBJ could constitutionally do so and there is no United States Supreme Court or any other Federal Court that has held the use of passenger fees to defend a lawsuit challenging the constitutionality of the use of the fees to be unconstitutional.

Dated: August 14, 2017

HOFFMAN & BLASCO, LLC

By: /s/ Robert P. Blasco
Robert P. Blasco, AK Bar #7710098
Attorney for the City and Borough of
Juneau, Alaska, a municipal corporation,
and Rorie Watt, in his official capacity as
City Manager

CERTIFICATE OF SERVICE

The undersigned certifies that on August 14, 2017 a true and correct copy of the foregoing **THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S RESPONSES TO PLAINTIFF CRUISE LINES INTERNATIONAL ASSOCIATION ALASKA AND CRUISE LINES INTERNATIONAL ASSOCIATION'S FIRST SET OF REQUESTS FOR ADMISSION TO ALL DEFENDANTS** was served on the following parties of record via E-Mail and US First Class Mail:

C. Jonathan Benner (*pro hac vice*)
Kathleen E. Kraft (*pro hac vice*)
Thompson Coburn LLP
1909 K Street, N.W., Suite 600
Washington, D.C. 20006-1167

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