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MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

ROOTED IN ENVIRONMENTAL JUSTICE, a Montana nonprofit public benefit corporation, Plaintiff, vs. CITY OF MISSOULA, a political subdivision of the State of Montana, Defendant	Dept. No. Cause No. DV-32-2026-0000685-DK **DEFENDANT CITY OF MISSOULA'S BRIEF IN SUPPORT OF MOTION TO DISMISS**

INTRODUCTION

The City of Missoula ("City") files this brief in support of its motion to dismiss Plaintiff Rooted in Environmental Justice's ("REJ") First Amended Complaint ("Compl.") pursuant to Mont. R. Civ. P. 12(b)(6) and (7).

REJ asks the Court to void the City Council's decision to sell approximately 13 acres of land in Urban Renewal District III, colloquially known as Midtown Commons (the "Property"), after the City went through an extensive public review process that ultimately led to the sale after a properly noticed public meeting at which the public, including members of REJ, had the right to voice their objections to the sale. Because REJ's First Amended Complaint fails to state a claim upon which relief may be granted, dismissal with prejudice is warranted.

Additionally, REJ failed to name Miramonte Companies, LLC ("Miramonte") as a party to this litigation. Miramonte was the entity to whom the City sold the Property and with which it entered the Development Agreement. Miramonte has vested rights in the Property and the Development Agreement such that the Court cannot enter complete relief without Miramonte's presence.

RELEVANT FACTUAL ALLEGATIONS

REJ is a non-profit corporation whose members are opposed to the Midtown Commons Development. Compl., ¶ 1. REJ alleges its members "will suffer harm if the project is allowed to proceed as they will lose their recreational opportunities, the aesthetic quality of the land, and the environmental benefits provided by the mature trees and open water." *Id*., ¶ 36. With the exception of the Tollefson Parcel, the Property was private property owned by the Beach Family and Southgate Mall Associates until December 2024. *Id*., ¶¶ 5, 9.

The City purchased the Property (with the exception of the Tollefson Parcel) on or about December 13, 2024. *Id*., ¶¶ 8-9. The City contracted with the Missoula Economic Partnership ("MEP") to identify potential developers for the Property. *Id*., ¶ 10. MEP recommended several potential developers to the City, who interviewed the firms and selected Miramonte as the best fit for desired outcomes on the Property. *Id*. Mayor Davis then signed an Exclusive Negotiation Agreement ("ENA") with Miramonte to allow negotiations of terms for potential development. *Id*., ¶ 20. As discussed below, the ENA did not commit the City to sell the Property to Miramonte. Decl. of Claire Trimble, **Ex. A** and **B** (Aug. 10, 2026).

In 2025, Mayor Davis formed a "Mayoral Land Use Task Force" (the "Task Force") consisting of public agency personnel and private parties "to develop a strategy for the redevelopment of city-owned properties that were not necessary for exclusive future municipal use." Compl., ¶¶ 11, 13. The public was not provided with notice of the Task Force meetings[1]. *Id*., ¶¶ 13, 15-18. The Task Force allegedly finalized a report of its findings in July 2025, but the City Council has never adopted the report. *Id*., ¶ 19.

Mayor Davis, assisted by City Staff, and Miramonte negotiated a proposed Development Plan for Midtown Commons which was publicly disclosed on Oct.

[1] As discussed in more detail below, no public notice of these Task Force meetings was required.

22, 2025. *Id.*, ¶ 21. The Development Plan called for a 1.6 acre park, re-routing of an irrigation ditch crossing the Property, and removal of existing trees. *Id.*, ¶ 22.

"On May 18, 2026, the City Council considered and approved the sale of [the Property] to Miramonte." *Id.*, ¶ 31. REJ members attended the May 18, 2026 City Council meeting at which the decision was made to sell the Property to Miramonte. *Id*. During this meeting, the Council "voted to make a simultaneous purchase [of the Tollefson Property] and then sell the Tollefson property to Miramonte." *Id.*, ¶ 32. The City sold the Tollefson Property to Miramonte for the same amount it paid for that property. Decl. Trimble, **Ex. G**, p. 1, ¶ 2.

