

Doug James  
Bryce Burke  
MOULTON BELLINGHAM PC  
27 North 27<sup>th</sup> Street, Suite 1900  
P. O. Box 2559  
Billings, Montana 59103-2559  
Telephone: (406) 248-7731  
Doug.James@moultonbellingham.com  
Bryce.Burke@moultonbellingham.com

Attorneys for City of Billings

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY

TERRY HOUSER, TERRY ODEGARD,  
THOMAS ZURBUCHEN, ROGER WEBB, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

-v-

CITY OF BILLINGS,

Defendant.

Cause No. DV 18-0778

Judge Michael Salvagni

**EXHIBIT 1**  
**SETTLEMENT AGREEMENT**

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between the City of Billings (the “City”) and Terry Odegard, Thomas Zurbuchen, and Roger Webb, on behalf of themselves individually and as Class Representatives, (“Class Representatives”), along with Susan McDaniel (“McDaniel”). The City, the Class Representatives, and McDaniel are referred to collectively as the “Parties.” This Settlement Agreement becomes finally and fully enforceable only upon the occurrence of the Effective Date, as described herein.

### RECITALS:

1. Between April 1992 and June 2018, the City collected franchise fees from its water, wastewater service, and solid waste disposal service customers.
2. The City and the Class Representatives are parties to *Houser, et al. v. City of Billings*, Cause No. DV 18-0778, (“*Houser*”).
3. The City and McDaniel are parties to *McDaniel v. City of Billings*, Cause No. DV 19-1444 (“*McDaniel*”).
4. In *McDaniel*, the Court entered Partial Summary Judgment on January 19, 2022 on Count I, in favor of McDaniel and against the City, declaring the franchise fees to be unlawful sales taxes and permanently enjoined the City from imposing them.
5. In *McDaniel*, the Court also entered Partial Summary Judgment on January 19, 2022, March 11, 2022, and June 7, 2022 in favor of the City and against McDaniel, on Counts II and III and dismissed both counts. Additionally, in *McDaniel*, the Court entered partial summary judgment in favor of the City and against McDaniel on the statute of limitations on McDaniel’s due process claims and further dismissed Gary McDaniel from the case.
6. In *McDaniel*, due process claims under Counts IV and V remain unresolved. In *Houser* there are multiple motions for summary judgment pending that have not been ruled upon by the Court.
7. Counsel for the Parties have reviewed and analyzed the legal and factual issues presented in this action, the risks and expenses involved in pursuing the litigation to conclusion, the likelihood of recovering damages in excess of those obtained through the Settlement, the protracted nature of the litigation, and the likelihood, and possible outcomes of one or more procedural and substantive appeals. Based upon their review and analysis, and after arm’s length negotiations, including two in-person mediations, the Parties now enter into this Agreement.

### AGREEMENT

The Parties stipulate and agree to settle and resolve *Houser* and *McDaniel* as follows:

1. Amendment of Class Definitions in *Houser*:



a. The parties shall jointly move to (1) amend the Class Definitions in *Houser* to include those customers subject to a subdivision improvement agreement, and (2) name Sue McDaniel as an additional Class Representative. This will result in three classes (“Classes”) defined as follows:

i. The Water Class. All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.

ii. The Wastewater Class. All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.

iii. The Solid Waste Disposal Class. All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

b. Excluded Parties. The Classes shall not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including: County Water District of Billings Heights; Lockwood Area/Yellowstone County Water and Sewer District; Phillips 66 Refinery; Meadowlark Capital, LLC; City of Powell, Wyoming; City of Laurel, Montana; Mackenzie Disposal, Inc.; Republic Services of Montana; Stillwater County, Montana; Two Tough Guy Services, LLC; and Yellowstone County Solid Waste Disposal District. (the “Excluded Parties”).

c. Class Members. All City customers who paid franchise fees between February 2, 2015 and June 30, 2018, shall be Class Members with respect to the above-described classes, except for those Excluded Parties identified in Section 1(b) above.

d. Claim Period. The term “Claim Period” shall mean February 2, 2015 through June 30, 2018.

e. The Parties shall file a Stipulated Joint Motion to Amend Class Definitions, (see Exhibit “A”).

## 2. Entry of Final Judgment in *McDaniel*.

a. The Parties shall file a Stipulated Joint Motion to Certify Final Judgments in *McDaniel* and to Dismiss the remaining claims in *McDaniel* (attached as Exhibit “B”). The District Court’s Interlocutory Judgments, including the Legality of the Franchise Fees and its Injunction, shall become a Final Judgment.

b. The Parties agree that they shall not appeal the District Court’s Final Judgment in *McDaniel*.

3. Settlement Amount. Following the Effective Date, the City will pay the sum of Three Million Six Hundred Thousand Dollars (\$3,600,000.00) (the “**Settlement Amount**”), as provided herein, in full, final, and complete settlement of all claims and causes of action, including but not limited to claims for refunds, damages, attorney’s fees, prejudgment interest, costs (including but not

limited to class administration and class notice) and any other relief that was sought or could have been sought in the *Houser* and/or *McDaniel* cases. A portion of the Settlement Amount shall be paid to the Class Administrator, as provided herein. After payment of the Settlement Amount, the City shall be released from any and all liability or liabilities that arose from or are related to the franchise fees imposed by the City from April 1992 through June 30, 2018. This settlement shall bind all class members except those members who expressly request exclusion from the class settlement under Mont. R. Civ. P. 23(e)(4). For the purposes of the Settlement, Class Counsel, counsel for the City, the Class Representatives, McDaniel, and the City stipulate that the Settlement is fair, adequate, and reasonable and will not object to its approval, and will appear at any required hearings and affirm that they believe the Settlement is fair and reasonable. Should the Settlement not be approved, or the Settlement not become final, binding, and non-appealable, no Party to this Agreement shall waive their respective claims or defenses. The Settlement Amount shall be divided into two funds: (a) the Class Administrator Fund, which includes the Claim Fund (as described in paragraphs 8 & 9 below); and (b) the Rebate Fund (as described in paragraph 11 below). The Settlement Amount shall be distributed, as provided herein, subject to approval by the Court, and as generally reflected on **Exhibit "C"** hereto. (Exhibit "C" is included only for demonstrative purposes). After payment of the Settlement Amount the City shall have no other, further, or additional financial obligations arising from or related to the past imposition of franchise fees in connection with water, wastewater, and solid waste disposal services. Provided, however, the foregoing shall not relieve the City of its obligation to comply with the terms and provisions of this Agreement.

