



55 Schoenbar Ct. Ketchikan, AK, 99901 . 907-225-0999

Mr. Karl Amylon
City of Ketchikan
City Manager
334 Front St.
Ketchikan, AK, 99901

RE: Best and Final Offers for contract No. 19-36 – Redevelopment of Port of Ketchikan Berths I, II, III and IV and Other Infrastructure Within the City

Dear Mr. Amylon:

I wanted to take this opportunity, on behalf of our entire family of companies and employees at Survey Point Holdings (SPH) to thank the City of Ketchikan Staff, Ketchikan's Port Commission and the entire City Assembly for the opportunity to participate in the RFP process. The following pages provide our best and final offer along with some additional information we think is important to the decision-making process. The RFP process has been a lot of work for all parties involved and we appreciate the City's continued diligence in your efforts to make the best decision regarding Ketchikan's port management and the long-term stability of our Community's driving economic engines.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Ethan Berto', with a stylized flourish at the end.

Ethan Berto

CC:

Lacey Simpson
Ketchikan City Council Members
Mayor Sivertsen

SPH's has spent substantial time analyzing our financial proposal along with the information provided by Ketchikan Port Solutions (KPS) at their presentation on August 27th and feel that the financial offer we have made the City far exceeds that of KPS. As such our final and best offer stands as originally proposed as follows:

- Assume all debt or payments for Berth III Bonds
- Assume all future payments during life of Concession Agreement for Berth IV Lease
- Plan and execute a Cathodic Protection Program for Berths I & II
- Initial Upland Improvements to enhance guest experience
- Assume all operating and administrative expenses as it relates to the management of the Port
- While we proposed to do a marine project of \$25,000,000 during the term of the concession when it was warranted, we would agree to complete the Berth III dolphin project as soon as possible if selected and agreeable to the City and Community.
- Continue to collect and remit to the City the \$7.00 head fee charge to all cruise customers calling into Ketchikan
 - This will require a new ordinance from City since the fee is currently scheduled to increase in 2021
- Annual lease payment to the City starting at \$500,000 and tied to CPI increases over life of the agreement.

SPH's team tried to take an apples to apples look at our proposal compared to the proposal presented by KPS. It was clear to us that the KPS proposal was at best disingenuous to claim KPS was making a \$204M "investment" into Ketchikan. Many of the items and associated dollars are simply annual costs that the City is already covering as part of its successful port operation. Attached as Exhibit A is a side by side comparison for your review showing our "Investment" of over \$305M over the term.

More importantly SPH believes the City should be looking at future cash inflows paid to the City by the RFP proposals. Our analysis of this is attached as page 2 of Exhibit A and clearly shows SPH's financial proposal brings long term security and certainty to City finances.

Finally, we hope the Council will consider the following points as you discuss and deliberate the final decision regarding this RFP:

- SPH's has received support letters from both the Holland America Group and the Royal Caribbean Group (**Exhibit B**). Together these entities bring approximately 94% of the remaining customers to downtown Ketchikan.
- SPH's, along with the cooperation of Cruise Line Industry Association (CLIA) member lines, is uniquely positioned to assist the City in reaching an agreement over future uses of the fees back to City generated by head fees on the port.
 - This will unencumber funds to be used on upland projects and general fund needs to help offset the impacts of the cruise industry. (Juneau settlement agreement attached as **Exhibit E** for reference)
- SPH's ownership and senior managers all live and work right here in Ketchikan. The City will not have to work through one manager here in town that has then to ask permission or approval from a corporate management team on the East Coast or in Turkey.