REJ's members had effectively trespassed on the Property "for decades" during the time the land sat undeveloped. *Id.*, ¶ 33. The City did not conduct an environmental assessment of the impacts of the sale or development of the Property because, as explained below in Section V, no such review was required. *Id*. Additional facts will be described below as necessary.

<u>LEGAL STANDARD</u>

Where "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." M.R.Civ.P. 12(d). Because the City has filed a Declaration of Claire Trimble in support of its motion, the City respectfully requests the Court to consider its motion under Rule 56.

Summary judgment is appropriate when the "pleadings, the discovery and disclosure materials on file, and any affidavits" demonstrate the absence of genuine issues of material fact and the movant's entitlement to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). The party moving for summary judgment bears the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. *Phelps v. Frampton*, 2007 MT 263, ¶ 16, 339 Mont. 330, 170 P.3d 474. If this initial burden is met, the burden shifts to the nonmoving party to establish with substantial evidence, as opposed to mere denial, speculation, and conclusory assertions, that a genuine issue of material fact exists or that the moving party is not entitled to prevail under the applicable law. *Id.*

Finally, the City has also moved for dismissal under Rule 12(b)(7) based on REJ's failure to join a party – in this case, the developer, Miramonte Companies -- as required by Rule 19 and Mont. Code Ann. § 27-8-301.

ARGUMENT

I. The City did not Violate REJ's Right to Participate

Count I of REJ's Complaint alleges the City violated Article II, Section 8 of the Montana Constitution and § 2-3-103 by failing to afford citizens a reasonable opportunity to participate in the decision to sell the Southgate Crossing property to a private developer. This claim fails as a matter of law, as ample participation opportunities were provided, and many of the meetings Plaintiff complains it could not attend were not "agency" meetings within the ambit of § 2-3-103.

A. Plaintiff's Allegations Demonstrate Extensive Public Participation Which Satisfy Constitutional Guarantees.

Pursuant to § 7-8-4201(2)(a), the transfer of municipally owned property "must be made by an ordinance or resolution passed by a two-thirds vote of all members of the council." This is all the statute requires for such a transfer, though the statutory requirement is informed by the Montana Constitution, which provides "[t]he public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law." Mont. Const. Art. II, § 8.

The basic elements of the constitutional right of participation are notice and reasonable opportunity to be heard. *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs of Flathead Cnty.*, 2016 MT 256, ¶ 39, 385 Mont. 156, 381 P.3d 555 ("*Citizens*"). The constitutional text expressly requires that this participation be afforded "prior to the final decision." Mont. Const. Art. II, § 8. This timing requirement is central to the right: once a final decision has been made, the constitutional guarantee has either been satisfied or violated.

In *Sonstelie v. Bd. of Trs. for Sch. Dist. No. 10, Flathead Cnty.*, 202 Mont. 414, 420, 658 P.2d 413, 417 (1983), the Court upheld a finding of adequate notice where radio broadcasts were given approximately 48 hours before a special meeting, the public had been informed at a prior regular meeting that contract decisions were imminent, members of the public had already participated in discussions about the decision, and the public had another opportunity to comment at a subsequent regular meeting. In *Protect the Gallatin River v. Gallatin Cnty., Dep't of Plan. & Cmty. Dev.*, 2025 MT 34, ¶ , 1420 Mont. 352, 564 P.3d 438, the Court held a public comment period that closed nearly eleven months before the Floodplain Administrator issued a conditional permit provided sufficient participation opportunity and did not violate Article II, Section 8.

REJ alleges "[t]he City Council's May 18, 2026, votes approving the Real Property Purchase and Sale Agreement, the Tollefson Transaction, and the Development Agreement constituted the City's "final decision," within the meaning of Article II, Section 8, and § 2-3-103, MCA, regarding the disposition and redevelopment of the Property." Compl., ¶ 42. Here, there can be no reasonable dispute the City provided significant public participation opportunities for more than a year prior to this May 18, 2026, final decision.

On November 6, 2024, before the City's purchase of the properties at issue, Carrie Schreiber, a member of REJ, attended the Missoula City Council Special Meeting and "spoke on the Southgate Crossing purchase and the street connection possibilities there, including concerns for pedestrian safety, canal access, and possible park locations." Decl. Trimble, ¶ 10, Ex. H. At the November 18, 2024

City Council Meeting, the City Council discussed the Southgate Crossing property purchase, and heard public comment from REJ members Carrie Schreiber and Catherine Scribner. *Id.*, ¶ 11, Ex. I.