4. **Source of Monetary Relief.** The Settlement Amount will be paid by the City out of the City's General Fund.

5. **Class Administrator.** The Parties will seek approval from the Court to appoint Simpluris as Class Administrator. The duties of the Class Administrator shall include: (a) creating a list of current and former City customers who paid franchise fees during the Claim Period and who are Class Members; (b) creating a list of current customers who are Class Members entitled to a Rebate from the City pursuant to Section 12 below; (c) creating a list of Excluded Current Customers (current City customers who are not Class Members and who are not entitled to receive a Rebate from the City pursuant to Section 12 below); (d) providing Postcard Notice to all Class Members; (e) publishing and sharing the Court Approved Notices; (f) reimbursing the City for any direct costs incurred in providing Notice; (g) receiving, reviewing, approving, and paying, out of the Claim Fund, approved claims filed by Former Customers and Excluded Current Customers; (h) objecting to claims submitted by Former Customers and Excluded Current Customers who do not qualify for a refund; (i) providing updates and information to the Court, Class Counsel, and Counsel for the City; (j) paying out of the Claim Fund the amount of attorney fees and Costs awarded to Class Counsel by the Court; (k) paying the costs and expenses of distributing the Settlement Notice and the Summary Notice; (l) reporting to the Court the amount of funds remaining in the Claim Fund after all expenses have been paid and all approved rebates paid to Former Customers and Excluded Recent Customers; (m) paying 50% of the Cy Pres Funds to the Access to Justice Organization identified and approved by the Court; (n) paying the remaining 50% of the Cy Pres Funds to the City for the Benefit of the Public Works Department; (o) paying the Class Administrator's Court approved fees and expenses; and (p) performing any other related duties or tasks that may be assigned by the Court to the Class Administrator.

The Class Administrator shall be exclusively responsible for determining:

- a. Who are Class Members eligible to receive a settlement payment (“Allowed Claims”). As a neutral third party, the Class Administrator shall determine which filed claims shall be Allowed Claims, in its sole and exclusive discretion;
- b. Which current customers of the City are entitled to receive a rebate; and
- c. Which current customers of the City are Excluded Current Customers (defined below).

The Parties stipulate to and shall seek approval of the appointment of Simpluris of 3194-C Airport Loop Drive, Costa Mesa, CA 92626, as the “Class Administrator”. The Class Administrator shall file an appropriate report with the Court documenting its confirmation that the Settlement Amount was allocated in accordance with the approved settlement. The Class Administrator’s costs and expenses shall be paid from the Settlement Amount, subject to Court review and approval.

6. **Limitation of Liability.** The Parties, Class Counsel, the City and its Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Class Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; and/or (ii) the payment or withholding of any Taxes and Tax-Related Expenses.

7. **Attorney’s Fees and Case Costs.** Class Counsel will timely make a Motion for Attorney’s Fees and Costs pursuant to Mont. R. Civ. P. 23(h), as provided herein. Class Counsel’s Motion for Attorney’s Fees shall be made so that the Court can decide whether to approve Class Counsel’s fees at the Fairness Hearing. Any fees and costs awarded to Class Counsel shall be paid from the Settlement Amount, after the Effective Date. The City will not oppose Class Counsel’s application for fees and costs as permitted under Mont. R. Civ. P. 23(h)(2). The dollar amount of fees and costs to be awarded to Class Counsel shall be determined by the Court.

Prior to the Final Fairness Hearing, and at least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application for an award of attorneys’ fees and Litigation Costs to be paid from the Settlement Fund. Class Counsel shall provide to the City and its counsel and the Class Administrator a properly completed and duly executed IRS Form W-9. Fees and Costs awarded (plus any interest accrued thereon) shall be paid by the Class Administrator in the amount approved by the Court, no later than ten (10) days after the Effective Date.

Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs’ counsel and other attorneys for Plaintiffs. The City shall have no liability or other responsibility for the allocation of any such attorneys’ fees and costs.

8. **Mechanics of Distributing the Settlement Amount.** After the Effective Date, the Settlement Amount shall be distributed in two ways: (a) to the Class Administrator to fund the Class Administrator Fund; and (b) to the Rebate Fund.

**The Class Administrator Fund.**

The Class Administrator shall use the money in the Class Administrator Fund for the following purposes:

- a. To reimburse the City for the cost of providing notice. The parties stipulate that \$4,000.00 is a fair and adequate fee. If the City's costs exceed \$4,000.00, the City shall not be entitled to further reimbursement.
- b. To pay the fees, costs and expenses of the Class Administrator in accordance with this Settlement Agreement and the Parties' contract with Simpluris.
- c. To pay refunds to Former Customers and Excluded Current Customers, as defined herein, who file claims and who demonstrate that they paid franchise fees to the City during the Claim Period. The Class Administrator shall be responsible for reviewing all filed claims and determining whether or not the claim filer is a Class Member entitled to be paid from the Claim Fund.
- d. After payment of the foregoing, any funds remaining in the Claim Fund and/or the Class Administrator Fund shall be paid as provided in Section 11 herein.

**The Rebate Fund.**

The City shall distribute the Rebate Fund (the Settlement Amount less the amount of the Class Administrator Fund) to its current water, wastewater, and solid waste disposal customers who have been identified by the Class Administrator as Class Members. The distribution to Class Members shall be on a pro-rata basis. The amount to be distributed shall be divided by the total number of accounts held by current customers who were customers during the Claim Period, as identified by the Class Administrator. The City shall not rebate any portion of the Rebate Fund to Excluded Current Customers, as defined herein below. The Class Administrator shall identify the Excluded Current Customers. The City shall not make any distribution or rebate to the customers identified by the Class Administrator as Excluded Current Customers. In order to participate in the Settlement, Excluded Current Customers must file a claim with the Class Administrator and establish that they paid franchise fees during the Claim Period. Excluded Current Customers who file claims and establish that they paid franchise fees shall be paid by the Class Administrator through the Claim Fund. Excluded Current Customers shall not receive rebates from the City.

