

DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500	DOE FILED: September 26, 2018 5:37 PM FILING ID: 2AB89412B555D CASE NUMBER: 2018CV149
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>Defendants: THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and</p> <p>Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Defendant City of Fort Collins: John W. Mill (#22348) Amanda Levin Milgrom (#47871) Sherman & Howard L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Phone Number: (303) 297-2900 Email: jmill@shermanhoward.com amilgrom@shermanhoward.com Carrie M. Daggett, #23316 John R. Duval, #10185 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80522-0580 970-221-6520 cddaggett@fcgov.com , jduval@fcgov.com	Case No.: 2018CV149 Courtroom/Division: 3C
AFFIDAVIT OF JOHN W. MILL	

I, John W. Mill, hereby state under oath as follows:

1. I have personal knowledge of the facts stated herein.
2. I am over the age of 18 years and competent to give testimony.

EXHIBIT A

3. I submit this Affidavit in support of the City of Fort Collins' Combined Motion for Attorneys' Fees and Bill of Costs (the "Motion"), and to set forth the costs and attorneys' fees incurred in the above-captioned litigation.

4. I am lead counsel for the City of Fort Collins ("the City") in this case.

5. I am the partner or member of S&H who has been responsible for (i) supervising the legal services provided by S&H in its representation of the City in this matter, and (ii) reviewing and approving all invoices for attorneys' fees and costs charged by S&H to the City for services related to this matter.

Attorneys Providing Legal Services

6. The attorneys who have performed legal services for the City in this matter are:

John W. Mill	S&H	Member and Lead Counsel
Amanda Levin Milgrom	S&H	Associate
Carrie Mineart Daggett	City of Fort Collins	City Attorney
John R. Duval	City of Fort Collins	Deputy City Attorney

7. I have been practicing law in Colorado at S&H for 26 years. My practice has included a wide range of litigation including:

a. Municipal litigation. I have represented several Colorado municipalities in various types of litigation. This has included reporting to and working with city attorneys, city councils and city staff, as well as handling issues relating to city charters, codes, ordinances and procedures.

b. Election issues. My practice has included four cases under the Fair Campaign Practices Act, C.R.S. § 1-45-101 *et seq.* including representing municipalities and municipal employees. My experience also includes being lead counsel for a state agency in a case of statewide significance, Mesa Cty. Bd of Cty. Comm'rs v. State of Colorado, 209 P.3d 519 (Colo. 2009) (involving ballot measures by school districts and the Colorado Constitution's Taxpayer's Bill of Rights ("TABOR")).

c. Complex civil litigation. In addition, I have years of experience in complex civil litigation including class actions, construction, financial claims, RICO claims, appeals and other issues.

8. Amanda Milgrom is a fourth-year associate at S&H. She has experience working on complex government investigations and related civil litigation under the False Claims Act. At S&H, Ms. Milgrom conducts electronic legal research on a variety of legal issues ranging from construction law to intellectual property for both state and federal cases. She routinely drafts complaints, answers, motions to dismiss, affidavits, and other written pleadings.

9. Carrie Mineart Daggett is the City Attorney for the City and John R. Duval is the Deputy City Attorney for the City. Mr. Sutherland's claims have required Ms. Daggett and Mr. Duval to spend considerable time on this matter. While the City could seek attorneys' fees for their time on this matter, the City is only seeking the fees and costs it incurred for outside counsel on this case.

Work Required to Respond to Mr. Sutherland's Claims

10. Responding to Mr. Sutherland's claims required substantial work. That included a fair amount of work simply to try to figure out who he was suing, which of his 19 claims were asserted against the City and what the substance of his claims against the City were.

11. Mr. Sutherland's vague assertions of potential future harm from a speculative and remote in time (if it ever occurred) increase in electricity rates raised the issue of his lack of standing. That required substantial legal research, as well as development of jurisdictional facts, presented to the Court in two affidavits from City employees, establishing (i) the unlikelihood of any increase in electric rates, and (ii) the remoteness in time of such impact, if any ever occurred. The City's Motion to Dismiss included substantial arguments, evidence and citations to legal authority regarding Mr. Sutherland's lack of standing.