REJ alleges that on April 29, 2026, the City sent an email to interested parties, *including members of REJ*, listing upcoming meetings: a May 8 MRA Special Board meeting, a May 12 Parks and Recreation Board meeting, a May 13 Land Use and Planning Committee meeting, and the May 18 City Council meeting. Compl. at ¶ 26. REJ members, including Catherine Scribner, Carrie Schreiber, and Katie Thompson, attended the May 12, 2026 Parks and Recreation Board meeting and provided public comment. Decl. Trimble, ¶ 17, Ex. O. Public participation and comment also occurred at the May 13, 2026 Land Use and Planning Committee meeting. *Id.*, at ¶ 16, Ex. N.

This does not even represent the full scope of public participation. For example, Nathan McLeod, Associate Director of Planning, Design and Projects along with Garrick Swanson, Project Manager and Lead Landscape Architect, reported during the May 12, 2026 Parks and Recreation meeting that with regard to the planned park, additional public engagement "was carried out through a design workshop held in November 2025, two subsequent online public comment periods, and a public open house in February 2026." *Id.*, ¶ 17, Ex. O.

As REJ alleges in its Complaint, the City Council voted on May 18, 2026 to approve the Real Property Purchase and Sale Agreement, the Tollefson Transaction, and the Development Agreement. Compl. at ¶ 42. At this City Council meeting, Catherine Scriber, Carrie Schreiber, and Katie Thompson again all provided public comment. Decl. Trimble, ¶ 5, Ex. C. Clearly the public had ample opportunity to participate, and members of REJ exercised these opportunities.

B. The Task Force Is Not An "Agency" Under § 2-3-203.

The Legislature implemented the constitutional right to participate by enacting § 2-3-101 to -221. *Citizens*, ¶ 40. As it relates to REJ's claims, these laws require agencies to "develop procedures for permitting and encouraging" public participation and to provide adequate notice of planned actions. *Id.* (quoting § 2-3-103(1)(a)). Courts are permitted to void an agency decision reached in violation of the statutory provisions. *Citizens*, ¶ 41. The term "agency" is defined to mean "any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, make a decision on development applications, or enter into contracts…" § 2-3-102.

In *Citizens*, the plaintiff argued in making recommendations to the county commissioners on changes to the county growth policy, the Flathead County Planning Board "failed to keep minutes of its meetings, failed to produce a comprehensive document highlighting in one place all the changes made to the original growth policy, and failed to give adequate notice after its February 15, 2012 public hearing of what changes it was considering." *Citizens*, ¶ 34. The Montana Supreme Court rejected this argument, noting the Planning Board held numerous public workshops where it solicited public comment on the growth policy. *Id.*, ¶ 35. The Court further held the Planning Board "does not have the authority of an agency. Its duty is to recommend that the Commission adopt, reject, or take some other action with regard to the proposed revisions to the growth policy…The Planning Board's recommendations are not binding on the Commission." *Id.*, ¶ 42 (citation omitted). Ultimately, because the Planning Board did not meet the statutory definition of "agency" under § 2-3-102, the statutes did not authorize a court to invalidate its actions under §§ 2-3-114 and -213. *Id.*

REJ complains primarily that the public did not have the opportunity to participate in the Task Force meetings, that no notice was provided, no members of the public attended, and no official meeting minutes were taken. Compl. at ¶¶ 11-18. However, as with the Planning Board in *Citizens*, the Task Force in this case is not an "agency" within the meaning of § 2-3-103. There is no allegation that the Task Force was "authorized by law to make rules, determine contested cases, make a decision on development applications, or enter into contracts…" § 2-3-102. Instead, REJ's Complaint acknowledges that the Task Force, as an ad hoc team convened to offer advice to the Mayor, was meant to "provide 'strategic guidance' and not parcel level design" for the City's redevelopment project. Compl. at ¶ 16.

The public had no right of participation for the Mayor's meetings with her Task Force or any day-to-day meetings the Mayor holds. Even if it did, a violation of such would not allow the Court to void the Task Force's actions as the Task Force is not an "agency" within the meaning of the statutes because it had no authority to make rules, decide cases or make binding decisions. Moreover, the public *was* provided ample opportunity to participate in the City Council's decision-making process on the sale of the Property.

