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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CRUISE LINES INTERNATIONAL ASSOCIATION ALASKA, and CRUISE LINES INTERNATIONAL 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

REPLY IN SUPPORT OF THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S REQUEST FOR ENTRY OF FINAL JUDGMENT

I. INTRODUCTION

The Plaintiff's Notice in response to *The City and Borough of Juneau and Rorie Watt's Request for Entry of Final Judgment* (the "Notice to Court of Issues that Remain to be Resolved") asks the Court to re-litigate issues already decided by the Court. CLIA's Notice does not present the Court with "issues that remain to be resolved" from the Court's Order of December 6, 2018.

CLIA's "Notice" is a motion for reconsideration of the Court's December 6, 2018 Order; CLIA has not complied with the rules or showed the required factors for reconsideration.[1] CLIA has failed to show that the Court made a manifest error of the law or fact; that there is a new discovery of new material facts not previously available; or that there was an intervening change in the law.[2] CLIA's Notice contains the same general arguments it made in its prior summary judgment pleadings.[3] The Court does not need to re-decide these issues and can order a final judgment as requested by The City and Borough of Juneau and Rorie Watt (hereafter collectively "CBJ").

CLIA's response also requests the Court to undergo analysis on future expenditures, which have not been appropriated and are not ripe for decision. There is no legal basis for this request in any of the cases cited by CLIA. CLIA also improperly requests legal fees without a motion, and without providing any support for the request. CBJ respectfully requests the Court deny CLIA's requests and enter final judgment.

II. CLIA IS NOT ENTITLED TO AN INJUNCTION BASED ON CLIA'S DESCRIPITION OF CATEGORIES OF EXPENDITURES, AS PREVIOUSLY DECIDED BY THE COURT

CLIA's Notice requests the Court to rule on categories of expenditures, not specific expenditures. CLIA's summary judgment motion was based on categories of expenditures, using CLIA's labelling and description of expenditures, and the Court denied CLIA's request for a

[1] Under Local Rule 7.3(h) Motion for Reconsideration:

(1) A court will ordinarily deny a motion for reconsideration absent a showing of one of the following: (A) manifest error of the law or fact; (B) discovery of new material facts not previously available; or (C) intervening change in the law.

(2) A Motion for reconsideration is limited to 5 pages, and must be filed and served: (A) not later than 7 days after the entry of the order, for motions asserted under subsection (1)(A); or (B) within 14 days of the discovery or change in law, for motions asserted under subsections (1)(B) or (1)(C).

[2] Local Rule 7.3(h).

[3] See Attachment A comparing the Notice with CLIA's previous arguments.

broad injunction on CLIA's created categories. The Court reviewed hundreds of pages of briefing centered on CLIA's efforts to have the Court adopt CLIA's designations of "categories" of expenditures that CLIA proposes would violate the Tonnage Clause and RHAA. The Court held that "categories" of alleged expenses are not sufficient evidence of the actual expenditure and not sufficient evidence of how the alleged expense would violate the Tonnage Clause and RHAA. The Court explicitly stated that it "does not presently have before it any claim or sufficient evidence upon which to make a determination as to the reasonableness of any costs of services which defendants supply to the vessels."[4] The Court stated it "is not making any factual determinations at this time."[5]

In its Notice, CLIA submitted to the Court the same category list which the Court already held was not sufficient evidence to decide on the constitutionality of any given expenditure.[6] CLIA cited to the same exhibits submitted with its summary judgment motion, with the addition of two exhibits (marked as Exhibits 3 and 4) that were already in the public record prior to the Oral Argument and prior to the Court's December 6, 2018 Order.[7] These exhibits are not new material facts which require the Court to reconsider its December 6, 2018 Order.[8]

Under the Court's Order, before being entitled to any injunctive relief, CLIA must prove that an actual expenditure (not hypothetical, not planned, not a descriptive category created by

[4] Order, Dk. 207 at 33.
[5] Order, Dk. 207 at 33.
[6] CLIA's Notice, Dk. 211 at 8-9. CLIA also apparently added additional vague new categories like "administrative expenses".
[7] Exhibit 3 is dated June 4, 2018. Exhibit 4 is dated June 1, 2018. CLIA had the opportunity to present these to the Court as supplemental exhibits to their motion for summary judgment, and chose not to do so.
[8] CLIA also attached two attorney letters, with CBJ's counsel indicating CBJ intends to apply its code "[C]onsistent with the Decision." CBJ can and should apply its fees consistent with the Court's Order because the Court held the fees to be constitutional. (Docket 207 at 33). The letters between counsel have no relevance to the legal analysis in this case and do not require the Court to reconsider its prior order.

