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 Attorneys for Defendant/Counterclaimant

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

CITY OF BILLINGS, a Montana municipal corporation,	)	Cause No. DV 20-1653
	)	
Plaintiff/Counterdefendant,	)	Judge Rod Souza
	)	
vs.	)	<b>DEFENDANT'S ANSWER, COUNTER-CLAIM, AND JURY TRIAL DEMAND</b>
	)	
COUNTY WATER DISTRICT OF BILLINGS HEIGHTS, a Montana local government unit,	)	
	)	
Defendant/Counterclaimant.	)	
	)	

Defendant, County Water District of Billings Heights, by and through its attorneys, Nelson Law Firm, P.C., for its Answer to the Complaint states and alleges as follows:

1. Admits the allegations contained in paragraphs 7, 23, 28, 33, 116, 117, 118, and 150, except avers that settlement discussions are inadmissible.
2. Denies each and every allegation contained in paragraphs 1, 2, 3, 4, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96,

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EXCEPT: admits the City, through a government entity to government entity transfer, obtains water which is delivered to its customers for a rate; admits the Board voted to refuse the City's collection demand; admits it is a Montana local government unit; admits the basic details as to its formation and functions; admits the City acts as a governmental unit for its true owners, the people of Billings; admits the government entities should be serving Montana residents and that both entities should never be engaged in conflict detrimental to the constituents they serve; admits the City and Defendant have an agreement; admits it receives all its water from the Yellowstone River, which water passes through systems the City operates; admits the City passed water on to Defendant; admits Defendant does not "own" any part of the City; admits water moves; admits the water conformed to that which Defendant expects under the contract; admits venue is proper; admits the water received has been sufficient for Defendant users; admits Defendant has taken and not rejected water; admits Defendant has never issued statements that it refuses the water; admits the contract speaks for itself; admits that its audited financial statements speak for themselves; admits the City has made demands.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 11, 69, 71, and 72.

4. Responding to paragraphs 5, 131, and 134, Defendant is under no obligation to respond to statements of law, and therefore denies the same, except admits that Montana law is

as stated in its Constitution, its statutes, rules, and common law.

**FIRST AFFIRMATIVE DEFENSE**

The City and Defendant are not merchants under the UCC, and do not transact business or purchase and sell goods. Rather, the City and Defendant are simply entities consented to by the people, and for the people, for the purpose of the common good.

**SECOND AFFIRMATIVE DEFENSE**

The contract between the City and Defendant is not a sales agreement under the UCC.

**THIRD AFFIRMATIVE DEFENSE**

The City's Complaint fails to state a claim upon which relief may be granted.

**FOURTH AFFIRMATIVE DEFENSE**

The City is barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

The City's Complaint is cryptically pled in that it bleeds on for 178 paragraphs and seeks relief well beyond the theories of relief actually pled. The City's allegations to terminate the contract and to declare limits on Defendant's area of operation are buried within the lengthy document (while not stated as theories of relief). They are buried in the document without corresponding theories of relief in order to obscure from public scrutiny the City's true intentions until a later date. Sunlight is the best disinfectant.

**SIXTH AFFIRMATIVE DEFENSE**

Each bill presented by the City, and paid by Defendant, constituted an accord and satisfaction of any debt.

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**SEVENTH AFFIRMATIVE DEFENSE**

The City's actions are subject to the doctrine of estoppel, waiver, performance, and laches.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant did not breach the contract.

**NINTH AFFIRMATIVE DEFENSE**

The amounts the City charged for water were reasonable under the contract in the amount actually billed at the time of the original bill.

**TENTH AFFIRMATIVE DEFENSE**

The City's claim is barred by Art. IX, Section 3 of the Montana Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

The City's claim is barred by Art. XI, Section 7 of the Montana Constitution.

**TWELFTH AFFIRMATIVE DEFENSE**

The City's claim is barred by Art. XIII, Section 1 of the Montana Constitution.

**COUNTERCLAIM**

Count I - Negligence

1. The City and Defendant are governmental entities existing through the consent of the people of Montana and pursuant to the Montana Constitution and its statutes.
2. The City owed and continues to owe a duty of care to Defendant.
3. The City's actions breached its duty of care. Defendant relied upon as accurate the City's monthly billing statements. Defendant cannot go back and charge a different rate to its users. Defendant has and will suffer harm from the City's errors. The City accepts no

responsibility for causing harm through its claimed billing error.

4. The City's breach is a cause of injury to Defendant in amounts to be proven at trial.

5. Defendant will be financially damaged if required to pay the City for its own admitted errors. Defendant is entitled to an offset for the harm inflicted in the event further payment is ordered.

Count II - Collection and Declaratory Judgment

6. The City has wrongfully collected franchise fees from Defendant in the amount of \$1,255,424.20.

7. Since the date of its adverse ruling before the Montana Supreme Court, the City has failed to return the funds collected.

8. Defendant is entitled to a declaratory ruling and payment and judgment for improperly collected franchise fee amounts.

9. Defendant is entitled to interest thereon.

10. The City's actions have forced Defendant to secure the services of an attorney.

The City is obligated to pay reasonable and necessary fees.

WHEREFORE, Defendant/Counterclaimant prays for judgment as follows:

1. For judgment in favor of Defendant and Counterclaimant and against the City;
2. For application of the Montana Constitution;
3. For the amounts prayed for herein, including damages and franchise fees;
4. For costs of suit;
5. For interest;

6. For reasonable attorney's fees; and
7. For such other and further relief as the Court deems just and proper under the circumstances.

**JURY TRIAL DEMAND**

Defendant/Counterclaimant demands trial by jury.

DATED this 7<sup>th</sup> day of January, 2021.

NELSON LAW FIRM, P.C.  
ATTORNEYS FOR DEFENDANT/  
COUNTERCLAIMANT

By

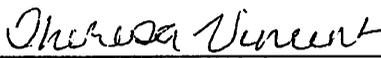


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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 7<sup>th</sup> day of January, 2021, a copy of the foregoing was duly served by first class mail, postage prepaid, upon the following:

Doug James  
Jordan W. FitzGerald  
MOULTON BELLINGHAM PC  
P.O. Box 2559  
Billings, MT 59103-2559  
Attorneys for Plaintiff

  
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Theresa Vincent