II. The Tollefson Transaction Complied with State Law

When a municipality acquires real property in an urban renewal district in accordance with an urban renewal plan, that property "must be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan." § 7-15-4262(4). The Tollefson Property was simultaneously purchased and sold by the City. The City received the Tollefson Property by Warranty Deed dated June 17, 2026 and immediately issued a Special Warranty Deed for that same property to Miramonte on June 18, 2026. Decl. Trimble, **Ex. J** and **K**. Further, the City sold the Tollefson Property for the same price it paid for the Property (representing fair market value), and the sale was approved by a 2/3 vote of the Council as required by § 7-8-4201(2)(a).

III. The Mayor's Land Use Task Force Did Not Result in Ultra Vires Action by the City

Count III of REJ's Complaint is titled "DECLARATORY JUDGMENT: ULTRA VIRES *EXECUTIVE ACTION* IN THE DISPOSITION OF CITY OWNED PROPERTY." Compl., p. 17 (emphasis added). REJ alleges the Task Force developed a "property disposition framework" which was never formally adopted by the City Council, but that this "framework" somehow guided the Administration's (not the Council's) "governing rationale for the disposition of the Property at the May 18, 2026, Council meeting." *Id*., ¶¶ 54-55. REJ contends convening a Task Force without public notice exceeded the Mayor's authority in violation of Mont. Code Ann. § 7-5-4101. *Id*., ¶¶ 53, 56.

"An ultra vires act is one performed without any authority to act on the subject." *Haslund v. City of Seattle*, 547 P.2d 1221, 1230 (WA 1976). "It is presumed that the law has been obeyed . . . Furthermore, there is an additional presumption . . . that the acts of a corporation are not ultra vires." *McMahon v. Cooney*, 95 Mont. 138, 25 P.3d 131, 133 (1933) (citations omitted).

REJ's claim is a non sequitur. Although REJ alleges that the *Council* voted to sell the Property at its May 18, 2026 meeting (Compl., ¶ 42), REJ alleges that the *Mayor*, not the Council, acted ultra vires by allegedly adopting the Task Force report as City policy. *Id*., ¶¶ 53-57. Because the Council, and not the Mayor, has the authority to decide whether to sell City owned property, unfettered by unadopted City policies, it is simply irrelevant that the Task Force allegedly drafted a report that guided the Mayor in proposing to sell the Property. See Section IV, supra., discussing § 7-8-4201(2)(a).

The statute which REJ cites, § 7-5-4101, gives the Council "the power to make and pass all bylaws, ordinances, orders, and resolutions . . . necessary for the government or management of the affairs of the powers vested in the body corporate, and for carrying into effect the provisions of this title." Nothing in this section prohibits the City's executive, in this case, the Mayor, from convening bodies like the Task Force to assist in developing policies. Indeed, Article 3, Section 5 of the City Charter states that "The Mayor shall have the day-to-day responsibility of administering the affairs of the City."[2] Rather, the only power this statute removes from the Executive and vests in the Council is the power to pass "bylaws, ordinances, orders, and resolutions[.]" Because the Task Force's report does not rise to the level of a "bylaw, ordinance, order or resolution," its existence is not prohibited by law.

Further, nothing in the minutes of the May 18, 2026 meeting reflects the Council felt constrained to follow the Task Force framework. Indeed, the minutes of that meeting are silent on the issue. See Decl. Trimble, **Ex. C** at pp. 4-13.

[2] The City requests the Court to take judicial notice of its charter pursuant to Rules 201(d) and 202(b)(2), M.R.Evid.

Last, even if various members of the Council considered the framework in their decision to sell the Property, that act was not ultra vires as the statute does not prohibit the City from selling the Property under such a framework.

IV. Execution of the Exclusive Negotiation Agreement Was Not Ultra Vires Action by the Mayor

REJ alleges in Count IV that Mayor Davis's "unilateral execution of the ENA on June 30, 2025 . . . constituted ultra vires executive action." Compl., ¶ 59. According to REJ, the ENA "was the dispositive commitment: it selected Miramonte as the sole developer, foreclosed negotiation with any other party, and determined the parameters of the eventual sale" without City Council approval or public process. *Id*., ¶ 61. REJ further alleges the Mayor's "execution of the [ENA]…binding City-owned real property to Miramonte exclusively and without a prior City Council resolution, was beyond the Mayor's executive authority and is void as an ultra vires act under § 7-8-4201(2)(a), MCA." *Id*., ¶ 66.