- When an expansion project for Ketchikan is needed our Company and key decision makers are here and ready to execute the agreed upon project. Our focus is Alaska and our infrastructure investments are all in Alaska.
- Our model does not require unrestrained growth in the industry but can work for both SPH and the City at levels at or near 2019.
- KPS insinuated that SPH's does not actively market or have relationships with Cruise Lines outside of Alaska. This is far from the truth. SPH has been actively engaged with companies like MSC and Genting Cruises to bring them into the Alaska market for years. SPH has been in discussions with MSC about Alaska since 2013 and has hosted the Chairman and President of Genting for a visit to Ketchikan.
- MSC is on the cruise ship schedule in 2022 using an itinerary developed with Cruise Line Agencies of Alaska and in cooperation with other CLIA member lines.
- KPS solutions insinuated that existing lines in Alaska were keeping other customers like MSC out of the market, but failed to mention that MSC is partnering with a group including Royal Caribbean and Carnival that are part of an RFP to build a new cruise ship berth in Seattle. They are competing against Global Port Holdings on this RFP **(Exhibit C)**. Obviously, these lines are working together not against each other to grow the business as Seattle is one of the Gateways to Alaska cruising.
- SPH's has successfully marketed and helped create itineraries over the last few years to bring Azamara, Disney Cruises, Seabourn Cruise Line, Viking Ocean Cruises, Victory Cruise Line, Ponant, Windstar Cruises, Hurtigruten and Cunard into the Alaskan Market. In addition, we have been working with companies such as Aurora Expeditions, Scenic Cruises, and Tradewinds to help establish new smaller sized vessels into the Alaska Market **(Exhibit D)**. To somehow insinuate Alaska is not being effectively marketed and not open for all cruise lines is simply not true.

Exhibit A

Ketchikan RFP Financial Proposal Comparison

Global Port Holdings		Survey Point Holdings
• Payment to City-	\$40,000,000	• Payment to City- \$0
• Berth III Debt-	\$33,000,000	• Berth III Debt- \$33,000,000
• Dock Improve-	\$19,000,000	• Dock Improve- \$19,000,000
• Berth IV-	\$62,000,000	• Berth IV- \$62,000,000
• Overhead-	\$10,000,000	• Overhead- \$10,000,000
• Op Maint-	\$20,000,000	• Op Maint- \$20,000,000
• Revenue Share-	\$20,000,000	• Revenue Share- \$161,559,065
• Total-	\$204,000,000	• Total- \$305,559,065

Cash Inflows to City from RFP

Global Port Holdings		Survey Point Holdings
• Upfront Payment-	\$40,000,000	• Upfront Payment - \$0
• Revenue Share-	\$20,000,000	• Revenue Share- \$161,559,065
• New Cash Total-	\$60,000,000	• New Cash Total- \$161,559,065

Exhibit B

August 14, 2020

Mayor Bob Sivertsen
334 Front Street
Ketchikan, Alaska 99901

Dear Mayor Sivertsen,

First, thanks to you, Karl and Lacey for taking the time to participate in our CLIA Alaska update call last month. I hope you felt the background was a helpful kickoff to what will certainly be much more discussion as we advance our plans to safely return ships to Alaska. If there are any important issues you feel that we're missing as we form our operating plans, please reach out so we can discuss them. We definitely intend for our process to be very collaborative so that everyone's best thoughts are included.

Even though our attention has been almost entirely focused on the response to COVID-19 since we last spoke in January, I wanted to confirm that we are still interested in staying engaged in your efforts to define the future for the city docks.

I'm aware that, in June, the council selected two potential groups to advance discussions on a possible partner for management of the city facilities. Since that time, the Survey Point Group has reached out to us to outline their vision and strategy to operate as a potential partner with the city. Based on this discussion, I believe Survey Point understands the key issues involved in assuring that the city docks deliver a solid return to the community while also balancing the need to be cost efficient so that they continue to benefit from steady traffic for years to come.

In addition, it appears that they have developed a number of creative solutions to achieve key community objectives while assuring that passenger fees are utilized in a legal fashion. The retirement of the indebtedness on the city docks, for example, clearly seems to be an appropriate use of guest fees and a legitimate relief of one of the costs of our vessels to the community.

The offer to change the structure of the present lease on Berth IV is another good step to assure that as the operator, Survey Point's interests would be well aligned with those of the City.

As you know, we are well acquainted with the Survey Point team. They serve our lines and many others very well in many capacities throughout the state. Their capabilities and experience handling the growth and unique aspects of the Alaskan cruise market are well earned and provide a great foundation to take on the responsibilities expressed in your RFP.

As indicated in January, the new Ward Cove development does present both a challenge and opportunity for Ketchikan. In addition, the effects of the pandemic will certainly have lasting impacts for the future of our business. Given all these changes, the need to stay communicating is more important than ever. My team and I remain available to keep you updated on our progress and to discuss any emerging issues there in Ketchikan.

Once again Mayor Sivertsen, thank you for your time.

