

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

FAIRFAX COUNTY WATER AUTHORITY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF FALLS CHURCH, )  
 )  
 Defendant. )

Case No. 2008-16114

**CITY OF FALLS CHURCH'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant City of Falls Church (the "City"), by counsel, states the following as its Answer to Plaintiff Fairfax County Water Authority's ("Fairfax Water") Amended Complaint.

1. The City admits that Fairfax Water is a body corporate and politic created by the Fairfax County Board of Supervisors pursuant to the Virginia Water and Waste Authorities Act, but is without sufficient information to admit or deny the remaining allegations in paragraph 1 and therefore denies them.

2. The City is without sufficient information to admit or deny the allegations of paragraph 2 and therefore denies them. Paragraph 2 states a legal conclusion to which no response is required.

3. Paragraph 3 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

4. The City admits the allegations of paragraph 4.

**JURISDICTION AND VENUE**

5. Paragraph 5 states a legal conclusion to which no response is required.

## BACKGROUND

6. The 1959 Agreement speaks for itself. The allegations of paragraph 6 are incomplete representations of the 1959 Agreement and therefore the City denies the allegations of paragraph 6.

7. The City is without sufficient information to admit or deny the allegations in the first sentence of paragraph 7 and therefore denies them. The City denies the allegations of paragraph 7 as phrased.

8. The City admits the allegations of paragraph 8.

9. Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, the allegations of paragraph 9 are denied.

10. The City admits the allegations of paragraph 10.

11. The document attached as Exhibit 1 to the Amended Complaint speaks for itself.

12. The City is without sufficient information to admit or deny the allegations of paragraph 12 and therefore denies them.

13. The City admits the allegations of paragraph 13.

14. The City is without sufficient information to admit or deny the allegations of paragraph 14 and therefore denies them.

15. The City denies the allegations in the first sentence of paragraph 15. The City admits the allegations in the second sentence of paragraph 15. The City denies the allegations in the third sentence of paragraph 15.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

17. The City admits the allegations in the first sentence of paragraph 17. The City

denies the allegations in the second sentence of paragraph 17 as phrased.

18. The City denies the allegations of paragraph 18.

19. The City denies the allegations of paragraph 19.

20. The City denies the allegations of paragraph 20.

21. The City denies the allegations of paragraph 21.

22. The City denies the allegations of paragraph 22 as phrased.

23. The City denies the allegations of paragraph 23.

24. The City denies the allegations of paragraph 24 as phrased.

25. The City admits the allegations in the first sentence of paragraph 25. The City denies the remaining allegations of paragraph 25 as phrased.

26. The City is without sufficient information to admit or deny the allegations of paragraph 26 and therefore denies them.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent a response is required, the City denies the allegations of paragraph 27 as phrased.

28. The City admits the allegations of paragraph 28.

29. The City is without sufficient information to admit or deny the allegations of paragraph 29 and therefore denies them.

30. The City denies the allegations of paragraph 30 as phrased.

31. The City denies the allegations of paragraph 31.

32. The United States District Court complaint referenced in paragraph 32 speaks for itself. The allegations of paragraph 32 are incomplete representations of the United States District Court complaint and therefore the City denies the allegations of paragraph 32.

33. The written communication referenced in paragraph 33 speaks for itself. The

allegations of paragraph 33 are incomplete representations of the written communication referenced and therefore the City denies the allegations of paragraph 33.

34. The United States District Court opinion referenced in paragraph 34 speaks for itself. The allegations of paragraph 34 are incomplete representations of the United States District Court opinion and therefore the City denies the allegations of paragraph 34.

35. The City admits the allegations of paragraph 35.

36. The City denies the allegations of paragraph 36 as phrased.

37. The City denies the allegations of paragraph 37.

38. The City admits that the Halstead Project has been planned on property located near the Dunn Loring Metro station, but the City denies the remaining allegations of paragraph 38 as phrased.

39. The City admits the allegations of paragraph 39.

40. The City is without sufficient information to admit or deny the allegations in paragraph 40 and therefore denies them.

41. The City is without sufficient information to admit or deny the allegations in paragraph 41 and therefore denies them.

42. The City denies the allegations of paragraph 42.

43. The City denies the allegations of paragraph 43 as phrased.

44. The proffer referenced in paragraph 44 speaks for itself. To the extent a response is required by the City, the City denies the allegations of paragraph 44 as phrased.

45. Paragraph 45 states a legal conclusion to which no response is required. To the extent a response is required, the allegations of paragraph 45 are denied.

46. The City denies the allegations of paragraph 46 as phrased.

47. The City is without sufficient information to admit or deny the allegations of paragraph 47 and therefore denies them.

48. The City is without sufficient information to admit or deny the allegations of paragraph 48 and therefore denies them.

49. The City admits that the Halstead Developer offered to relocate the City's water lines at no cost to the City, but denies the remaining allegations of paragraph 49 as phrased.

50. The City denies the allegations of paragraph 50 as phrased.

51. The written communication referenced in paragraph 51 speaks for itself. The allegations of paragraph 51 are incomplete and inaccurate representations of the written communication referenced and therefore the City denies the allegations of paragraph 51.

52. The City admits the allegations in the first and second sentence of paragraph 52, but denies the remaining allegations of paragraph 52 as phrased.

53. The written communication referenced in paragraph 53 speaks for itself. The allegations of paragraph 53 are incomplete representations of the written communication referenced and therefore the City denies the allegations of paragraph 53.

54. The City is without sufficient information to admit or deny the allegations of paragraph 54 and therefore denies them.

55. The City denies the allegations of paragraph 55.

56. The City is without sufficient information to admit or deny the allegations of paragraph 56 and therefore denies them.

57. The City is without sufficient information to admit or deny the allegations of paragraph 57 and therefore denies them.

