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Attorneys for Financial Consulting Solutions Group, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

JEFF BECK, individually; AMY
WEINBERG, individually; ZAC
WEINBERG, individually; ALTA
VIEWS, LLC; RIVERVIEW
COMPANY, LLC; and on behalf of a
class similarly situated persons or
entities,

Plaintiffs,

v.

CITY OF WHITEFISH, a Montana
municipality, and DOES 1-50,

Defendants.

Cause No. CV-22-44-M-DLC-KLD

**FINANCIAL CONSULTING
SOLUTIONS GROUP, INC.'S
AMENDED ANSWER TO THIRD-
PARTY COMPLAINT AND
DEMAND FOR JURY TRIAL**

CITY OF WHITEFISH, a Montana municipality,

Third-Party Plaintiff,

v.

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.,

Third-Party Defendant.

Third-Party Defendant Financial Consulting Solutions Group, Inc. (“FCS Group”) submits this Amended Answer to Third-Party Plaintiff City of Whitefish’s Third-Party Complaint. (Doc. 47).

1. FCS Group admits the allegations in Paragraph 1.
2. Answering Paragraph 2, FCS Group admits it is a Washington corporation that entered into and performed services under contract with the City of Whitefish (“City of Whitefish” or “City”) during the relevant time period. FCS Group denies the remaining allegations of Paragraph 2.
3. Answering Paragraph 3, FCS Group admits that in January 2018, it entered into a Contract Agreement with the City of Whitefish, which is incorporated here by reference. FCS Group denies the remaining allegations of Paragraph 3 to the extent they are inconsistent with the Contract Agreement.

4. Answering Paragraph 4, FCS Group admits the Contract Agreement states in part: “FCS GROUP shall comply with all Federal Government, State and

local laws and ordinances applicable to the work to be done under this Agreement.”

(Doc. 45-1 at 3).

5. FCS Group denies the allegations in Paragraph 5 as incomplete and inaccurate and affirmatively states that paragraph 7 of the Contract Agreement provides in full:

FCS GROUP shall comply with all Federal Government, State and local laws and ordinances applicable to the work to be done under this Agreement.

FCS GROUP hereby agrees to hold the Client harmless from and shall process and defend at its own expense, specific claims, demands or suits at law or equity, arising from FCS GROUP’s negligent performance of the provisions of this Agreement; provided that if the Client and FCS GROUP are concurrently negligent, FCS GROUP shall be required to indemnify and defend only in proportion to negligence of FCS GROUP. These indemnity provisions shall not require FCS GROUP to defend or indemnify the Client against any action based solely on the alleged negligence of the Client.

(Doc. 45-1 at 3).

6. FCS Group admits the allegations in Paragraph 6.

7. FCS Group denies the allegations in Paragraph 7.

**COUNT ONE – BREACH OF CONTRACT
AND CONTRACTUAL INDEMNITY**

8. Answering Paragraph 8, FCS Group restates and incorporates its answers in the preceding Paragraphs as if fully set forth herein.

9. FCS Group denies the allegations in Paragraph 9.

10. Answering Paragraph 10, FCS Group affirmatively states that by letter

dated November 14, 2022, the City of Whitefish, through counsel, requested FCS Group defend and indemnify it, and FCS Group denied the request.

11. Answering Paragraph 11, FCS Group denies that it failed to comply with Federal, State and/or local laws or that it was negligent in any way and further denies it is contractually liable for any amounts the City of Whitefish may be obligated to pay in this matter.

COUNT TWO – COMMON LAW INDEMNITY

12. Answering Paragraph 12, FCS Group restates and incorporates its answers in the preceding Paragraphs as if fully set forth herein.

13. Answering Paragraph 13, FCS Group denies it was negligent and denies that it has a common law duty to indemnify the City of Whitefish for any amounts the City is obligated to pay in this matter.

COUNT THREE – CONTRIBUTION

14. Answering Paragraph 14, FCS Group restates and incorporates its answers in the preceding Paragraphs as if fully set forth herein.

15. Answering Paragraph 15, FCS Group denies it was negligent and denies that it is liable for any amounts the City of Whitefish is obligated to pay in this matter.

FCS Group denies each and every allegation in Third-Party Plaintiff's Complaint to the extent any allegation is inconsistent with the Contract Agreement

and denies every allegation not specifically admitted above.

The remainder of the Complaint is a prayer for relief to which no response is required.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiff's Complaint fails to state a claim against FCS Group upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

FCS Group denies it is guilty of any breach of contract or breach of duty which caused or contributed to Plaintiffs' or Third-Party Plaintiff's claimed injuries and/or damages.

THIRD AFFIRMATIVE DEFENSE

No acts or omissions by FCS Group were the proximate cause of any injury to Third-Party Plaintiff or the Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiff's recovery is limited or barred by comparative negligence to the extent Third-Party Plaintiff's own actions caused or contributed to the injuries alleged in its Third-Party Complaint.

FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiff's damages, to the extent they are able to prove any, were

caused by or contributed to by a party other than FCS Group.

SIXTH AFFIRMATIVE DEFENSE

If the City of Whitefish was negligent in any way as alleged by Plaintiffs, Montana prohibits a common law claim for indemnity by the City against FCS Group.

SEVENTH AFFIRMATIVE DEFENSE

FCS Group's duty or obligation is limited to the Contract Agreement, and any potential liability of FCS Group is limited by the unambiguous terms of the Contract Agreement between FCS Group and the City of Whitefish.

EIGHTH AFFIRMATIVE DEFENSE

Any potential liability of FCS Group is limited by the provisions of Montana Code Annotated § 27-1-703.

NINTH AFFIRMATIVE DEFENSE

To the extent the City of Whitefish assessed and was paid excessive impact fees as alleged by Plaintiffs, the City—not FCS Group—was unjustly enriched by such payments, and the City—not FCS Group—is responsible under the law for disgorgement of those fees to the ratepayers.

TENTH AFFIRMATIVE DEFENSE

The damages alleged in the Complaint and Third-Party Complaint were caused in whole or in part by third parties beyond the control of FCS Group.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' and Third-Party Plaintiff's damages, to the extent they are able to prove any, must be reduced or barred by their failure to mitigate.

TWELFTH AFFIRMATIVE DEFENSE

If the City of Whitefish effected an unconstitutional taking in any way as alleged by Plaintiffs, federal law prohibits a claim for contribution or indemnity by the City against FCS Group.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the statute of limitations.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because they failed to exhaust administrative remedies available to them.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs and Third-Party Plaintiffs are not entitled to attorney fees.

FCS Group has raised affirmative defenses in this Amended Answer so they will not be waived. Pursuant to Federal Rule of Civil Procedure 14(a)(2)(C), FCS Group has also raised affirmative defenses against Plaintiffs' claims. Pretrial investigation and discovery may disclose that some of the defenses raised may not apply. FCS Group will dismiss any affirmative defenses that do not appear to be reasonably supported by the facts and the law.

WHEREFORE, having fully answered Third-Party Plaintiff's Complaint, FCS Group prays that Third-Party Plaintiff takes nothing by virtue of its Complaint and that the action be dismissed, that FCS Group recover its costs of suit, and that the Court grant such further relief as it deems just.

DEMAND FOR JURY TRIAL

FCS Group demands a trial by jury on all issues so triable.

Respectfully submitted this 25th day of May 2023.

HALL BOOTH SMITH, P.C.
*Attorneys for Financial Consulting
Solutions Group, Inc.*

/s/ Jori L. Quinlan
Jori L. Quinlan