CLIA, not an administrative title for a budget line item), does not advance the marine operations of the vessel or facilitate marine operations.[9] CLIA's Notice requests the Court issue an injunction (already asked for and not issued by the Court) against CBJ "applying Entry Fee revenues to uses that would violate the Tonnage Clause or the RHAA because they lack a nexus to the marine operations of the cruise vessels or generate revenues in excess of Defendants' costs of providing services that facilitate the marine operations of cruise vessels." The Court already decided this issue and correctly denied an injunction.

It is a factual question whether any specific expenditure provides a service to the vessel or facilitates the marine operation of the vessel or advances the interstate commerce of the marine operation of the vessel.[10] CLIA's request requires a two-part burden of proof on CLIA: 1) to establish that any specific expenditure actually being spent does not facilitate the marine operations of the cruise vessels; and 2) that the fees exceed the costs of providing the services that facilitate the marine operations of the cruise vessels. The burden is on CLIA to prove that specific expenditures (not past expenditures and not unappropriated future expenditures) are

[9] Order, Dk. 207 at 34.

[10] For example, CLIA has not identified what the "administrative services" are or the amount of the expenditure. Administrative services may well constitute a service to the vessel. For example, if the ship's captain calls the Docks and Harbor Director and requests ambulance services for a passenger, is that not clearly a service to the vessel, and are not the ambulance services provided clearly a service to the vessel? Other courts have found so. In *Captain Andy's Sailing, Inc. v. Johns*, 2001 U.S. Dist. LEXIS 26105, *43-45, 195 F. Supp. 2d 1157, (Dist. Hawaii 2001), the court noted that fees for administrative services were constitutional: "Specifically, the expense records do not account for the services provided by the central office in Honolulu in support of these harbors…but that facility generally benefitted from these services and should be assessed its share of such expenses." In *Lil' Man in the Boat, Inc. v City of San Francisco,* No. 3:17 CV-00904-JST, 2017 WL 3129913 (N.D. Cal. July 24, 2017), the court upheld the use of fees for debt service and overhead. Fire and ambulance services are another "category" delineated by CLIA, despite similar services being upheld as constitutional in other Tonnage Clause cases. See *New Orleans Steamship Association v. Plaquemines Port Harbor & Terminal District,* 874 F.2d 1018, 1023 (5th Cir. 1989) (Plaquemines II) *cert denied*, 495 U.S. 923 (1990) upheld the use of fees for emergency services. CLIA conceded that fire services and ambulance services are constitutional uses of passenger fees in its summary judgment motion, Docket 67 at 17. *Bridgeport & Port Jefferson Steamboat, Co. v. Bridgeport Port Authority,* 567 F. 3d 79, 82-83 (2d Cir. 2009) upheld the use of fees for: parking facility, security measures, supervision of security personnel, cleaning. 566 F. Supp. 2d at 89. These case cites are illustrative, not exhaustive, of how courts have held expenditures in the CLIA "categories" to be constitutional, and none held fees unconstitutional without trial.

unconstitutional. CLIA has wrongfully attempted to switch that burden to CBJ.[11] Nothing in the Court's Order changed the burden of proof.[12] CLIA must put on actual evidence. CBJ is entitled to discovery after CLIA identifies specific challenged expenditures and provides the factual basis for that challenge. There may be testimony on whether a specific expenditure that CLIA chooses to challenge facilitates the marine operations of the vessel or advances the marine enterprise.[13] There may be testimony as to the costs of the services and how those costs relate to the fees.[14] CBJ may raise any of its defenses to any particular expenditure such as estoppel, quasi-estoppel, laches and waiver because the challenge is not for future relief but to an actual expenditure. As a minimum, CLIA must file a motion for a preliminary injunction, specifying the actual expenditures being challenged, allowing CBJ to oppose, allow the parties to conduct discovery, and then conduct a trial.[15]

The Court should not put the parties and Court through that time and expense unless and until the Ninth Circuit upholds the Court's legal standard on appeal. CBJ respectfully requests

[11] For example, CLIA contends that CBJ has not "identified the services that each of its various MPF funded departments allegedly render for marine operations of cruise vessels." (CLIA's Notice, Dk. 211 at 11.) CLIA makes the same contention on page 12 as to certain expenditures. CBJ only has to do so if and when CLIA identifies actual specific expenditures it claims are unconstitutional; and if and when CLIA does so, CBJ will put on its evidence consistent with the Court's Order at trial.