9. **The Class Administrator Fund.** After the Effective Date, the City shall pay to the Class Administrator as the Class Administrator Distribution an amount equal to:

- a. The amount, as directed by the Court, to fund the Claim Fund. The amount to fund the Claim Fund shall be determined after the Claim Filing Deadline has passed and after the Class Administrator has been able to verify the number of Eligible Former Customers and Excluded Customers who are entitled to settlement payments. It is the intention of the Parties to fund the Claim Fund so that those who filed Allowed Claims shall receive a settlement payment that will approximate the amount of the payment that will be rebated to Current Customers from the Rebate Fund. Accordingly, once the Class Administrator has verified the number of Allowed Claims to be paid through the Claim Fund, the Parties shall enter into a Joint Motion asking the Court to approve the transfer of a portion of the Settlement Amount to the Class Administrator to pay Allowed Claims, consistent with this paragraph.

b. The attorneys' fees and costs awarded to Class Counsel by the Court; (Class Counsel will request \$925,000.00).

c. The amount of the costs and expenses of the Class Administrator, as approved by the Court. (estimated at \$130,194.00).

d. \$4,000.00 as the estimated amount for any reimbursements to the City for direct costs associated with providing Notice(s), as provided herein.

10. **The Class Administrator Fund & the Claim Fund.** The Parties stipulate and agree that the Claim Fund shall be included in the Class Administrator Fund and that the Claim Fund should be funded in the amount to be determined after the number of Allowed Claims has been determined (hereinafter, the "**Claim Fund**") be established to compensate Eligible Former Customers and Excluded Current Customers who timely submit Allowed Claims. The Claim Fund shall be a portion of the Class Administrator Fund, as defined in Section 8 above. Once the City makes payment of the Court approved amount to the Class Administrator, the City shall have no further duty, obligation, or liabilities arising from or with respect to any amounts that may be owed to the Class Administrator, Former Customers, or Excluded Current Customers. Once the City pays the Court approved amount of the Settlement Amount to the Class Administrator, Former Customers and Excluded Current Customers shall look exclusively to the Class Administrator Fund and not to the City. The Class Administrator will make payments from the Claim Fund only to those Eligible Former Customers and Excluded Current Customers who filed Claim Forms (**Exhibit "D"**) and establish that they are Class Members. The Class Administrator shall review all filed claims and determine whether or not the claims are Allowed Claims of customers or former customers and are Class Members entitled to participate in the settlement.

"**Eligible Former Customers**" means any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City between February 2, 2015 and June 30, 2018. Eligible Former Customers are not current customers of the City and accordingly will not receive a rebate from the City through the Rebate Fund described in Section 12 below. In order to receive a portion of the Settlement, Eligible Former Customers who had water, wastewater, and/or solid waste disposal accounts with the City during the Claim Period, must file a claim **Exhibit "D"** with the Class Administrator.

"**Excluded Current Customers**" means any individual or entity that is a current City Public Works Department customer who paid franchise fees during the Claim Period who was not identified by the Class Administrator as a Class Member. Excluded Current Customers will not receive a rebate from the City. Excluded Current Customers must file a Claim (**Exhibit "D"**) with the Class Administrator.

a. **Identification of Eligible Former Customers and Excluded Current Customers.** Eligible Former Customers and Excluded Current Customers who desire to receive money from the Claim Fund must file a claim form within the timeline set by the Court and provided in the Settlement Notice. The Claim Form is attached as **Exhibit "D"**. Eligible Former Customers and Excluded Current Customers will not be paid by the City from the Rebate Fund but may be paid by the Claims Administrator from the Claim Fund if they file a timely, approved claim. Eligible Former

Customers and Excluded Current Customers will not receive any portion of the settlement unless they file a Claim Form with the Class Administrator within the time limits set by the Court.

b. Claim Filing Deadlines for Eligible Former Customers and Excluded Current Customers. Eligible Former Customers and Excluded Current Customers shall file claims by August 31, 2023. Eligible Former Customers and Excluded Current Customers shall submit their claims on the Claim Form approved by the Parties and attached as **Exhibit “D”**. The Claim Form shall be attached to the Postcard Notice and will be a tear-off postcard claim form.

c. Payment to Eligible Former Customers and Excluded Current Customers. After the claim filing deadline (August 31, 2023) has passed, the Class Administrator shall notify the Parties of the number of Allowed Claims. The Parties shall then file a Joint Motion asking the Court to authorize a transfer of a sufficient sum out of the Settlement Amount to the Claim Fund, so that the Allowed Claims to be paid out of the Claim Fund will be the same or approximately the same amount as the amount that will be paid to customers out of the Rebate Fund.

In no event will the combined payments to Eligible Former Customers and Recent Service Address Customers exceed the amount in the Claim Fund.

d. The Amount of the Claim Fund. The amount of the Claim Fund that will be paid to Allowed Claims by the Class Administrator shall be determined after the Class Administrator has determined the number of Allowed Claims. Thereafter, the dollar amount to be paid on each allowed claim shall be determined by using a fraction, the numerator of which shall be the total amount of the Claim Fund and the denominator shall be the number of Allowed Claims from Eligible Former Customers and Excluded Current Customers. The dollar amount to be used as the numerator shall be that portion of the Settlement Amount necessary to pay Allowed Claims roughly the same dollar amount as the amount that will be rebated to customers from the Rebate Fund.

11. Cy Pres Funds. The Class Administrator shall pay any undistributed funds (the “Cy Pres Funds”) from the Claim Fund and the Class Administrator Fund as follows: (a) Fifty percent (50%) of the funds shall be paid to the Access to Justice Organization designated by the Court under M. R. Civ. P. Rule 23(i); and (b) the remaining fifty percent (50%) shall be paid to the City’s Public Works Department. The Class Administrator shall distribute the Cy Pres Funds in accordance with the Court’s order. No Cy Pres Funds shall be returned to the City’s General Fund and shall instead be split as equally as possible between the following Public Works Department accounts: (a) the Water Fund; (b) the Wastewater Fund; and (c) the Solid Waste Disposal Fund.

