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Attorneys for City of Billings

CLERK OF THE  
DISTRICT COURT  
TERRY HALPIN

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DEPUTY

IN THE THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY, MONTANA

TERRY HOUSER, CLAYTON FISCUS,  
TERRY ODEGARD, ROGER WEBB,  
MAE WOO, KATHREYN ZURBUCHEN,  
THOMAS ZURBUCHEN, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

-vs-

CITY OF BILLINGS,

Defendant.

Cause No. DV 18-0778

Judge Gregory G. Pinski

**ANSWER TO FIRST  
AMENDED COMPLAINT**

The City of Billings ("City") answers Plaintiffs' First Amended Complaint as follows:

1. Denies the allegations of Paragraph 1.
2. Denies the allegations of Paragraph 2.
3. The allegations contained in Paragraph 3 of the First Amended Complaint are legal conclusions, which do not require an admission or denial.
4. The allegations contained in Paragraph 4 of the First Amended Complaint are legal conclusions, which do not require an admission or denial.

5. Denies the allegations of Paragraph 5.
6. In answering Paragraph 6, the City admits that it provides water, waste water, and solid waste disposal services directly to its customers.
7. Denies the allegations of Paragraph 7.
8. Denies the allegations of Paragraph 8.
9. In answering Paragraph 9, the City admits that the minutes of the City Council meeting reflect comments of a number of individuals over the years who are opposed to the franchise fees.
10. In answering Paragraph 10, the City admits that Plaintiff Clayton Fiscus appeared at the Billings City Council meeting on February 23, 2004 and commented upon the franchise fees and asserted that the franchise fees were an "illegal sales tax". The minutes of the February 23, 2004 City Council meeting reflect that Mr. Fiscus said he "speaks against the '5% sales tax' on water, wastewater and solid waste operations."
11. In answering Paragraph 11, the City admits that Council Member Brown commented upon the franchise fees during a City Council meeting on February 23, 2004.
12. In answering Paragraph 12, admits that Bruce Simon appeared at a City Council meeting on August 27, 2005 and commented that he believed the franchise fee an illegal tax.
13. In answering Paragraph 13, admits that at a City Council meeting on April 14, 2008, Bruce Simon appeared and commented that he believed the franchise fees were an illegal tax. The minutes of that City Council Meeting reflect Mr. Simon stating that "a higher authority need to be asked if that was an illegal sales tax because he feared it was and the City would be liable to have to pay it back someday it [sic] it was sued."

14. Admits that Council Member Larry Brewster was present at a City Council meeting on May 22, 2017 at which time he commented upon the franchise fees.

15. In answering Paragraph 15, the City does not have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 and accordingly leaves Plaintiffs to their proof.

16. In answering Paragraph 16, the City does not have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and accordingly leaves Plaintiffs to their proof.

17. Denies the allegations of Paragraph 17.

18. Denies the allegations of Paragraph 18.

19. In answering Paragraph 19, admits that Plaintiff Terry Houser has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 19 and leaves Plaintiffs to their proof.

20. In answering Paragraph 20, admits that Plaintiff Clayton Fiscus has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and leaves Plaintiffs to their proof.

21. In answering Paragraph 21, admits that Plaintiff Terry Odegard has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21 and leaves Plaintiffs to their proof.

22. In answering Paragraph 22, admits that Plaintiff Roger Webb has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and leaves Plaintiffs to their proof.

23. In answering Paragraph 23, admits that Plaintiff Mae Woo has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23 and leaves Plaintiffs to their proof.

24. In answering Paragraph 24, admits that Plaintiff Kathreyn Zurbuchen has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24 and leaves Plaintiffs to their proof.

25. In answering Paragraph 25, admits that Plaintiff Thomas Zurbuchen has had an account with the City. The City does not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 and leaves Plaintiffs to their proof.

26. The allegations contained in Paragraph 26 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

#### **JURISDICTION AND VENUE**

27. Denies the allegations of Paragraph 27.

28. The allegations contained in Paragraph 28 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

29. Admits that venue is proper in the Thirteenth Judicial District Court.

## FACTUAL ALLEGATIONS

30. In answering Paragraph 30, the City admits that it sold water to residents and businesses located in the City of Billings.

31. In answering Paragraph 31, the City admits that it provided waste water services to residents and businesses in Billings.

32. In answering Paragraph 32, the City admits that it provided solid waste disposal services to residents and businesses in the City.