Best regards,

*Charlie Ball*_{/SI/}

Charlie Ball
Executive Vice President, Holland America Group

Cc: Karl Amylon
Lacey Simpson



Royal Caribbean Group

August 11th, 2020

Mayor Robert Sivertsen
City of Ketchikan
334 Front St.
Ketchikan, AK 99901

To: City of Ketchikan elected officials, City Manager and residents
Ketchikan, Alaska

RE: Royal Caribbean Group support for Survey Point Holdings, Inc. as it pertains to Contract No. 19-36:
Redevelopment of Port of Ketchikan Berths I, II, III and Other Infrastructure Within the City

Dear Mayor Sivertsen, City Council Members, City Officials and Ketchikan residents:

On behalf of Royal Caribbean Group and its brands – Royal Caribbean International, Celebrity Cruises, Azamara Cruises and Silversea – I am encouraged to see the City of Ketchikan pursuing long-term infrastructure solutions. We remain steadfast in our commitment to a vibrant visitor industry in Ketchikan and are excited to express our support for Survey Point Holdings, Inc. to lead these development plans.

Survey Point Holdings, Inc. and Royal Caribbean Group have a track record of collaboratively solving complex port challenges to expand infrastructure throughout Southeast Alaska in a way that maintains pace with industry growth and with demands that arise from large-ship operations. By 2021, Royal Caribbean Group will double its number of Ovation-sized ships in Alaska and we are optimistic that these larger, state-of-the-art ships will have the ability to call on the Ketchikan city docks once upgrades are complete.

As the City continues evaluating its development options, I am confident that working with Survey Point Holdings, Inc. and engaging in direct dialogue with cruise industry partners and stakeholders will produce a mutually beneficial solution to everyone that will also gain the support of local residents. My team and I remain available for future discussions and collaboration.

Sincerely,

Joshua Carroll
Vice President, Destination Development
Royal Caribbean Group

Announcing Shortlist for New Cruise Facility at Terminal 46

⚠ Update on the Port's COVID-19 response [Learn More.](#) 🔊 (/News/Updates-Ports-Covid-19-Response)



May 6, 2019

The Port of Seattle announced the shortlisted firms to proceed in the process towards selecting a partner in the development and operation of a new cruise facility at the north end of Terminal 46.

"We are delighted about the prospect of partnering with each of these highly qualified teams," said Stephanie Jones Stebbins, Managing Director of the Port's Maritime Division and leader of the selection team. "Each group showed exciting and innovative ideas in how we can work together to deliver a new cruise terminal that will provide an incredible experience for passengers while benefiting the surrounding community."

The teams are:

- Cruise Industry Leaders Group, a partnership between Royal Caribbean Cruise Ltd., MSC Cruises S.A., Carnival Corporation and SSA Marine, Inc., a subsidiary of Carrix, Inc.
- Global Ports Holding Plc and Civil & Building North America, Inc.
- Ports America, teaming with Jacobs Engineering Group

The three teams responded to the Port's Request for Qualifications issued in March and will now be invited to respond to a Request for Proposals, expected to be released in June. The Port is targeting delivery of the new cruise terminal for the 2022 cruise season.

Learn more about the new cruise terminal project (</sites/default/files/2018-12/Cruise-terminal-V02.pdf>).

Contact

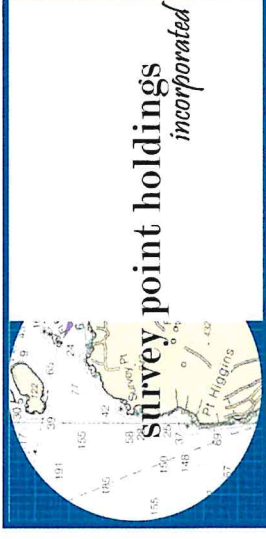
Peter McGraw | Maritime Media Officer
(206) 787-3446 | mcgraw.p@portseattle.org (<mailto:mcgraw.p@portseattle.org>)

Exhibit D

SURVEY POINT HOLDINGS CRUISE PARTNERS



SURVEY POINT HOLDINGS CRUISE PARTNERS



American	Dream	Oceania	Seabourn
Aurora	Fred Olsen	Peace Boat	Silver Sea
Azamara	Genting	P&O Cruises	Star
Carnival	Holland-America Line	Paul Gauguin	Tui
Celebrity	Hapag-Lloyd	Ponant	TradeWind
Crystal	Hurtigruten	Princess	UnCruise
Costa	Lindblad Expeditions	Pulmantur	Victory
Cunard	MSC	Royal Caribbean	Viking
Disney	Norwegian	Regent 7 seas	Windstar
	NYK	Scenic	ResidenSEA

Exhibit E

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereinafter, the “Agreement”) is made and entered into effective as of March ____ 2019, by and between Cruise Lines International Association Alaska and Cruise Lines International Association (“Plaintiffs or CLIA”), on the one hand and The City and Borough of Juneau, Alaska and Rorie Watt (hereinafter “CBJ” and “Watt” respectively and collectively “Defendants”), on the other hand (Plaintiffs and Defendants may sometimes be referred to hereinafter collectively as the “Parties,” or any one of them individually, a “Party”).