12. The Rebate Fund. The Rebate Fund shall mean the Settlement Amount less the amount paid into the Class Administrator Fund. That portion of the Settlement Amount that is not paid to the Class Administrator Fund shall constitute the Rebate Fund. After the Effective Date, the City shall rebate the full amount of the Rebate Fund to its current water, wastewater, and solid waste disposal customers, excluding: (a) Excluded Parties as identified in paragraph 1(b) above; and (b) Excluded Current Customers, as determined by the Class Administrator. It is the intent of the Parties that the rebates shall be paid to current customers who are Class Members.



a. Calculation of Individual Rebates. The amount of the Rebate Fund that will be rebated to an individual service account shall be determined by using a fraction, the numerator of which shall be the total amount of the Rebate Fund and the denominator of which shall be the combined number of current water, wastewater, and solid waste disposal service accounts held by Eligible Current Customers. For demonstrative purposes only, if the amount in the Rebate Fund equals \$1 Million and the combined number of water, wastewater and solid waste disposal service accounts held by Eligible Current Customers is 90,000, then \$1 Million would be divided by 90,000. The resulting number (\$11.11) would be credited against each Eligible Current Customer account for each service type (water, wastewater, and/or solid waste disposal) that the customer has with the City. For demonstrative purposes only, if a customer had only solid waste disposal services during the claim period, that customer would receive a rebate of \$11.11 and a customer who had water, wastewater, and solid waste disposal services would receive a rebate of \$33.33.

b. Distribution of the Rebate Fund. The City shall rebate the total Rebate Fund to Eligible Current Customers in connection with the City's monthly billing. The Rebate Fund will be distributed to Eligible Current Customers as a one-time rebate, and individual rebates will partially offset the amount invoiced to Eligible Current Customers on their City of Billings Public Works Utilities bill. The Rebate Fund will be rebated to customers over multiple weeks, in accordance with the calculation described above. The City shall use its best efforts to rebate the total Rebate Fund to Eligible Current Customers within nine (9) months of the date the Court grants final approval of the Settlement. The City will not be required to provide any rebates during the months of July and August.

c. Report on Rebate Fund Administration. After the City has paid the Rebate Fund to Eligible Current Customers, the City shall provide a report with the Court stating: (a) the total dollar amount rebated; (b) the number of water, wastewater, and solid waste accounts that received rebates; and the date range during which the rebates were provided to Eligible Current Customers.

13. Class Notice. The Parties shall seek approval from the Court for approval of the Notice of Proposed Class Action Settlement ("Settlement Notice") and a Summary Class Settlement Notice ("Summary Notice") attached as Exhibits "E" and "F", respectively. Upon approval by the Court, the Settlement Notice and the Summary Notice shall be distributed in accordance with Section 14 below, or as otherwise directed by the Court.

Subject to the Court's approval, the Notice shall advise Class Members that objections must:

a. Include the case name and number (*Houser v. City of Billings*, Cause No. DV-18-0778, Montana Thirteenth Judicial District Court, Yellowstone County);

b. If the Objector is represented by counsel, the Notice must include the name and address of the Objector's attorney;

c. Explain the basis and reason for the objection;

d. Include the member's current mailing address;

e. State the customer(s) name(s) and address(es) associated with any franchise fees paid by the

member and the dates of residence at each address;

f. Identify the City services for which the member contracted from the City of Billings between February 2, 2015, to July 31, 2018 for: (a) water service; (b) wastewater service; and/or (c) solid waste disposal services;

g. Identify any class action cases in which the member has previously objected to a class settlement;

h. State whether or not the member intends to appear at the final approval hearing; and

i. Be signed by the member.

Additionally, subject to the Court's approval, the Notice shall advise Class Members that, unless approved by the Court after a hearing, a Class Member cannot receive a payment in exchange for (1) forgoing or withdrawing an objection, or (2) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

14. **Distribution of the Settlement Notice and the Summary Notice.** The City and the Class Administrator will distribute notice of the proposed settlement as broadly and cost-effectively as possible to Class Members. The City shall not be required to distribute any Notice to customers during the months of July and August. To ensure that the Parties provide the best notice practicable, including individual notice to members who can be identified through reasonable effort, the Settlement Notice and the Summary Notice shall be distributed by the City and/or the Class Administrator, as follows prior to the Fairness Hearing:

a. **Notice By the City.** The City shall provide Notice as follows:

i. **City Council Meeting Announcement.** The City of Billings will make an announcement regarding the proposed settlement and the date of the Fairness Hearing at three public and regularly noticed City Council meetings or work sessions. The announcement will direct class members to copies of the Settlement Notice that will be available at the Council meetings.

ii. **Copies of Notice at City Council Meetings.** The City shall place at least twenty-five (25) copies of the Settlement Notice next to the Meeting Agenda at three (3) consecutive public meetings of the Billings City Council. These Settlement Notices shall be available and designated for members of the public.

iii. **Public Posting.** The City shall post a copy of the Summary Notice in prominent places within the control of the City of Billings, including City Hall, the Billings Public Library, Municipal Court, the Airport, the City Planning Department, and the office of the Public Works Department. The City will also request that Yellowstone County post the Summary Notice in the Yellowstone County Courthouse, the County Treasurer's Office, and the Clerk and Recorder's Office.

iv. **Facebook**. The City shall post the Summary Notice on its Facebook page with a hyperlink to the website containing the Settlement Notice and other information regarding the litigation.

v. **Direct Mailing to Current City Customers**. The City of Billings shall mail the Summary Notice to all of its current water, wastewater, and solid waste disposal customers, with the exception of the Excluded Parties identified in paragraph 1(b) above. The City shall not be required to mail the notices in the months of July and August. The City may include the Summary Notice with monthly invoices or may separately mail the Summary Notice. The Summary Notice will be mailed to all current customers within ninety (90) days of the date that the Court provides preliminary approval of the settlement and the Settlement Agreement. The Summary Notices may be mailed to customers on a rolling basis consistent with the Public Works Department's billing practices.

vi. **Mail or E-mail Notice**. The City shall mail or e-mail a copy of the Settlement Notice to the following local media outlets: (i) the Billings Gazette; (ii) the Yellowstone County News; (iii) the Laurel Outlook; (iv) KTVQ; (v) KULR; (vi) Community 7; (vii) KSVI; (viii) the Montana Free Press; (ix) the Daily Montanan; (x) The Bismarck Tribune; (xi) the Missoulian; (xii) the Great Falls Tribune; (xiii) The Independent Record; (xiv) the Bozeman Daily Chronicle; (xv) the Casper Star-Tribune; (xvi) the Montana Standard; (xvii) and (xviii) the Billings Times. After the City completes the foregoing mailings, it shall file a Report with the Court verifying where the Notice was mailed and the date or dates of mailing.