33. The allegations contained in Paragraph 33 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

34. The allegations contained in Paragraph 34 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

35. The allegations contained in Paragraph 35 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

36. The allegations contained in Paragraph 36 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

37. The allegations contained in Paragraph 37 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

38. The allegations contained in Paragraph 38 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

39. The allegations contained in Paragraph 39 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

40. In answer Paragraph 40, the City admits that the franchise fees arise from and relate to resolutions adopted by the City Council beginning in 1992.

41. Denies the allegations of Paragraph 41.
42. Denies the allegations of Paragraph 42.
43. Denies the allegations of Paragraph 43.
44. Denies the allegations of Paragraph 44.
45. Denies the allegations of Paragraph 45.
46. Denies the allegations of Paragraph 46.
47. Denies the allegations of Paragraph 47.
48. Admits the allegations of Paragraph 48.
49. In answering Paragraph 49, the City admits that funds deposited into the general fund were used to cover unallocated expenses that were otherwise not reflected in the rates charged for water, waste water, and solid waste disposal services.

50. Denies the allegations of Paragraph 50.
51. Denies the allegations of Paragraph 51.
52. The allegations contained in Paragraph 52 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

53. The allegations of Paragraph 53 call for speculation and require no admission or denial. Accordingly, the City leaves Plaintiffs to their proof. The City further represents that Plaintiffs could have objected to the payment of the franchise fees and could have pursued their legal and administrative remedies if they had objected to those fees.

54. Denies the allegations of Paragraph 54.
55. The City incorporates its answers to Paragraphs 1 through 54 herein above as though fully set forth.

56. The allegations contained in Paragraph 56 of the First Amended Complaint do not require an admission or denial. To the extent that a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 and leaves Plaintiffs to their proof.

57. Denies the allegations of Paragraph 57.

58. The allegations contained in Paragraph 58 of the First Amended Complaint do not require an admission or denial. To the extent that a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 and leaves Plaintiffs to their proof.

59. Denies the allegations of Paragraph 59.

60. Denies the allegations of Paragraph 60.

61. The allegations of Paragraph 61 call for legal conclusions, which do not require an admission or denial. To the extent that an admission or denial is required, the City denies the allegations of Paragraph 61 and leaves Plaintiffs to their proof.

62. The allegations of Paragraph 62 call for legal conclusions, which do not require an admission or denial. To the extent that an admission or denial is required, the City denies the allegations of Paragraph 62 and leaves Plaintiffs to their proof.

63. The allegations of Paragraph 63 call for legal conclusions, which do not require an admission or denial. To the extent that an admission or denial is required, the City denies the allegations of Paragraph 63 and leaves Plaintiffs to their proof.

64. The allegations of Paragraph 64 call for legal conclusions, which do not require an admission or denial. To the extent that an admission or denial is required, the City denies the allegations of Paragraph 64 and leaves Plaintiffs to their proof.

65. Denies the allegations of Paragraph 65.

66. Denies the allegations of Paragraph 66.

67. Denies the allegations of Paragraph 67.

68. The allegations contained in Paragraph 68 of the First Amended Complaint do not require an admission or denial. To the extent that a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 and leaves Plaintiffs to their proof.

69. The allegations contained in Paragraph 69 of the First Amended Complaint do not require an admission or denial. To the extent that a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 and leaves Plaintiffs to their proof.

70. The City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the First Amended Complaint and leaves Plaintiffs to their proof.

71. The City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the First Amended Complaint and leaves Plaintiffs to their proof.

72. The City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the First Amended Complaint and leaves Plaintiffs to their proof.

73. The allegations contained in Paragraph 73 of the First Amended Complaint do not require an admission or denial. To the extent a response is required, the City



denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 and leaves Plaintiffs to their proof.

74. The allegations contained in Paragraph 74 of the First Amended Complaint do not require an admission or denial. To the extent a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 and leaves Plaintiffs to their proof.

75. The allegations contained in Paragraph 75 of the First Amended Complaint do not require an admission or denial. To the extent a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 and leaves Plaintiffs to their proof.

76. The allegations contained in Paragraph 76 of the First Amended Complaint do not require an admission or denial. To the extent a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 and leaves Plaintiffs to their proof.

77. The allegations contained in Paragraph 77 of the First Amended Complaint do not require an admission or denial. To the extent a response is required, the City denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 and leaves Plaintiffs to their proof.

78. The allegations of Paragraph 78 call for a legal conclusion and do not require an admission or denial. The City leaves Plaintiffs to their proof.