RECITALS

A. WHEREAS, on or about April 13, 2016, Plaintiff filed an action in the United States District Court for the District of Alaska entitled Cruise Lines International Association Alaska and Cruise Lines International Association v. The City and Borough of Juneau, Alaska and Rorie Watt, bearing case number 1:16-cv-0008-HRH (the “Action”). In the Action, Plaintiffs challenged two fees imposed on vessels by the CBJ (the Marine Passenger Fee (MPF) a \$5-per passenger fee and the Port Development Fee (PDF) a \$3-per passenger fee, collectively referred to as “Fees”) that enter CBJ public or private docks, alleging the Fees were either facially unconstitutional or being expended by CBJ in an unconstitutional manner. Defendants disputed the Plaintiffs’ claims made in the Action, and generally and specifically disputed that the Fees were unconstitutional or unlawful, while asserting that CBJ’s use of the Fees was proper in all respects.

B. WHEREAS, Plaintiffs and Defendants filed cross motions for summary judgement and Defendants filed a motion to determine the law of the case. After oral argument the United States District Court Judge, Hon. H. Russel Holland, issued an Order on December 6, 2018 (“MSJ Order”) holding the Fees are permissible under the Tonnage Clause (“Tonnage Clause”) of the United States Constitution and the Rivers and Harbors Appropriation Act of 1899 (RHAA) codified at 33 U.S.C. section 5; provided said Fees are used for services to a vessel or rendered to facilitate the marine enterprise/operations of the vessel and not for services that only benefit passengers. While Judge Holland’s rulings clarified the law, they leave the parties discretion to amicably apply the Court Rulings. Thereafter, on January 25, 2019, Judge Holland entered a Final Judgement in the Action affirming the holding of the MSJ Order (MSJ Order and Final Judgement collectively referred to as “Court Rulings”).

C. WHEREAS, it is the desire of the Parties hereto to abide by this Agreement and resolve the Disputes raised by the Parties in the Action in a manner consistent with the terms of the MSJ Order and in compliance with the Final Judgement, unless the underlying legal authority changes. The parties agree that amicable resolution of the issues is better than continued litigation. This Agreement shall further set forth the terms and conditions of the Parties continuing relationship based on the terms of the MSJ Order and Final Judgment and

1 under which Fees, if any, will be collected and expended. The MSJ Order and Final Judgment
2 shall be subject to the good faith interpretation of the Parties for certain projects. The Parties
3 wish to avoid the costs and the expenditure of resources in pursuing and defending continued
4 litigation pertaining to the various claims and/or defenses raised in the Action. The Parties agree
5 that the terms and conditions set forth in this Agreement are intended to be fully enforceable.

6 D. WHEREAS, other communities in Southeast Alaska are concerned about the
7 impact of the Court Rulings on their communities and have voluntarily offered the CBJ
8 monetary support to appeal the Court Rulings, and as such, any amicable resolution between
9 CBJ and CLIA must be practical, not harmful to other communities in Southeast, and should
10 acknowledge each community must exercise local control in its decision making because each
11 community has unique approaches and issues. The Parties also acknowledge that CBJ's Marine
12 Passenger Fee and Port Development Fee are fees imposed upon a vessel, and not fees imposed
13 upon a passenger like the State Commercial Passenger Vessel excise tax (A.S. 43.52.200 et.
14 seq). The Parties agree that the State Commercial Passenger Vessel excise tax was not litigated
15 or an issue in the Action. The State of Alaska and a predecessor of CLIA settled a dispute
16 involving the State Commercial Passenger Vessel excise tax in 2010 resulting from No. 3:09-cv-
17 00015-TMB, United States District Court for the District of Alaska.