b. **Class Administrator Notice**. The Class Administrator shall provide Notice as follows:

i. **Postcard Notice**. The Class Administrator shall mail Postcard Notices to all Class Members. The Postcard Notice shall contain the URL for the Class Administrator's website with additional information regarding the Settlement. The Postcard Notices shall contain a tear-off claim form to be used by Eligible Former Customers and Excluded Current Customers. Current Customers who have been identified by the Class Administrator as Class Members will not have to file claims. The Claim Form is attached as Exhibit "D".

ii. **E-mail Notices**. The Class Administrator shall e-mail copies of the Summary Notice and the Settlement Notice to any current or former water, wastewater, and/or solid waste disposal customers for whom the City Public Works Utility Department has e-mail addresses. The City has e-mail addresses for approximately 8,700 current customers and for approximately 4,000 former customers. The City shall provide the e-mail addresses to the Class Administrator. The Class Administrator shall use the e-mail addresses exclusively for the purposes of this Settlement and for no other purpose.

iii. **Settlement Notice Website**. The Class Administrator will provide notice to the Class Members via its website. The website shall include a copy of the Summary Notice and the Settlement Notice. In addition, the website will also include pertinent details about the proposed settlement, the lawsuit, the date of the Fairness Hearing, contact information for Class Counsel, the Claim Form, and the Opt-Out Form, **Exhibit "H"**.

iv. **Published Notice.** The Class Administrator shall publish an advertisement in the following publications once a week for three consecutive weeks: (a) the Billings Gazette; (b) the Yellowstone County News; (c) the Billings Times; (d) the Missoulian; and (e) the Great Falls Tribune. The advertisement will contain the Summary Class Notice along with the URL to the website for additional information.

v. **Big Sky Business Journal.** The Class Administrator shall publish an advertisement in the Big Sky Business Journal for two consecutive editions. The advertisement will contain the Summary Class Notice along with the URL to the website for additional information.

15. **Notice Costs.** Any direct, out-of-pocket costs incurred by the City in distributing the Settlement Notice or Summary Notice shall be reimbursed to the City out of the Class Administrator Fund. Subject to the Court's approval, the Parties stipulate that the Class Administrator shall pay \$4,000.00 to the City, as a stipulated amount, as reimbursement for the City's Notice Costs. In the event that the City's Notice costs exceed the foregoing amount, the City waives any right to additional reimbursement.

16. **Effective Date.** The Effective Date of this Settlement is the earliest date upon which all of the following have occurred:

a. Entry of an order granting the Joint Motion Amending the Class Definitions and adding McDaniel as a Class Representative;

b. Entry of the preliminary approval order of the Settlement;

c. Entry by the Court of an order in *McDaniel* certifying the Interlocutory Judgments as Final Judgments and dismissing the remaining claims, with prejudice;

d. Entry of an order in response to the Motion of Class Counsel for attorney fees and costs;

e. Approval by the Court of the settlement, following notice to the class and a hearing, as required under Mont. R. Civ. P. 23;

f. Approval of the settlement by the Billings City Council;

g. Entry by the Court of the Final Judgment and Order of Dismissal; and

h. The passage of time in which any appeal might be taken from the Final Judgment, with no appeal having been timely filed; or, in the event of any timely appeal, either affirmance of the Final Judgment without modification of any term of this Settlement Agreement or dismissal or withdrawal of such appeal, all such that the Final Judgment shall be final, binding, and non-appealable. (As used herein, "appeal" and "appellate review" include any petition for a writ of certiorari or application for other discretionary judicial review as well as any appeal of right.).

17. **Comprehensive Release of All Claims.** On or before the Effective Date, the Class Representatives and McDaniel, on behalf of themselves and all Class Members, shall execute and deliver to the City a comprehensive Release of All Claims substantially in the form of the Release of Claims attached as **Exhibit "G"**. All Participating Class Members (all Class Members except

for those who opted out of the Settlement) (“Participating Class Members”) will fully release and discharge the City and other Released Parties of and from any and all claims pled or that could have been pled in the Complaint driving from and/or based on the facts alleged, arising out of or related to the franchise fees charged or imposed by the City. The Court appointed Class Representatives and McDaniel shall acknowledge that the Release shall be binding upon all Class Members. This Release will finally, fully, and forever release, compromise, settle, and discharge any and all claims that the class members may have against the City arising from or related to the franchise fees. The Class Members shall not reserve or retain any claims but shall knowingly and intentionally release any and all claims that arose prior to the date of the Settlement Agreement. Neither the Plaintiffs nor the City of Billings shall admit any fault. The release language shall be modeled on the MDTLA release form but may contain additional release language consistent with there being a full and final release of all claims. The Release shall state the intention of the Parties that the Release be construed to the broadest extent possible to achieve a full, final, and complete settlement and compromise of all claims and issues.

The Settlement is the result of disputed claims, including but not limited to claims pertaining to the due process rights of the Class Members. The Settlement Agreement and/or the implementation thereof is not and shall not be construed as an admission of liability that the City violated those rights.

The Release shall provide that every Participating Class Member who does not timely and properly opt out of the class shall be bound by all proceedings, orders, and judgments entered by the Court. Named Class Representatives and McDaniel by signing below agree that the satisfaction of all the claims against the City, as well as entry of the final approval Order, shall be binding upon all Class Members.

Any Participating Class Member who does not timely submit an allowed objection to the Settlement hereby waives any and all rights to appeal from the Final Approval Order and Judgment, including all rights to any post-judgment proceeding and appellate proceeding such as a motion to vacate judgment, motion for new trial, and extraordinary writs. This waiver does not include a waiver of the right to oppose any appeals, appellate proceedings, or post judgment proceedings, if any.

All of the claims of Class Members described hereinabove and/or in the Release of All Claims (**Exhibit “G”**) are collectively referred to as the “Released Claims”. It is the intention of the parties that the Release Claims be construed to the broadest extent possible to fully, finally, and forever settle and resolve the disputes between the parties.