[12] Just as nothing in the Court's Order required CBJ to respond to CLIA's demands as set forth in its counsel's letter.

[13] Order, Dk., 207 at 34.

[14] In *Captain Andy's Sailing, Inc. v. Johns*, 2001 U.S. Dist. LEXIS 26105, *43-45, 195 F. Supp. 2d 1157, (Dist. Hawaii 2001) The court held: "a harbor fee charged for the use of restroom facilities, parking, trash disposal and security is not a 'duty of tonnage' because services are provided in exchange for the fee." 195 F. Supp. 2d at 1172.

[15] Federal Rule of Civil Procedure 65; CLIA's cites extensively to *Bridgeport and Port Jefferson Steamboat Company v. Bridgeport Authority,* 567 F. 3d 79 (2d Cir. 2009); 566 F. Supp. 2d 81 (D.Conn. 2008). In *Bridgeport,* the district court denied the plaintiff's request for a preliminary injunction and then held a lengthy bench trial. The court found some of the expenditures to be unconstitutional and enjoined collection and expenditure of the fees. The district court then stayed the injunction pending appeal. "To determine whether the revenue from the Passenger Fee was unreasonably high compared to the benefits the BPA provided to the ferry passengers, the District Court examined separately each activity of the BPA." *Bridgeport and Port Jefferson Steamboat Company v. Bridgeport Port Authority,* 567 F. 3d 79, 84-85 (2d Cir. 2009). Assuming for purposes of argument in this Reply only that the standard is "service to the vessel," the Court must examine separately each activity of CBJ at trial based on the facts presented by the parties and witnesses.

the Court enter final judgment and allow the appellate courts, if necessary, to determine whether the Court declared the proper standard under the Tonnage Clause for determining the constitutionality of the use of CBJ's fees. Whatever is decided by the appellate courts, the Court can then hold a trial on any actual expenditure CLIA claims to be unconstitutional.[16]

III. CBJ HAS NOT CHARGED EXCESSIVE FEES AND THE COURT HAS ALREADY HELD THE FEES ARE CONSTITUTIONAL AND THAT PAST EXPENDITURES ARE NOT RELEVANT TO CLIA'S REQUEST FOR PROSPECTIVE RELIEF

The Court held the fees to be constitutional.[17] CLIA reiterates the same arguments in an attempt to sway the Court to change its prior decision and reverse its determination that the fees were constitutional. CLIA has not provided any new evidence to reverse the Court's decision. CLIA also has not provided any legal basis for the Court to reverse its decision.

CLIA requests the Court again review past expenditures as a basis for determining unconstitutionality of possible future expenditures.[18] In its ruling on CBJ's cross motion, the Court held that the "question here is the proper expenditure of MPF and PDF revenue in the future."[19] The Court should not re-open a review of CBJ's past expenditures, many of which are no longer current expenditures, as CBJ pointed out in its summary judgment pleadings, affidavits

[16] CBJ urges the Court to consider and recognize that CLIA has already collected the fees from the passengers because it has sold the tickets for the 2019 cruises. In its Notice, CLIA does not tell the Court that it will refund those fees to the passengers if the Court were to grant an injunction. There is no case law to support allowing the CLIA members to profit in excess of an $8,000,000 windfall at the expense of their passengers and with those passengers receiving no benefits if CBJ were enjoined from collecting the fees. Although the CBJ's fees are imposed on the vessel, the Court stated in its Order: "There is, however, no dispute that the cruise lines incorporate this fee into the cost cruise passengers pay for their cruises". As an injunction is an extreme remedy of equitable relief, there is no equity in applying such an extreme remedy that would provide the CLIA members with in excess of $8,000,000 paid by their passengers to comply with the CBJ code and then relieve CLIA of the obligation to remit the fees to CBJ so the fees can be used consistent with the Court's Order.

[17] Docket 207 at 33.

[18] CLIA Notice, Dk. 211 at 7.

[19] Order, Dk. 207 at 21. The date is of no legal significance for relevancy. All past expenditures are irrelevant to the question as to the constitutionality of future expenditures.

and at oral argument.