12. Mr. Sutherland's challenge to the City's issuance of \$150 million in revenue bonds required the City to research and brief the issue of C.R.S. § 11-57-210 ("the Bond Ordinance"). See Motion to Dismiss at 7-8. The Bond Ordinance, and cases from other states, support the City's position that Mr. Sutherland could not, as a matter of law, challenge the validity of the City's broadband revenue bonds after the bonds were delivered.

13. Mr. Sutherland's assertions regarding alleged failure to comply with the City Charter, the City Code and City ordinances required substantial review of the history of the events at issue, various ballot measures approved by the City's voters, actions by the City's Electric Utility Enterprise Board and more. See Motion to Dismiss at 9-16.

Attorneys' Fees Incurred by the City

14. The City's Motion to Dismiss was a significant motion, sixteen pages long, that required significant legal research on a number of issues and took substantial time to draft. The City's Reply required sifting through Mr. Sutherland's thirteen-page response required substantial additional work to prepare.

15. I have reviewed S&H's invoices and other records related to S&H's work in connection with the claims by Mr. Sutherland, the City's Motion to Dismiss and the Court's Order dismissing all claims against the City.

16. Attached as Exhibit A to this Affidavit are true and correct copies of the four invoices S&H has sent to the City for services in this matter. As Exhibit A shows, the total amount of

attorneys' fees that the City has incurred in this action are \$33,284.23. The City has paid, and/or is obligated to pay, these attorneys' fees.

17. The standard rates of the S&H attorneys involved are as follows: (1) \$545 per hour for John Mill, a member; and (2) \$360 for Amanda Milgrom, a fourth-year associate. S&H provided the City a ten percent discount on all fees. Thus, the net hourly rates after the ten percent discount were \$490.50 for Mr. Mill and \$324 for Ms. Milgrom.

18. Based upon my experience, in my opinion the net hourly rates billed by S&H in this matter are reasonable and consistent with the billing rates of attorneys performing this type of work in similar-sized firms with similar levels of expertise and experience in Denver, Colorado.

19. Based on my experience, in my opinion the number of hours expended by S&H in defending this matter is reasonable. Mr. Sutherland's claims required substantial time and effort to respond to.

20. All of the time entries on the attached invoices are directly related to the claims brought against the City in this action. The fees were calculated by multiplying the number of hours spent on the tasks noted in each diary entry by the attorney's normal hourly rate. A ten percent discount was then applied to the attorneys' fees on each invoice.

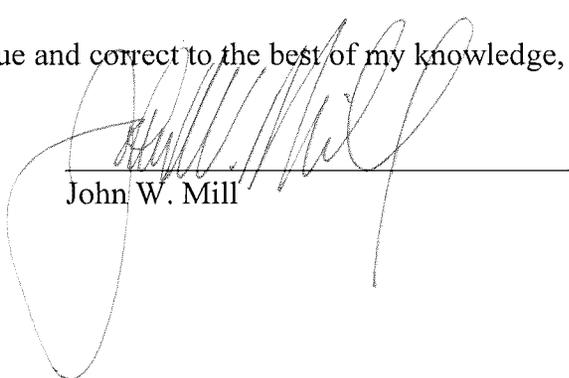
Costs Incurred by the City

21. In addition to attorneys' fees, Mr. Sutherland's claims required the City to incur costs. The costs billed to the City, as shown on the four invoices as Exhibit A, total \$1,470.42.

22. Attached as Exhibit B to this Affidavit is an itemized summary of the litigation costs and expenses incurred by the City. Exhibit B itemizes costs incurred for things like filing fees and electronic legal research. Exhibit B shows total costs billed of \$1,470.42 (consistent with the Exhibit A invoices).

23. S&H billed the City for these costs separately from, and in addition to, the attorneys' fees. In my opinion, the amount of costs incurred were reasonable and were necessary for the City to respond to Mr. Sutherland's claims.

I hereby swear or affirm that the foregoing is true and correct to the best of my knowledge, information and belief.



John W. Mill

STATE OF COLORADO)

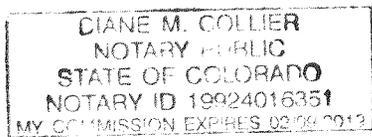
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COUNTY OF DENVER)

I hereby certify that the foregoing **AFFIDAVIT OF JOHN W. MILL** was subscribed and sworn to before me on this 26th day of September, 2018, by John W. Mill.

WITNESS my hand and official seal.

My commission expires: 02/09/2019



Diane M. Collier
Notary Public

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