58. The City is without sufficient information to admit or deny the allegations of

paragraph 58 and therefore denies them.

59. The City is without sufficient information to admit or deny the allegations of paragraph 59 and therefore denies them.

60. The City is without sufficient information to admit or deny the allegations of paragraph 60 and therefore denies them.

61. The City is without sufficient information to admit or deny the allegations of paragraph 61 and therefore denies them.

62. The City denies the allegations of paragraph 62.

63. The City denies the allegations of paragraph 63.

64. The City denies the allegations of paragraph 64.

65. The City denies the allegations of paragraph 65.

66. The City denies the allegations of paragraph 66.

67. The City denies the allegations of paragraph 67.

68. The City denies the allegations of paragraph 68.

**COUNT I**  
**(Monopolization in Violation of the Virginia Antitrust Act)**

69. The City hereby incorporates by reference its answers to paragraphs 1 – 68.

70. Paragraph 70 states a legal conclusion to which no response is required.

71. The City denies the allegations of paragraph 71.

72. The City denies the allegations of paragraph 72.

73. The City denies the allegations of paragraph 73.

74. The City denies the allegations of paragraph 74.

**COUNT II**  
**(Attempted Monopolization in Violation of the Virginia Antitrust Act)**

- 75. The City hereby incorporates by reference its answers to paragraphs 1 – 68.
- 76. Paragraph 76 states a legal conclusion to which no response is required.
- 77. The City denies the allegations of paragraph 77.
- 78. The City denies the allegations of paragraph 78.
- 79. The City denies the allegations of paragraph 79.
- 80. The City denies the allegations of paragraph 80.

**COUNT III**  
**(Violation of Virginia Common Law)**

81. – 84. Plaintiff's Count III of its Amended Complaint has been dismissed with prejudice, therefore no response to the allegations in paragraph 81 – 84 is required. To the extent a response is required, the City denies the allegations of paragraphs 81-84.

**COUNT IV**  
**(Tortious Interference with Fairfax Water's Business Expectancies)**

- 85. The City hereby incorporates by reference its answers to paragraphs 1 – 84.
- 86. Paragraph 86 states a legal conclusion to which no response is required. To the extent a response is required, the City denies the allegations of paragraph 86.
- 87. The City denies the allegations of paragraph 87 as phrased.
- 88. The City denies the allegations of paragraph 88.
- 89. The City denies the allegations of paragraph 89.
- 90. The City denies the allegations of paragraph 90.
- 91. The City denies the allegations of paragraph 91.

**COUNT V**  
**(Unconstitutionality of the City's Rates, Fees and Charges for Public Water)**

92. The City hereby incorporates by reference its answers to paragraphs 1 – 91.
93. The City admits the allegations of paragraph 93.
94. The City admits the allegations of paragraph 94.
95. The City denies the allegations of paragraph 95.
96. The City denies the allegations of paragraph 96.
97. The City denies the allegations of paragraph 97.
98. The City denies the allegations of paragraph 98.
99. Paragraph 99 states a legal conclusion to which no response is required. To the extent a response is required, the City denies the allegations of paragraph 99.
100. Paragraph 100 states a legal conclusion to which no response is required. To the extent a response is required, the City denies the allegations of paragraph 100.
101. The City denies the allegations of paragraph 101.
102. The City denies the allegations of paragraph 102.
103. The City admits the allegations of paragraph 103 because its water rates, fees and charges are constitutional and are permitted by law, and because its rates, fees and charges for water service do not constitute a tax.
104. Paragraph 104 states a legal conclusion to which no response is required. To the extent a response is required, the City denies the allegations of paragraph 104.
105. Paragraph 105 states a legal conclusion to which no response is required. To the extent a response is required, the City denies the allegations of paragraph 105.
106. Any allegation in Plaintiff's Amended Complaint not expressly admitted above

is denied, including but not limited to any allegations contained within Plaintiff's Preliminary Statement or Prayer for Relief.

**AFFIRMATIVE DEFENSES AND PLEAS IN BAR**

1. Plaintiff's claims are barred by the doctrine of unclean hands.
2. Plaintiff's claims are barred by the doctrine of waiver and estoppel.
3. Plaintiff is not entitled to the relief it seeks.
4. Plaintiff cannot recover on its claims because its alleged damages are too speculative to permit recovery.
5. Plaintiff's claim for damages is barred under the doctrine of assumption of risk.
6. Plaintiff's claims are barred by the doctrine of laches.
7. Plaintiff's claims in Counts I and II are barred under the state action doctrine.
8. Plaintiff's claims are barred by the doctrine of sovereign immunity.
9. Plaintiff's damages, to the extent any exist, are barred due to Plaintiff's failure to mitigate.
10. Plaintiff's claims are not ripe for adjudication.
11. Plaintiff has failed to allege sufficient facts to show that an actual case or controversy exists for adjudication by the Court.
12. Plaintiff's claims are excluded by § 59.1-9.4(b) of the Virginia Antitrust Act.
13. Plaintiff's Count V is barred because the City's rates, fees and charges are not a tax or fee imposed by law.
14. Fairfax Water lacks standing to bring this action.
15. The City reserves the right to assert and rely upon such other affirmative defenses as become available and known to it during the course of litigation.

WHEREFORE, having fully answered the Amended Complaint and denying any and all liability, the City respectfully requests that the Court dismiss the Amended Complaint against it with prejudice and award it its costs and reasonable attorneys' fees incurred in defending this suit.

Respectfully submitted,

CITY OF FALLS CHURCH  
By Counsel



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**CERTIFICATE OF SERVICE**

I certify that on the 17<sup>th</sup> day of April, 2009, a true copy of the foregoing was emailed and mailed, first-class postage prepaid, to:

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