A. The Port Development Fee

CLIA claims that the Court's Order means that CBJ can only lawfully use the PDF on the 16B project.[20] There was no such holding of the Court. The Court ruled that the past expenditures are not relevant to the prospective claims.[21] The Court found the PDF to be constitutional. The Court noted that the use of the PDF to pay the bond indebtedness for 16B was constitutional and that CLIA conceded it was constitutional. The Court's Order did not require the CBJ to change the fee amount or create a new fee amount. Without any basis in the Court's Order, CLIA now argues that the PDF cannot exceed the amount necessary to pay the debt of the 16B project.[22] The debt from the 16B project is currently in excess of $25,000,000 as of the date of the Court's Order. Using CLIA's estimate of the passenger volumes for 2019 at 1.3 million,[23] and the PDF currently at $3.00 a passenger, the total amount collected next year will be $3.9 million; which is much lower than the remaining 16B debt. There is no basis to support CLIA's argument that "the current PDF exceeds the costs of lawful uses" even if the Court had limited the use of the PDF to the 16B project, which the Court did not.[24]

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[20] CLIA's Notice, Dk. 211 at 10.

[21] CLIA's allegations about the SeaWalk were before the Court on the summary judgment motions and the Court did not enjoin the use of PDF for the SeaWalk nor indicate that such expenditures were unconstitutional. The fact is that there is no way for the passengers to disembark from the 16B floating docks except by use of the SeaWalk. Additionally, if CLIA brings a challenge to future approved expenditures for the SeaWalk, CBJ may assert its defenses based on the explicit approval of the SeaWalk project by the former CLIA predecessor president and the approval of CLIA member representatives.

[22] CLIA's Notice, Dk. 211 at 10.

[23] CBJ points out that the volume of passengers who come to Juneau is entirely determined by CLIA's members. There is no guarantee as to how many passengers will arrive each year or for how long. CLIA appears to be presenting a new potential test for the first time, tying a fee rate to the number of passengers who arrive each year (see CLIA's footnote 1); the number of passengers change each year, with recent years having large increases without much advance notice to CBJ. This would require a new fee analysis each year, and would put CBJ dependent on CLIA's estimate each year. CLIA did not cite to any case law that limits passengers' fees to the estimates of the number of passengers provided by the cruise ship companies.

[24] CLIA's Notice, Dk. 211 at 10.

B. The Marine Passenger Fee

The Court held that the MPF was constitutional.[25] CLIA now re-argues that the current MPF is "unlawfully excessive."[26] CLIA has not provided any new argument or new evidence to support their request for reconsideration of the Court's decision.[27] CLIA asserts again that the MPF is being used for "general revenue-raising purposes."[28] The Court rejected that argument by CLIA.[29] There is no basis for the Court to reconsider that decision.

CLIA requests the Court enjoin CBJ from charging MPF until the MPF is reduced.[30] The Court Order did not direct CBJ to reduce the MPF. There is no legal or factual basis for such an injunction. The Court determined that the MPF did not violate the Tonnage Clause, the Supremacy Clause or the RHAA.[31] CLIA's request for an injunction is not based on expenditures approved since the Court's December 6, 2018 Order. The proper process is for CLIA to file a new suit on the legality of a specific expenditure once the specific expenditure has actually been approved by the Assembly,[32] at which time the Court could enter a pretrial order, allow the parties to conduct discovery (there would necessarily be depositions of witnesses who CLIA propounds to testify that the specific expenditure did not provide a service to the vessel),

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[25] Docket 207 at 33.
[26] CLIA's Notice, Dk. 211 at 13.
[27] As discussed above, CLIA's Exhibit 3 and 4 with its Notice are dated prior to the Oral Argument and prior to the Court's decision. CLIA failed to provide those to the Court with its summary judgment motion or supplemental exhibits.
[28] CLIA's Notice, Dk. 211 at 13.
[29] "The MPF ordinance and the PDF resolution do not impose a tax nor do they raise fees for general revenue purposes." Order, Dk. 207 at 33.
[30] CLIA's Notice, Dk. 211 at 13.
[31] Docket 207 at 33.
[32] CLIA provides the Court with a future capital improvement plan through FY2024. CLIA then says it "presumes" CBJ will authorize expenditures for these services. These expenditures have not all been authorized by the CBJ Assembly, and will not be authorized until the budget process is completed for each fiscal year. CLIA also provides the FY19 and FY20 budget as Exhibit 3, which is dated prior to the Court's decision and CLIA is barred from re-litigating FY19 expenditures now. The FY20 expenditures have not been approved by the Assembly, and a determination on these expenditures is not ripe for decision.

and eventually schedule trial. The parties can bring forward evidence at trial on how the actual expenditure provides a service that facilitates the marine operations.[33] Then it would be up to the Court or a Juneau jury to determine whether a specific expenditure actually provided a service that facilitates or advances the marine operations of the vessel under the Court's current decision.