18 E. WHEREAS, CBJ acknowledges that the construction of the western seawalk
19 project from Gold Creek to Overstreet Park may or may not have survived legal challenge and
20 that because CLIA chose not to seek an injunction for this part of the construction, this project
21 was not delayed and was successfully constructed; and while CLIA acknowledges that the
22 western seawalk project may or may not have survived a legal challenge, CLIA also
23 acknowledges the entire seawalk has been a part of CBJ's Long Range Waterfront Plan for more
24 than 10 years, the project has the support of the Juneau public and such public support is
25 instrumental and necessary to the development of the Juneau waterfront and the growth of the
26 cruise industry;

27 F. WHEREAS, the Parties shall engage in annual meetings to discuss their
28 respective issues and positions, regarding major development projects, as early as possible. For
29 example, during the 2019 consultations with the City Manager, CLIA did not object to the CBJ
30 using fees, subject to Assembly appropriation, imposed on a vessel or passenger to lease space
31 away from the downtown Juneau area to temporarily stage containers during the cruise season to
32 enable vessels to efficiently unload, load, and timely depart instead of having containers trucked
33 through the Maritime Industry Zone during peak periods;

34 G. WHEREAS, the Parties affirm that nothing in this Agreement is an attempt to
35 interfere with the Assembly's responsibility to govern the affairs of the City and Borough of
36 Juneau but is provided to the Assembly as best practices pertaining to the collection and
37 appropriation of Passenger fees so that future disputes may be avoided.

1 NOW, THEREFORE, for valid and binding consideration acknowledged by the Parties,
2 the Parties hereby agree as follows:

3 **DEFINITIONS**

4 A. The term "Cruise Lines International Association" shall include its Members
5 calling in Juneau, Alaska, specifically and without limitation to include: Carnival Cruise Lines,
6 Crystal Cruises, Disney Cruise Lines, Holland America Line, Norwegian Cruise Line, Oceana
7 Cruises, Princess Cruises, Regent Seven Seas Cruises, Royal Caribbean International and
8 Silverseas Cruises and any person or entity, past or present, acting on behalf of any of the
9 foregoing, including, but not limited to, each of their present and former agents, representatives,
10 owners, officers, executives, partners, directors, employees, insurers and/or attorneys.

11 B. The term "Cruise Lines International Association Alaska" (together with Cruise
12 Lines International Association, "CLIA") shall also include CLIA Northwest & Canada and any
13 person or entity, past or present, acting on behalf of any of the foregoing, including, but not
14 limited to, each of their present and former agents, representatives, owners, officers, executives,
15 partners, directors, employees, insurers and/or attorneys.

16 C. The term "The City and Borough of Juneau, Alaska" shall include any person or
17 entity, past or present, acting on its behalf, in the collection and expenditure of those certain Fees
18 collected from cruise vessels calling at the docks and local waters within the jurisdiction of CBJ,
19 including, but not limited to, each of their present and former members, representatives, officers,
20 executives, partners, directors, employees, insurers and/or attorneys, but not individual
21 Assemblymembers.

22 D. The term "Rorie Watt" shall include Mr. Watt in his official capacity as City
23 Manager of Juneau, Alaska and any person or entity, past, present or future, acting in the official
24 capacity as City Manager of Juneau, Alaska, including, but not limited to, each of their
25 successors, assigns, representatives, officers, executives, partners, directors, employees, insurers
26 and/or attorneys.

27 E. The term "Dispute(s)" shall be defined as all claims, defenses and/or allegations
28 arising out of and in any way connected with the pleadings filed in the Action. The term shall not
29 include future business dealings with respect to the collection and expenditure of Fees, except as
30 otherwise agreed in this Agreement.

31 F. The term "Marine Passenger Fee" ("MPF") shall mean that certain five U.S.
32 dollar (US\$5.00) per passenger fee assessed on certain passenger vessels as codified by CBJ
33 Code Sections 69.20.030 and 69.20.040.

1 G. The term "Port Development Fee" ("PDF") shall mean that certain three U.S.
2 dollar (US\$ 3.00) per passenger fee assessed on vessels carrying passengers for compensation on
3 port calls in the City and Borough of Juneau pursuant to Resolution 2552 (2010).

4 H. The term "Motion for Summary Judgment Order" ("MSJ Order") is defined
5 above. The terms of the MSJ are incorporated herein by this and any other reference. The MSJ
6 Order is attached hereto as Exhibit A.