The Released Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Litigation and that any of the Class Representatives or Class Members and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns does not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the City and its present and former successors, assigns, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing or the Released Claims or might affect his, hers or its decision to

agree, object or not to object to the Settlement. Upon the Effective Date, each of the Class Representatives and Participating Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of state, the District of Columbia or territory of the United States, by federal law, or principle of common law or the law of any jurisdiction outside of the United States. The Class Representatives and Participating Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

18. **Dispute Resolution.** If any disputes as to this Agreement or the conditions of the Settlement arise which the Parties are unable to settle and resolve by written stipulation, then the Parties consent and agree to submit any unresolved disputes to the Court for resolution. Notwithstanding the foregoing, the Court shall not change the Settlement Amount, and the Court shall not modify the timing of the City's distribution of Notices or the Rebate Fund (including the provision indicating that the City cannot provide notices or rebates in the Months of July or August). Provided, however, that nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any Court Order implementing this Agreement, in a manner consistent with the terms of this Agreement.

19. **Court Filings.** In connection with this Settlement, the Parties shall file the following motions and stipulations with the Court:

a. Joint Motion and Stipulation to Amend the Class Definitions and proposed Order, (see **Exhibit "A"**).

b. Joint Motion to Certify Final Judgments and to Dismiss the remaining claims in *McDaniel*, With Prejudice, and proposed Order, (see **Exhibit "B"**).

c. Joint Motion and Stipulation for Approval of the Settlement Agreement.

d. Joint Motion to Approve Class Notice and Summary Class Notice and Opt-out Form. (see **Exhibit "E", "F", & H"**).

e. Any additional motions or pleadings that are required to effectuate the terms of this Settlement Agreement or its approval by the Court.

20. **Publicity.** The Parties and Class Counsel agree that, until this Agreement has been preliminarily approved by the Court, the Parties will not in any manner publicize the terms of this Agreement, and they shall not notify any member of the media regarding the terms and conditions of the Agreement or respond to media inquiries. Provided, however, this provision shall not limit or preclude the Mediator from filing status reports with the Court in accordance with its Orders.

Class Representatives and McDaniel understand and expressly acknowledge that this Agreement must be approved by the Billings City Council following a properly noticed public hearing.

Accordingly, Class Representatives, McDaniel, and Class Counsel stipulate, consent, and agree that, the City, the City Administration, the City Council, the City Staff, the Mayor, and their counsel shall be permitted to openly discuss and respond to public comment regarding the Settlement, the Settlement Agreement and the associated litigation and may communicate with the public, the media, and others regarding the Settlement, the Settlement Agreement, and the associated litigation. Accordingly, the Parties stipulate to the Court including language in its Order Preliminarily Approving the Settlement to permit the foregoing communications. The Parties intend that the required City Council meeting will occur following: (a) preliminary approval of the Settlement; and (b) the distribution of the Settlement Notice as provided hereinabove. The City Council must approve the Settlement and the Settlement Agreement prior to the Fairness Hearing.

21. **Confidentiality.** The terms of this Agreement shall remain confidential until this Agreement is filed in connection with a motion for preliminary approval of the Settlement, unless otherwise ordered by the Court. Provided, however, the Mediator shall be permitted to file Status Reports with the Court. Further, the Parties acknowledge and waive the mediation confidentiality provisions under Mont. Code Ann. § 26-1-813 for the sole and limited purpose of disclosing the mediator's involvement in this settlement, as specifically referenced in this Agreement.

22. **Binding Effect: Exclusion and Objection Rights.**

a. **Right of Class Members to be Excluded.** Any Class Member, other than the Class Representatives and McDaniel, may elect to be excluded from the Classes at any time before the Response Deadline established by the Court. To be effective, the Class Member must submit a valid request for exclusion (the Opt-Out Notice) to the Class Administrator and postmarked on or before the Response Deadline. The date of the postmark on the mailing envelope shall be the exclusive means to determine whether a request for exclusion is timely. If a Class Member submits a timely exclusion using the Court approved Opt-Out Form (Exhibit "H") that is rejected by the Class Administrator as deficient in some material respect (for example, the Class Member failed to sign it), the Class Administrator will notify the Class Member in writing of the basis for the deficiency and give the Class Member an opportunity to cure the deficiency as set forth below. Notification to the Class Member may include a follow-up telephone call, if necessary. The Class Administrator will also provide the Class Member with Class Counsel's contact information in case the Class Member wishes to seek Class Counsel's assistance. Class Members shall have fifteen (15) calendar days from notification of the deficiency to cure the deficiency, or until the end of the Response Period, whichever comes later. Any Class Member who timely requests exclusion through the Opt-Out Notice (**Exhibit "H"**) in compliance with these requirements: (i) shall not have any rights under this Agreement; (ii) shall not be entitled to receive a Rebate; and (iii) shall not be bound by this Agreement, the Final Approval Order, or the Judgment.

b. **Binding Effect on Participating Class Members.** Except for those Class Members who Opt-Out and exclude themselves in compliance with the procedures set forth above or who otherwise file valid objections to the Settlement that are sustained by the Court, all Class Members will be deemed to be Participating Class Members for all purposes under this Agreement; will be bound by the terms and condition of this Agreement, the Final Approval Order, the Judgment, and the releases provided herein; and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the settlement.

c. Communication Between Counsel Regarding Objections and Exclusions: Upon receipt, counsel for the Parties shall promptly exchange with one another copies of all requests for exclusion and/or objections to the Settlement or to any part thereof. Class Counsel and Counsel for the City shall file any responses to any written objections that are submitted in accordance with this Settlement Agreement at least five (5) business days before the final approval hearing.

23. Binding Effect. This Agreement is binding upon the heirs, personal representatives, successors, and assigns of each of the Parties.

24. Choice of Law and Venue. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Montana. The Parties agree that Yellowstone County, Montana is the proper place of venue for any dispute arising under the Agreement.

25. Further Assurances. In the event that any further action is necessary or required to carry out the purposes of this Agreement or the settlement contemplated by this Agreement, each of the Parties will take such further action (including the execution and delivery of further instruments and documents or the filing of the necessary motions or documents with the Court) as any other party reasonably may request.

26. Electronic Signatures and Counterparts. A copy of this Agreement transmitted by authenticated electronic signature or by email containing the signature of any party shall be accepted as the original and shall be binding upon the signing party to the same extent as would a copy of this Agreement containing the party's original signature. Upon request of a party, a party signing and delivering this Agreement by e-mail shall deliver to the requesting party a copy of this Agreement containing the signing party's original signature. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same document.