CBJ respectfully requests the Court grant the request for entry of final judgment. Any future challenges to actual expenditures by CLIA can occur after the appellate courts have addressed the constitutional standard to be applied and only after the actual expenditures have been approved by the CBJ Assembly.

IV. THE COURT HAS ALREADY HELD THAT THE STATE MARINE PASSENGER FEE (CPV FUNDS) ARE NOT RELEVANT TO THE ANALYSIS OF CBJ'S MPF AND PDF AND THERE IS NO BASIS FOR CLIA TO BRING A NEW CLAIM RELATING TO THE CPV IN THIS LAWSUIT

CLIA amended its complaint to remove the challenge to CBJ's use of the CPV.[34] The State's CPV fee is not at issue in the case brought by CLIA against CBJ. CLIA cannot amend its Complaint by way of its "Notice."

The Court has already decided that the CPV is not relevant to CLIA's claims against CBJ in this lawsuit. The Court granted CBJ's Motion to Strike all exhibits submitted by CLIA related to the State CPV fees as not relevant to the issues of the constitutionality of the PDF and MPF fees.[35] The Court also noted CLIA had amended its Complaint to drop its challenge to the use of the CPV funds.[36] There is no legal basis for the Court to analyze CBJ's use of State CPV funds

[33] On pages 12 and 13, CLIA provides examples of budgetary items which CLIA says "it appears" are not for services to the cruise vessels. "It appears" is not an evidentiary standard known to CBJ. CLIA did not cite to any court that enjoined the collection and expenditure of fees based on the conclusions of the description of the expenditures by the Plaintiff and the assertion that "it appears" those expenditures are not for services the Plaintiff considers to be constitutional.
[34] Docket 28, CLIA's First Amended Complaint.
[35] Dk. 183 at 3-4.
[36] Dk. 183 at 3.

in relation to the constitutionality of uses of CBJ's PDF and MPF funds.[37] There is no new evidence or legal authority provided by CLIA establishing a basis for the Court to now evaluate the constitutionality of the use of state CPV funds, particularly where those funds come from fees imposed on the passengers, not on the vessels. CBJ respectfully requests the Court adhere to its earlier ruling on the Motion to Strike.

CLIA references "other" fees in the Notice. CLIA admitted in prior pleadings that the other fees were not part of this lawsuit.[38] There is no legal basis for the Court to analyze CBJ's other fees in relation to the constitutionality of CBJ's PDF and MPF Resolution and Code.

V. THE COURT'S ORDER DOES NOT PRECLUDE CBJ FROM CHARGING PDF AND MPF AT THE PRIVATE DOCKS

In its summary judgment motion, CLIA requested the Court find that CBJ's charging of the MPF and PDF at the two private docks violated the Tonnage Clause. The Court did not so hold. That is not surprising as CLIA never cited to any case that restricted a municipal government from charging passenger fees to only public docks and CLIA's Notice does not provide the Court with any such authority. There is no remaining issue for the Court to resolve as related to the collection of fees at the private docks. There is no basis for the Court to reconsider its decision.

As demonstrated by CBJ in its summary judgment pleadings and its supplemental chart at

[37] The State CPV fees are governed under state statutes and are fees imposed on passengers, not on the vessel. See CLIA Exhibits 18 and 20. CLIA admitted in their filing for Summary Judgment that CPV is distinguished because the fees are imposed on the passengers. (Docket 67 at 23, footnote 9.) The Court's Order did not enter any declaratory judgment related to fees imposed on passengers. CBJ's expenditures of the CPV were found legal under the State audit as provided in Docket 120-25, Exhibit BY with the CBJ's Opposition to the Motion for Summary Judgment. The parties may share a common interest in having the CBJ's passenger fee legislation amended, which would moot this litigation.

[38] CLIA's Opposition to Motion to Determine Law of the Case, Docket 97, page 21, footnote 15. "Those fees for services are not the subject of this lawsuit."

oral argument, the expenditures at the private docks have been directly requested by CLIA and/or its member representatives. If CLIA wants to claim any specific expenditures in the future are unconstitutional, even though requested by CLIA, that challenge should follow the same procedure as *Bridgeport*, requiring actual evidence and trial.