7 I. The term "Final Judgment" refers to that certain Judgment In A Civil Case filed
8 by the United States District Court Judge for the District of Alaska, Hon. H. Russel Holland, on
9 January 25, 2019, and entered in the Action at Docket No. 217; the terms of which are
10 incorporated herein by this and any other reference. The Final Judgment is attached hereto as
11 Exhibit B.

12 J. The term "Maritime Industry Zone" shall refer to that certain map attached hereto
13 as Exhibit D.

14 K. The term "Effective Date" shall be defined as the date of full execution of this
15 Agreement by both parties.

16 **AGREEMENTS**

- 17 1. **Incorporation.** This Agreement hereby incorporates the Recitals and Definitions
18 stated above.
19
- 20 2. **Operational Services Budget.** Attached as Exhibit C to this Agreement and
21 incorporated herein by this reference is a true and correct copy of the CBJ FY 2019
22 Budgeted MPFs expenditures. The Parties acknowledge the allocation of Fees stated
23 therein and, for purposes of this Agreement, CLIA does not object to each of the line
24 item expenditures for FY 2019. With respect to the allocation of Fees for General
25 Government Services in the successive years following FY 2019 governed by this
26 Agreement, the Parties agree that in lieu of a line item allocation for General
27 Government Services, CBJ will obtain a cost allocation study of said General
28 Government Services and will allocate Fees based on the results of the future study
29 effective FY2021 (July 1, 2020). The Parties understand and agree the intent of
30 procuring an audit under this paragraph is that the cost of operational services will not
31 vary significantly (+/- ten percent) from historical allocations for operational services.
32 The parties agree that from time to time inflationary adjustments will likely be
33 necessary.
34
- 35 3. **Agreed Use of Fees in Maritime Industry Zone.** The Parties acknowledge and
36 agree to the collection and expenditure of Fees in the Maritime Industry Zone. The

Parties attach hereto as Exhibit D an area map of downtown Juneau wherein CBJ provides (Zone A) or could provide (Zone B) the infrastructure for cruise vessels, the support services for such vessels while in port, and infrastructure and services that further the marine enterprise/operation of such vessels. The following expenditures are agreed to by the Parties:

- a. Debt service on the Cruise Ship Berth Enhancement project (commonly known as 16B) and the planning, design and construction necessary to improve private and public cruise ship docks. The cost of acquiring land, tidelands, and easements required for the construction of capital improvements would be considered eligible project costs. For purposes of this Agreement, CLIA does not object to Fee expenditures for those purposes.
- b. For the purposes of this Agreement, CLIA does not object to Capital improvements within Zone A of the Maritime Industry Zone including: dockage, lightering, ship to shore infrastructure including utilities and debt service, ship to ship infrastructure including debt service, seawalks, restrooms, signage/wayfinding, motor coach staging, passenger queuing facilities, access and parking facilities for vehicles serving a vessel, and any infrastructure required or recommended by the Department of Homeland Security (i.e. USCG and USCBP). The Parties agree to the expenditure of Fees for this infrastructure in Zone A and acknowledge that the CBJ may need to expand or change such services and infrastructure in Zone A due to a change in circumstances, such as changes in vessel size, scheduling, and demands for such services or infrastructure by the changes in circumstance. The cost of acquiring land, tidelands, and easements required for the construction of capital improvements would be considered eligible project costs. For purposes of this Agreement, CLIA does not object to Fee expenditures for those purposes.
- c. Operational Services provided within Zone A pursuant to Paragraph 2, including but not limited to the following services that the CBJ provided in 2018 to CLIA, its passengers or crew: dockage, lightering, restroom maintenance, crossing guards, police/security patrols and infrastructure, fire and emergency medical service, weather monitoring, tug assist, trash collection and disposal, and any service required or recommended by the Department of Homeland Security (i.e. USCG and USCBP). The Parties agree to the expenditure of Fees for these services in Zone A and acknowledge that the CBJ may need to expand or change such services and infrastructure in Zone A due to a change in circumstances, such as changes in vessel size, scheduling, and demands for such services or infrastructure by the changes in circumstance. For purposes of this Agreement, CLIA does not object to Fee expenditures for those purposes.