The statute upon which REJ relies provides, in pertinent part:

> (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, donate, or lease any property belonging to the city or town.
>
> (2)(a) Except for property described in subsection (3), the lease, donation, or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all members of the council.

§ 7-8-4201(1), (2)(a). Mayor Davis's action in signing the ENA did not violate this section in any way, shape or form, and therefore was not ultra vires.

The ENA and its Amendment are attached as **Exs. A and B** to the Declaration of Claire Trimble. The ENA provides, in relevant part:

> The City seeks to enter into an exclusive negotiation period with Developer to evaluate the viability of the Developer's proposed concept plan, to negotiate a formal Development Agreement, and to define a path for community engagement and infrastructure planning.
>
> **1. Purpose and Intent**
> The purpose of this Agreement is to provide a framework for the Parties to Conduct due diligence and evaluate a shared redevelopment vision consistent with the Midtown Master Plan and the Developer's proposed concept plan;
> - Collaborate on a public engagement process;
> - Negotiate in good faith to establish a Development Agreement ("DA") for the Site.
>
> *Execution of this Agreement does not constitute a sale, lease, or other disposition of land, or serve as a promise to do so.*

ENA, pp. 1-2 (emphasis added). The last clause of the ENA confirms the agreement did not obligate the City Council to sell Miramonte the Property: "No Obligation: This Agreement does not obligate the City to transfer land or approve any permits or development rights, or serve as a promise to do so in the future." *Id.*, p. 3. The only duty the ENA imposed is described in Section 2, "From the effective date through the term of this Agreement, the City agrees not to solicit or negotiate with any other party regarding the development of the Site." *Id.*, p. 2.

The ENA did not "select Miramonte as the sole developer." Rather, the ENA was entered so the City Council could determine if Miramonte should be selected as the developer for the Project, and if so, to negotiate a development agreement.

Nothing in § 7-8-4201(2)(a) prohibited the Mayor from negotiating exclusively with Miramonte towards a development agreement. The statute only required the City, if it decided to sell the Property, to do so upon a 2/3 vote of all the members of the Council. The City satisfied this requirement as demonstrated by the Minutes of the May 18, 2026 Council Meeting. Decl. Trimble, **Ex. C** at p. 11-12.

Further, the ENA did not "determine the parameters of the eventual sale[.]" Just the opposite is true as the ENA stated, unequivocally, at least twice, that the ENA did not obligate the City to transfer or sell the Property to Miramonte. Moreover, the ENA contains no "parameters" that could lead to an "eventual sale" as the ENA contains no purchase price, no closing date, no inspection contingency, and no development agreement. Indeed, the Property is not even described in the ENA. In the absence of these essential elements, the ENA did not commit the City to sell the Property to Miramonte.

Finally, even if the Mayor lacked the authority to sign the ENA (she did not), voiding that act would not change the result as the Council made the ultimate decision to sell the Property at the May 18, 2026 meeting regardless of the ENA. Thus, voiding the ENA would not provide a basis to void the Council's decision to sell the Property. On these undisputed facts, REJ's claim that the Mayor's signing the ENA was ultra vires in violation of § 7-8-4201(2)(a) fails as a matter of law.

V. The City did not Violate REJ's Right to a Clean and Healthful Environment

The Montana Constitution provides that all persons have a "right to a clean and healthful environment..." Mont. Const. Art. II, § 3. The State has a constitutional obligation to "maintain and improve a clean and healthful environment in Montana for present and future generations." Mont. Const. Art. IX, § 1. REJ argues in Count V of its Complaint that the City violated these rights by failing to "undertake an environmental review of the proposed development…" Cmpl. at ¶ 71. This claim fails, as the purchase and sale of property by a city pursuant to a land use development plan does *not* require review under the Montana Environmental Policy Act ("MEPA"). Further, § 7-8-4201 contains no requirement for environmental assessment prior to selling City-owned property.