VI. CLIA IS NOT ENTITLED TO INJUNCTIVE RELIEF

CLIA admits that reasonable notice and a hearing are required before injunctive relief may be granted.[39] CBJ agrees that injunctive relief is only appropriate if found necessary after an evidentiary hearing. However, the Court does not need to determine whether a hearing is appropriate as CLIA chose not to litigate past expenditures and the Court's Order properly determined that past expenditures are not relevant. It is not yet ripe for an injunctive hearing on future expenditures. If after appeal in this case CLIA wants a trial on specific identified expenditures it claims to be unconstitutional, those will be analyzed in accordance with the evidence presented at trial and with the legal standard that emerges after appeal. That is how the Courts cited by CLIA reached a determination regarding an injunction.[40] CLIA has not factually established that the case is ripe for a decision on "particularized expenses."

CLIA asserts it is entitled to injunctive relief "given the position stated in the January 8 letter of Defendants' counsel."[41] There is nothing in the January 8 letter that is contrary to the

[39] Dk. 211 at 15, citing the Declaratory Judgment Act. "Reasonable notice" must mean at least that CLIA identify actual, specific expenditures being challenged, not a generic description of categories created by CLIA that CLIA does not want the CBJ to use the fees for services.

[40] CLIA cites to *Bridgeport* in support of its renewed request for an injunction. In *Bridgeport*, the Second Circuit affirmed the injunction because the list of particularized expenses "deemed of no actual or potential benefit to the ferry passengers." 576 F.3d at 87. The other cases cited by CLIA are not helpful to CLIA. In *Poe v Gerstein,* the Supreme Court affirmed the denial of injunction, stating there was no "proof that respondents would not, nor can we assume, will not, acquiesce in the decision…" 417 US 281 (1974). CLIA's conclusory statements and statements such as "it appears" do not establish "proof" that CBJ will not act in accordance with the Court's decision.

[41] Dk. 211 at 15.

Court's Order.[42] CLIA is not entitled to an injunction based on communication between the parties' attorneys, in which CBJ's attorney accurately stated the Court's Order and advised CLIA's counsel the Assembly intended to act consistent with the Court's Order. Notably, the CBJ has heeded the Court's Order, pending appeal or a stay, and has appropriation and transfer legislation pending for January 28, 2019, that demonstrate the CBJ has not ignored the Court.

VII. A MOTION FOR ATTORNEYS' FEES IS ONLY PROPERLY FILED AFTER ENTRY OF FINAL JUDGMENT

The request for attorneys' fees is not properly before the Court. CLIA must file a motion with the legal basis for claiming it is the prevailing party for purposes of attorneys' fees and submit its actual billing statements for the Court to review. CBJ must be afforded a full opportunity to respond. CBJ notes that it prevailed on the central issue in the case: The Court held the PDF and MPF are constitutional and do not violate the Supremacy Clause.

VIII. CONCLUSION

The CLIA Notice is essentially a motion for reconsideration without making any effort to comply with the federal rules for a motion for reconsideration. CLIA's Notice does not address any "issues" that "remain to be resolved." All of the "issues" in CLIA's Notice were fully briefed by the parties and addressed by the Court in its Order. To the extent CLIA's Notice references possible future appropriations, CLIA is just speculating and must wait to challenge a

[42] The letter states: The Court did not "forbid the assessment" of the PDF and MPF. That is correct—the Court's Order did not "forbid" CBJ to collect the PDF and MPF. The Court's Order regarding Status did not require a response from either party. That is correct. The Court's Order did not require CBJ to reduce the fees. That is correct. The Court's Order did not require CBJ to provide CLIA with what "measures the Assembly intends to take to comply with the decision" by January 10, 2019. That is correct. The Court stated there was not sufficient evidence to rule on the constitutionality of any specific expenditure. That is correct. The Court held the PDF and MPF were constitutional and not precluded by the Tonnage Clause, RHAA or the Supremacy Clause. That is correct. The letter invited CLIA to submit specific expenditures it claimed were not constitutional with the reasons why. CLIA chose not to respond.

specific expenditure after the CBJ Assembly adopts a budget or approves legislation specific to an expenditure. To allow CLIA to bring a constitutional challenge to services or projects that have not been approved by the Assembly or for which fees have not been appropriated would constitute an advisory opinion by the Court and CLIA did not provide the Court with any legal authority to provide such an advisory opinion. CBJ respectfully requests the Court not allow CLIA to relitigate the summary judgment motions and to enter final judgment to allow the parties the opportunity to consider whether to appeal any aspect of the Court's Order.

HOFFMAN & BLASCO, LLC

Dated: January 17, 2019

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 17, 2019 a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S REQUEST FOR ENTRY OF FINAL JUDGMENT** was served on the following parties of record via ECF:

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