79. The allegations contained in Paragraph 79 of the First Amended Complaint do not require an admission or denial. To the extent a response is required, the City

denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 and leaves Plaintiffs to their proof.

**COUNT I**

80. The City incorporates its responses to Paragraphs 1 through 79 above as though fully set forth herein.

81. The allegations of Paragraph 81 call for legal conclusions and do not require an admission or denial.

82. The allegations of Paragraph 82 call for legal conclusions and do not require an admission or denial.

83. The City admits that it imposed fees upon water, waste water, and solid waste disposal services.

84. In answering Paragraph 84, the City admits that it received franchise fees in connection with its provision of water, waste water, and solid waste disposal services.

85. In answering Paragraph 85, the City admits that the revenue generated from franchise fees was deposited into the City's general fund.

86. In answering Paragraph 86, the City admits that the revenue generated from franchise fees was deposited into the City's general fund to pay for unallocated costs.

87. Denies the allegations of Paragraph 87.

88. Denies the allegations of Paragraph 88.

89. The allegations contained in Paragraph 89 of the First Amended Complaint call for legal conclusions which do not require an admission or denial. The City leaves Plaintiffs to their proof.

90. The allegations contained in Paragraph 90 of the First Amended Complaint call for legal conclusions which do not require an admission or denial. The City leaves Plaintiffs to their proof.

91. The allegations contained in Paragraph 91 of the First Amended Complaint call for legal conclusions which do not require an admission or denial. The City leaves Plaintiffs to their proof.

92. The allegations contained in Paragraph 92 of the First Amended Complaint call for legal conclusions which do not require an admission or denial. The City leaves Plaintiffs to their proof.

93. The allegations contained in Paragraph 93 of the First Amended Complaint call for legal conclusions which do not require an admission or denial. The City leaves Plaintiffs to their proof.

94. The allegations contained in Paragraph 94 of the First Amended Complaint call for legal conclusions which do not require an admission or denial. The City leaves Plaintiffs to their proof.

## COUNT II

95. The City incorporates its responses to Paragraphs 1 through 94 above as though fully set forth herein.

96. The allegations contained in Paragraph 96 of the First Amended Complaint call for legal conclusions which do not require an admission or denial.

97. The allegations contained in Paragraph 97 of the First Amended Complaint call for legal conclusions which do not require an admission or denial.

98. Denies the allegations of Paragraph 98.

99. Denies the allegations of Paragraph 99.

100. The allegations contained in Paragraph 100 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

101. Denies the allegations of Paragraph 101.

102. Denies the allegations of Paragraph 102.

103. Denies the allegations of Paragraph 103.

104. Denies the allegations of Paragraph 104.

### **COUNT III**

105. The City incorporates its responses to Paragraph 1 through 104 above as though fully set forth herein.

106. The allegations contained in Paragraph 106 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

107. Denies the allegations of Paragraph 107.

108. The allegations contained in Paragraph 108 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

109. Denies the allegations of Paragraph 109.

### **COUNT IV**

110. The City incorporates its responses to Paragraphs 1 through 109 above as though fully set forth herein.

111. The allegations contained in Paragraph 111 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

112. The allegations contained in Paragraph 112 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

113. The allegations contained in Paragraph 113 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

114. The allegations contained in Paragraph 114 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

115. Denies the allegations of Paragraph 115.

116. The allegations contained in Paragraph 116 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

117. The allegations contained in Paragraph 117 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

118. The allegations contained in Paragraph 118 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

#### **COUNT V**

119. The City incorporates its responses to Paragraphs 1 through 118 above as though fully set forth herein.

120. The allegations contained in Paragraph 120 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

121. The allegations contained in Paragraph 121 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

122. The allegations contained in Paragraph 122 of the First Amended Complaint call for legal conclusions, which do not require an admission or denial.

123. The City denies each and every allegation of Plaintiffs' Complaint not expressly admitted herein above.

## AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.
2. The City expressly reserves the right to amend and/or supplement its Answer, defenses and all other pleadings. The City raises each and every defense (at law, in equity, or otherwise) available under any and all federal and state statutes, laws, rules, regulations or other creations, including in common law. The City has insufficient knowledge or information on which to form a belief as to whether there may be additional affirmative defenses available to it and therefore reserves the right to assert such additional defenses based upon subsequently acquired knowledge or information that becomes available through discovery or otherwise.
3. The remedy provided by Montana Code Annotated § 15-1-406 is Plaintiffs' exclusive remedy. Plaintiffs fail to plead facts, which if proven, would entitle Plaintiffs to relief.
4. By way of affirmative defense, Plaintiffs' claims are barred by public policy and the public interest.
5. A person who consents to an act is not wronged by it, Section 1-3-206, Mont. Code Ann.
6. Acquiescence in error takes away the right of objecting to it, Section 1-3-207, Mont. Code Ann.
7. Any person may waive the advantage of law intended solely for that person's benefit, Section 1-3-204, Mont. Code Ann.
8. The law respects form less than substance, Section 1-3-219, Mont. Code Ann.