- 1 d. For proposed capital improvements or operational services within Zone B, the
2 parties agree to discuss these ideas at the annual meeting.
3 e. The Parties agree that expenditure of Fees outside of Zones A and B may be
4 necessary. In such case, the parties shall discuss such ideas in accordance with
5 paragraph 7.
6

- 7 4. **Statter Harbor Improvement Project.** CBJ has developed construction plans for
8 improvements to Statter Harbor that will promote marine commerce in the area and
9 provide services to vessels. CLIA contends the full scope of construction of the
10 Statter Harbor Project may be beyond the scope of permissible expenditure of Fees
11 set forth in the MSJ Order, but for purposes of this Agreement, CLIA does not object
12 to a Fee expenditure up to seventy-five percent (75%) of a total project budget not to
13 exceed twelve million four hundred thousand dollars (US\$12,400,000.) CBJ agrees
14 to finance the remainder of the Statter Harbor Project construction through other
15 funding sources.
16
- 17 5. **Attorney's Fees.** Both Parties shall be reimbursed for their respective attorney's fees
18 incurred litigating the Disputes brought in the Action. The Parties agree that CBJ
19 shall cause one million five hundred thousand dollars (\$1,500,000) to be paid from
20 the MPF collected from CLIA Members to partially reimburse CLIA for its attorney's
21 fees incurred in the Action. The Parties acknowledge that CBJ incurred
22 approximately Eight Hundred Thousand (\$800,000) in legal fees defending the
23 Action and prior to the Effective Date of this Agreement has used approximately
24 Three Hundred and Fifty Thousand Dollars (\$350,000) from MPF collected from
25 CLIA Members. The Parties agree that CBJ may cause the remaining Four Hundred
26 and Fifty Thousand Dollars (\$450,000) to be paid from the MPF collected from CLIA
27 Members and use those funds as an "other funding source" in accordance with
28 paragraph 5. Payment to CLIA shall be made on or shortly after March 22, 2019. The
29 Parties acknowledge that the CBJ has initially provided the \$1.95M payments from
30 FY2019 general funds (Ord. 2018-11(AF)); For purposes of this Agreement, CLIA
31 does not object to the CBJ reimbursing the \$1.95M payments of general funds with
32 FY20 MPF funds (Ord. 2019-14). Neither payment shall be deemed or constitute an
33 admission of liability or wrongdoing by either Party nor shall either Party be
34 considered the prevailing party.
35
- 36 6. **Public Records.** CBJ shall keep true and accurate records, sufficient to determine the
37 amount of Fees collected and the appropriation, allocation and expenditure of said
38 Fees during any Fiscal Year wherein Fees are collected from CLIA. Consistent with
39 Alaska public records laws (e.g. A.S. 40.25.110 and CBJC 01.70), these records shall
40 be maintained and open to inspection at CLIA's expense at reasonable intervals by an

independent auditor during regular business hours of CBJ. All audit expenses shall be considered costs recoverable to the prevailing party in any dispute resolution initiated pursuant to Paragraph 9.

7. **Annual Consultation.** Guided by the timelines in CBJC 69.20.120(b) (March 14, 2019), the Parties agree for each and every Fiscal Year, the Parties shall endeavor to meet in person to discuss in good-faith any new proposed projects and services for which Fees are sought to be expended in the following Fiscal Year with the ultimate decision resting with the Assembly.

8. **Amount of Fees.** CBJ acknowledges and agrees the MPF should remain at \$5.00 per passenger and the PDF should remain at \$3.00 per passenger for at least the next three years from the Effective date. However, if an Assembly determines otherwise during the next three years, the parties agree to meet and discuss consistent with paragraph 7. If there is any change to the State Commercial Passenger Vessel statutes (A.S. 43.52.200-295) during the three year period, then the intent of this section is null and void.

9. **Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the annual project planning meeting or any breach thereof, including any claims relating to collection and expenditure of the Fees, the Parties hereto shall use their best efforts to settle such disputes, claims, questions or disagreements through direct discussions and, if the matter cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation, before resorting to litigation. The parties agree that upon notice to the other demanding mediation, the statute of limitations for the matter is tolled. If the parties cannot reach a resolution through mediation, then either party may file their claim in the United States District Court for the District of Alaska, which shall be the sole and exclusive forum for resolving such matters. The Parties agree that all claims shall be filed and adjudicated in the United States District Court for the District of Alaska. The intent of this paragraph is to provide a process to resolve only justiciable issues that the CBJ has undertaken or is reasonably certain to undertake with Fees; This paragraph is not intended to limit or compel the legislative discretion of the Assembly.