27. Final Settlement Approval. A hearing shall be held for the purpose of obtaining the Final Approval Order and entry of Judgment approving this Settlement Agreement and releasing the claims of the Participating Class Members. The date of the hearing shall be set by the Court and notice of such hearing shall be provided to Class Members in the Class Notice, although such hearing may be continued by the Court without further notice to Class Members. Because any appeal by an objecting Class Member would delay the payment under the Settlement, each Class Member that appeals agrees to put up a cash bond to be set by the District Court sufficient to reimburse Class Counsel's appellate fees, Class Counsel's expenses, and the lost interest to the Class caused by the delay.

A final approval hearing shall be held before the Court in order to consider and determine whether (a) the Court should give final approval to this Settlement; (b) Class Counsel's application for attorney's fees and litigation costs should be granted; (c) the Class Administrator's fees and costs are appropriate; and (d) any timely objections made have any merit and to consider all responses by Class Counsel and counsel for the City.

Upon final approval of the Settlement by the Court, the Parties request that the Court enter a Final Approval Order and Judgment as follows:



- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- b. Approving Class Counsel's application for an award of attorneys' fees and costs;
- c. Approving Class Administrator's fees and costs; and
- d. Entering final judgment, permanently barring and enjoining all Participating Class Members from prosecuting any of the Released Claims against Released Parties, as defined herein, upon satisfaction of all payments and obligations hereunder, hereinafter the "Bar Order". The Final Judgment shall include the Bar Order referenced herein.

The judgment will contain the following: (a) the class definitions; (b) the full release language; and (c) a statement that no Class Member has opted-out of the settlement – i.e., requested to be excluded, or a statement listing the names of the Class Members who timely opted-out of the settlement. Notice of final Judgment shall be posted on the Class Administrator's website. Thereafter, the Class Administrator shall maintain the website for at least one hundred and eighty (180) days after the entry of Final Judgment.

**28. Miscellaneous.**

- a. The Parties agree that they each shall undertake any required steps to effectuate the purposes and intent of this Agreement.
- b. The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.
- c. The Parties understand and agree that all terms of this Agreement, including the Exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.
- d. This Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties and covenants contained and memorialized herein.
- e. The Parties agree that no single Party shall be deemed to have drafted this Settlement Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentum*. This Settlement Agreement is a collaborative effort of the Parties and their attorneys.
- f. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Persons who executed this Agreement or their successors-in-interest. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such

Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

g. Should any part, term or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

h. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.

i. The following shall apply to the interpretation of this Agreement:

i. Definitions apply to the singular and plural forms of each term defined.

ii. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

iii. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

j. The Parties agree and acknowledge that this Agreement carries no precedential value.

k. The Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of extensive arms-length negotiations.

l. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement.

m. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

n. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.

o. The Settlement Agreement contains all of the terms agreed upon among the Parties and supersedes all prior agreements among the Parties with respect to the subject matter hereof.

p. Each party shall bear the expense of any taxes associated with the settlement. Any taxes specific to the Class and Class Counsel shall be borne by them.

q. Any Exhibits to this Settlement Agreement are incorporated in and constitute an integral part of the Settlement Agreement.

29. **Approval Required.** This Settlement Agreement is subject to final approval by both: (a) the District Court, after a hearing as required under Mont. R. Civ. P. 23(e)(2); and (b) the Billings City Council, at a regularly scheduled and properly noticed public hearing. The undersigned agree to recommend approval of the Settlement by the Court as being fair, reasonable, and adequate.

30. **Effect of Termination.** In the event any third party is allowed by the Court to intervene in this Action and/or successfully challenges and/or contests, in any regard or manner, any term or condition of this Settlement Agreement that would increase the City's liability obligations, payments, or exposure under this Settlement Agreement, or diminish the scope of the relief accorded in this Settlement Agreement to the City, then, in that event, the City shall have the absolute right to terminate this Settlement Agreement, in the City's sole and exclusive discretion. Provided, however, that any increase in the City's attorney fees in connection with any challenges and/or contests shall not be considered to increase the City's liability obligations, payments, or exposure under this Settlement Agreement.

In the event any third party is allowed by the Court to intervene in this Action and/or successfully challenges and/or contests, in any regard or manner, any term or condition of this Settlement Agreement that would diminish the relief accorded to the Certified Classes pursuant to this Settlement Agreement, then, in that event, any of the Class Representatives and McDaniel shall have the absolute right to terminate this Settlement Agreement, in the Class Representatives and McDaniel's sole and exclusive discretion. Provided, however, that any increase or decrease in the attorney fees awarded to Class Counsel shall not be considered to diminish the relief provided to the Certified Classes under this Settlement Agreement.

In the event that the Settlement Agreement is terminated, it shall become null and void and shall have no further force and effect, and neither the Settlement Agreement nor any of the negotiations and proceedings relating to the Settlement Agreement shall be offered or received in evidence or otherwise used in the Action or in any other legal proceeding for any purpose. In such event, all of the Parties shall be restored to their respective positions existing prior to the execution of the Settlement Agreement and the Action shall revert to its status prior to November 1, 2022.

In connection with the final approval of the Settlement by the Court, the Parties shall jointly seek from the Court an Order barring any future actions against any of the undersigned Parties to the Settlement Agreement, including all Class Representatives and all Class Members, the City, and their affiliates, divisions, subsidiaries, agents, directors, attorneys, insurers, trustees, and assignees ("the Bar Order"). The Bar Order shall be incorporated in the Final Approval Order. Upon issuance of the Final Approval Order, containing the Bar Order, no party and no Participating Class Member may take any future action against any party to the Settlement with respect to the subject matter of the Action. Specifically, the Bar Order shall provide that the Releasing Parties, including all Participating Class Members, shall be permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal, or jurisdiction, asserting any released claims pursuant to this Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the litigation and/or as a result of or in addition to those provided by this Settlement Agreement and the Court's Final Order and Judgment. It is further

agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to the Settlement Agreement.

31. **Satisfaction of Judgments.** Once all obligations in this Settlement Agreement have been satisfied, the Parties agree to file satisfactions of judgment with the Courts in both the *Houser* and *McDaniel* cases.