9. At all times, the City acted in good faith, and without malice or intent to injure Plaintiffs.

10. At all times, the City acted in good faith in accordance with reasonable commercial standards.

11. Plaintiffs' claims are barred by the doctrine of quantum meruit.

12. Plaintiffs' claims are barred by the applicable statutes of limitations. The purported damages for which Plaintiffs seek recovery against the City are impeded, barred, or abated by the statute of limitations.

13. Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

14. Plaintiffs have failed to assert Plaintiffs' rights in a timely fashion, which delay is of such duration and character as to render the enforcement of the rights inequitable and, accordingly, Plaintiffs are guilty of laches and Plaintiffs' claims are barred.

15. Plaintiff Mae Woo does not own any real property located within the City of Billings in her individual name.

16. Plaintiffs, or some of them, failed to appear, participate, or object at the public hearings held by the City of Billings on proposed increases in water and waste water rates. The City held public hearings on proposed water and waste rate increases on July 26, 2010, May 23, 2011, May 14, 2012, May 13, 2013, May 27, 2014, May 26, 2015, May 22, 2017, and May 14, 2018. Plaintiffs, or some of them, failed to pursue the remedies available to them by reason of their failure to appear, participate, and/or object at the foregoing public hearings. See Exhibits "A" – "H" hereto.

17. The franchise fees imposed by the City of Billings for water and waste water services and solid waste disposal services are not a “sales tax” but are in fact, a part of the cost of water and waste water services and solid waste disposal services.

18. The franchise fees for water and waste water services and solid waste disposal services are paid to the City, in some cases, pursuant to written contracts. There is no express statutory limitation on the right of municipalities to generate income from contractual agreements.

19. The City is not imposing franchise fees on water and waste water services and solid waste disposal services for fiscal year 2019, beginning July 1, 2018. See Exhibit “I” hereto. Accordingly, Plaintiffs’ claim for an injunction is moot.

20. The right to utilize the water and waste water services and the solid waste disposal services provided by the City is a special right.

21. The City of Billings agreed to annex certain subdivisions in to the City of Billings. As part of that annexation and subdivision process, the City entered into Subdivision Improvements Agreements pursuant to which the City agreed to provide water, waste water, and solid waste disposal services to the annexed and/or subdivided properties. In connection therewith, the developers/subdividers agreed to pay franchise fees and agreed to be bound by the water rules for the City of Billings which included the payment of certain franchise fees.

22. The relationship between the City and those who have contracted for water and waste water services and/or solid waste disposal services is beneficial to both parties.



23. The Court should exercise its discretion under Title 27, chapters 8 and 19, Mont. Code Ann., and decline Plaintiffs' request to enter an injunction or declaratory judgment in this case.

24. The Court lacks authority to issue an injunction to prevent a legislative act by a municipal corporation.

25. Some or all of Plaintiffs' claims may be barred or limited by the statute of frauds.

26. Plaintiffs' claims and alleged damages may be limited, precluded, and/or barred by § 2-9-103, Montana Code Annotated (2017).

27. Plaintiffs failed to exercise and exhaust their administrative remedies prior to initiating this legal action.

28. Plaintiffs' claims may be barred or limited due to failure to mitigate damages, if any.

29. Plaintiffs' claims may be barred or limited because of the Voluntary Payment Doctrine.

30. Kathryn Zurbuchen and Thomas Zurbuchen do not have water accounts with the City of Billings.

31. Many members of the proposed class received their water from the County Water District of Billings Heights. Based upon information and belief, the City asserts that the Water District bills to its customers did not include any itemized charge for any franchise fees.