10. **Cost of Enforcement.** In the event that either party shall institute any action (whether mediation and/or court litigation), at law or in equity, against the other party to enforce or interpret any provision(s) of the this Agreement, or for breach hereof or default hereunder, the prevailing party shall be entitled to reasonable legal fees and costs, and such other relief to which it may be entitled, for the enforcement of any of its rights hereunder consistent with Alaska Civil Rule 79 and 82.

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11. **Complete Agreement.** This Memorandum of Agreement represents the complete and exclusive agreement by and between the Parties and supersedes all prior and contemporaneous promises and agreements of any kind relating to the resolution of the Disputes, as well as all negotiations and discussions between the Parties hereto and/or their respective legal counsel with respect to the subject matters covered hereby. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any of the Parties hereto concerning the subject matter hereof. This is an integrated agreement.
12. **Term of Agreement.** The term of this Agreement shall be ten years from the effective date with automatic ten year renewals unless either Party provides written notice to the other, sixty days prior to the renewal date, to terminate this Agreement.
13. **Successors and Assigns.** All of the terms and provisions of the Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Parties.
14. **Governing Law.** This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the United States of America and the State of Alaska.
15. **Waiver of Breach.** No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.
16. **No Admission of Liability:** The Parties agree that the execution of this Agreement is done solely for the purposes of compromise, and to eliminate the burden and expense of further litigation, and does not constitute, and shall not be construed as, an admission of liability, wrongdoing, fault or as evidence with respect thereto, by any Party, on account of any claims or matters arising between CLIA on the one side and the CBJ on the other side raised in the Action. The Parties further agree that this Agreement shall not be offered or received against any of the Parties as evidence of a presumption, concession or admission with respect to any liability, fault or wrongdoing, other than such proceedings as may be necessary to effectuate the terms of this Agreement, the MSJ Order and Final Judgment. The parties acknowledge and agree that nothing in this Agreement is intended to prohibit disclosure by CLIA Members to their passengers and guests of Fees paid to CBJ pursuant to this

1 agreement or to prohibit CLIA Members from continuing to assess passengers/guests
2 for reimbursement of fees paid to CBJ.

3 17. **Third party claims.** In the event that a third-party files a claim or lawsuit against the
4 CBJ resulting from or related to this Agreement and/or the collection and expenditure
5 of the Fees, CLIA shall have no obligation to defend or indemnify the CBJ for such
6 claim and/or lawsuit. CLIA's agreements and/or cooperation with respect to the
7 CBJ's collection and expenditure of Fees, does not bind the CBJ in any manner to
8 collect and expend the Fees nor does CLIA have any responsibility for the
9 expenditure of the Fees once the Fees are collected from CLIA Members.

10 18. **Notice.** Any notice required to be given pursuant to this Agreement shall be deemed
11 to have been sufficiently given either when served personally or when served by first-
12 class mail addressed to the other Parties.

13
14 a. Notice to CLIA shall be effective only when addressed to:
15 President, CLIA Alaska
16 Juneau, Alaska

17
18 b. Notice to CBJ shall be effective only when addressed to:
19 City and Borough of Juneau
20 c/o City Manager
21 155 S. Seward St
22 Juneau, AK 99801
23
24

25 19. **Mutual Drafters.** All Parties have cooperated in the drafting and preparation of this
26 Agreement. Hence, this Agreement shall not be construed against any party on the
27 basis that the party was the drafter.
28

29 20. **Severability.** If any provision of this Agreement shall be held by any court of
30 competent jurisdiction to be illegal, void or unenforceable, such provision shall be of
31 no force and effect, but the illegality or unenforceability of such provision shall have
32 no effect upon and shall not impair the enforceability of any other provision of this
33 Agreement.
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35
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37
38

1 **IN WITNESS WHEREOF**, the Parties hereto have executed this Memorandum of
2 Agreement.

3 **Cruise Lines International Association Alaska**

4 **By:** _____

5 **Its:** _____

6 **Dated:** _____

7
8 **Cruise Lines International Association**

9 **By:** _____

10 **Its:** _____

11 **Dated:** _____

12
13 **The City and Borough of Juneau**

14 **By:** _____

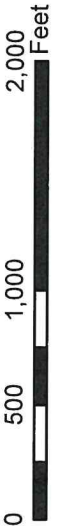
15 **Its:** _____

16 **Dated:** _____

17
18 **Rorie Watt**

19 **By:** _____

20 **Dated:** _____



Maritime Industry Zones