MEPA (§§ 75-1-101 through 75-1-228) is a procedural statute that declares a state policy providing for adequate assessment of the relationship between humans and their environment. § 75-1-102. The statute's operative provision directs "all agencies *of the state*, except the legislature" shall include in each recommendation or report on proposals for "projects, programs, and other major actions of state government significantly affecting the quality of Montana's environment" a detailed statement on proximate environmental impacts, adverse effects, and alternatives to the proposed action. § 75-1-201(1)(a)(iv) (emphasis added).

MEPA's implementing regulations define a "state agency" as "an office, commission, committee, board, department, council, division, bureau, or section of the executive branch of state government." Mont. Admin. R. 36.2.522. Cities and municipalities are not included within this definition.

In *Bitterrooters for Planning*, the Montana Supreme Court held the broader environmental impacts of a retail facility's construction and operation were not subject to MEPA review because "the Legislature has not placed general land use control in the hands of a state agency." *Bitterrooters for Plan., Inc. v. Montana Dep't of Env't Quality*, 2017 MT 222, ¶ 34, 388 Mont. 453, 401 P.3d 712. The Court explained that instead, "the Legislature has, with limited exceptions, placed general land use control beyond the reach of MEPA in the hands of local governments." *Id.* (citing Title 76, chapters 1-3 of the Montana Code (the Subdivision and Platting Act and local zoning enabling acts)). The Court declined to "stretch MEPA beyond the limits of its language and stated purpose to fill an environmental review gap created by the Legislature and remaining within its domain to remedy if so inclined." *Id.*; see also *Montana Wilderness Ass'n v. Bd. of Health & Env't Scis.*, 171 Mont. 477, 559 P.2d 1157 (1976).

Because a city is not a "state agency" within the meaning of MEPA, and because the Legislature has placed general land use control in the hands of local governments rather than state agencies, the transactions in this case do not trigger a MEPA environmental review. *See also* § 7-8-4201 (statute providing for disposal of municipal property contains no requirement for environmental assessment). The

City, just as a private citizen, was free to purchase and sell the subject properties pursuant to its land use development plan without preparing an environmental assessment or environmental impact statement under MEPA. REJ has alleged no viable violation of its constitutional right to a clean and healthful environment. Count V should be dismissed as a matter of law.

VI. REJ Failed to Join Miramonte Companies, an Indispensable Party

REJ seeks to void the sale of the Property by the City to Miramonte. See, e.g., Compl., Request for Relief, ¶ 1 ("Plaintiffs (sic) request relief against Defendants (sic) as follows: 1. For . . . an order setting aside the Real Property Purchase and Sale Agreement, the Tollefson Transaction and the Development Agreement"). As demonstrated on the face of the First Amended Complaint, and in the Development Agreement, Purchase and Sale Agreements, and Deeds to Miramonte (attached to the Declaration of Claire Trimble as **Exhibits E, F, G, K, L** and **M** respectively), Miramonte has a vested interest in the Development Agreement, the Purchase and Sale Agreements, and the Property. REJ's Complaint thus seeks relief which, if granted, would deprive Miramonte of the rights it holds under the Development Agreement, the Real Estate Purchase and Sale Agreements, and the Deeds to Phase 1 and the Tollefson parcel. Despite these facts, REJ failed to name Miramonte as a party to its lawsuit.

Montana's Uniform Declaratory Judgments Act requires:

> When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

§ 27-8-301. Because Miramonte has a "claim or interest which would be affected by the declaration[s]" sought by REJ, the Court may not issue any declaration in this case which would prejudice its rights.

Rule 12(b)(7) provides as a defense the "failure to join a party under Rule 19." Pursuant to Rule 19(a)(2), "If a person has not been joined as required, the court must order that the person be made a party." "If a person who is required to be joined if feasible cannot be joined" the court may dismiss the action. Rule 19(b). Thus, the Court should order that Miramonte either be joined as a defendant, or, if Miramonte cannot be joined, dismiss this suit for want of a necessary party.

CONCLUSION

Based upon the undisputed factual record and the arguments set forth herein, the City respectfully requests this Court to grant its motion to dismiss.

DATED this 11th day of August, 2026

HALL & EVANS, LLC

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CERTIFICATE OF SERVICE

I, J. Fred Simpson, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 08-11-2026:

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Dated: 08-11-2026