32. Plaintiffs do not have a contractual or statutory right to recover attorney fees. The City has not imposed franchise fees for fiscal year 2019, beginning July 1,

2018. See Exhibit “I”. Accordingly, Plaintiffs do not have an equitable basis for seeking attorney fees.

33. Since 1995, the City of Billings has entered into approximately 277 Subdivision Improvements Agreements (SIA), in connection with the annexation and/or subdivision of land. The SIAs are written contracts that have been recorded in the real estate records for Yellowstone County. In those 277 SIAs, the Developer and the City of Billings agreed that the lots in the subdivisions would be subject to the franchise fees assessed by the City of Billings. See Exhibit “J”, for a list of the SIAs. Those Developers and the property owners within each of those 277 subdivisions received a special right in connection with their agreement to pay franchise fees—they were allowed to annex their property into the City of Billings and/or subdivide their property in the City of Billings and they were provided with water, waste water, and solid waste disposal services, all of which are special rights.

34. The City of Billings entered into written contracts with: (i) Meadowlark Capital LLC, (ii) Phillips 66 Billings Refinery, and (iii) Lockwood Area/Yellowstone County Water and Sewer District, pursuant to which they agreed to pay the franchise fees assessed by the City of Billings. Meadowlark Capital LLC, Phillips 66 Billings Refinery, and Lockwood Area/Yellowstone County Water and Sewer District received special rights pursuant to the agreements.

35. The City of Billings has Legislative immunity for all legislative acts and omissions, pursuant to Mont. Code Ann. § 2-9-211.

36. The City of Billings has immunity from suit for certain actions by the elected City Council, pursuant to Mont. Code Ann. § 2-9-214.

37. The City of Billings is not civilly liable in any action if any duly promulgated rule or ordinance is declared invalid, pursuant to Mont. Code Ann. § 2-9-103.

38. Any liability that the City of Billings may have for damages in tort are limited, pursuant to Mont. Code Ann. § 2-9-108.

39. The Billings City Council adopted the franchise fees on April 13, 1992 through Resolution 92-16531. The official minutes of that meeting and subsequent City Council meetings demonstrate that Plaintiffs and others have alleged that the franchise fees were “illegal sales taxes” beginning in 1992. At the April 13, 1992 hearing, citizens appeared and argued that the franchise fees were illegal “sales taxes”. For example, Rod Garcia, former state legislator representing the Southside Task Force, the North Park Task Force, the North Elevation Task Force, and the Central-Terry Task Force, said all were “opposed to this ‘sales tax’ proposal.” Plaintiff Clayton Fiscus also testified in opposition to the franchise fees. At a subsequent hearing on January 12, 2004, Plaintiff Clayton Fiscus objected to the franchise fees as an illegal sales tax on water, waste water, and solid waste disposal services. (See Exhibits “K”). Mr. Fiscus further claimed that the Montana Supreme Court held that “government demand for money for the purpose of raising revenue is a tax”. (See Exhibit “K” hereto). At the January 12, 2004 City Council meeting, Mr. Fiscus also presented the City Council with a handout relating to the franchise fees. (See Exhibit “L”). In his handout, Mr. Fiscus stated:

There should be “NO” public hearing to increase the (4% Illegal Sales Tax) Franchise Fee on public utilities water and sewer service.

...

Also the PUD and the City of Billings may be required to pay back the 4% tax they illegally assessed consumers over the past few years if challenged in court.

(See Exhibit "L").

Plaintiff Clayton Fiscus testified at another City Council meeting on February 23, 2004 regarding the franchise fees. (See Exhibit "M"). Mr. Fiscus stated that "this Court has held that a government demands for money for the purpose of raising revenue is a tax." Bruce Simon testified at the same hearing that "he said he believes the franchise fee is a sales tax therefore is illegal." (See Exhibit "M"). Plaintiffs, or some of Plaintiffs, and other citizens, have argued that the franchise fees were illegal sales taxes since 1992.

Wherefore, the City prays that Plaintiffs take nothing by their complaint and that judgment be entered in favor of the City and against the Plaintiffs on all counts.

DATED this 15<sup>th</sup> day of October, 2018.

MOULTON BELLINGHAM PC

By 

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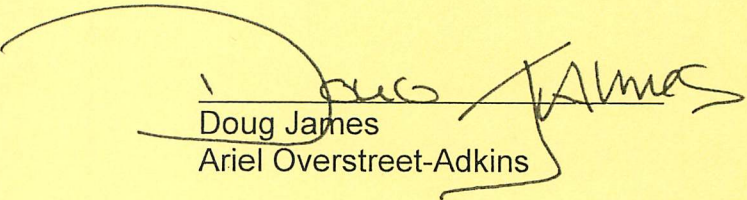
Attorneys for City of Billings

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served upon the following person by U.S. Mail, postage prepaid on this 15th day of October, 2018.

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4812-2742-1812, v. 5