**Exhibits:**

- A. Stipulated Motion to Amend the Class Definitions and add McDaniel as a Class Representative and Proposed Order.
- B. Stipulated Joint Motion to Certify Final Judgments and Dismiss Claims in McDaniel and Proposed Order.
- C. Settlement Amount Diagram.
- D. Claim Form for Former Customers and Recent Service Address Customers.
- E. Notice of Proposed Class Action Settlement.
- F. Summary Notice.
- G. Comprehensive Release of All Claims.
- H. Opt-Out Form.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

By: **The City of Billings**

\_\_\_\_\_  
William A. Cole  
Its Mayor

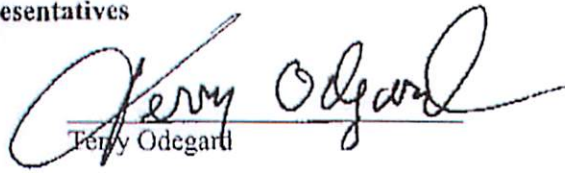
Approved as to form and content:

\_\_\_\_\_  
Doug James  
Moulton Bellingham PC  
P. O. Box 2559  
Billings, MT 59103  
Attorneys for the City of Billings

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023

*[Signatures to follow]*

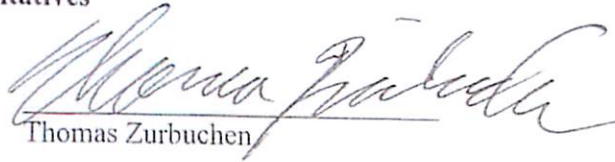
By: **The Class Representatives**

  
Terry Odegard

Dated this 16 day of March, 2023

*[Signatures to follow]*

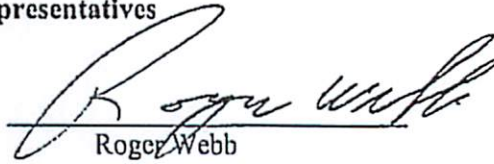
By: **The Class Representatives**

  
Thomas Zurbuchen

Dated this 16 day of March, 2023

*[Signatures to follow]*

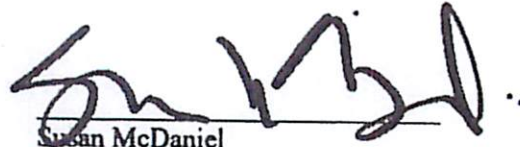
By: **The Class Representatives**

  
Roger Webb

Dated this 16<sup>th</sup> day of March, 2023

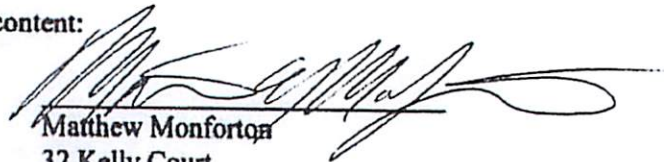
*[Signatures to follow]*

By: **McDaniel**

  
Susan McDaniel

Dated this 16 day of MARCH, 2023

Approved as to form and content:

  
Matthew Monforton  
32 Kelly Court  
Bozeman, Montana 59718

Attorney for the Class Representatives and McDaniel



# **Exhibit A**

Doug James  
Bryce Burke  
MOULTON BELLINGHAM PC  
27 North 27<sup>th</sup> Street, Suite 1900  
P. O. Box 2559  
Billings, Montana 59103-2559  
Telephone: (406) 248-7731  
Doug.James@moultonbellingham.com  
Bryce.Burke@moultonbellingham.com

Attorneys for City of Billings

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY

TERRY HOUSER, TERRY ODEGARD,  
THOMAS ZURBUCHEN, ROGER WEBB, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

-v-

CITY OF BILLINGS,

Defendant.

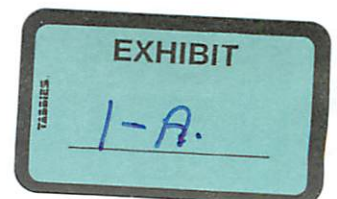
Cause No. DV 18-0778

Judge Michael Salvagni

**STIPULATION AND JOINT  
MOTION TO AMEND CLASS  
DEFINITIONS**

Defendant City of Billings and Plaintiffs, through their counsel, stipulate and move this Court to amend the class definitions of the Water Class, Wastewater Class, and Solid Waste Disposal Class in this matter. Under Mont. R. Civ. P. 23(c)(1), the parties request that the class definitions be amended as follows:

The Water Class. All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015, through June 30, 2018.



The Wastewater Class. All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015, through June 30, 2018.

The Solid Waste Disposal Class. All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

Excluded Parties. The Water Class, the Waste Water Class and the Solid Waste Disposal Class shall not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including: County Water District of Billings Heights; Lockwood Area/Yellowstone County Water and Sewer District; Phillips 66 Refinery; Meadowlark Capital, LLC; City of Powell, Wyoming; City of Laurel, Montana; Mackenzie Disposal, Inc.; Republic Services of Montana; Stillwater County, Montana; Two Tough Guy Services, LLC; and Yellowstone County Solid Waste Disposal District. (the “Excluded Class Members”).

The purpose of this motion is to effectively consolidate the Class Plaintiffs in the *Houser* case and the putative plaintiffs in the *McDaniel* case for purposes of one global settlement of the parties’ outstanding claims. Similarly, the parties request that Susan McDaniel, the current named

Plaintiff in the *McDaniel* case, be designated as a class member and a class representative following the amendment to the class definitions.

On July 26, 2022, the Court granted the City's Motion to Compel Mediation and ordered the parties to again mediate the present case and the *McDaniel* case. The parties continued settlement discussions after a failed mediation conference, which has resulted in the present tentative settlement in this matter and the *McDaniel* case. The present Stipulation and concurrent Motion for Approval of Class Action Settlement are made in accordance with the proposed settlement.

As part of the settlement, the parties have agreed to settle or compromise the remaining claims, issues, and defenses in these respective cases. Accordingly, the class definitions—as amended—meet the requirements of Mont. R. Civ. P. 23(a), 23(b)(2) and (b)(3), as more particularly described below.

On August 30, 2021, this Court entered its Decision and Order Denying Plaintiffs' Motion to (1) Modify Class Definitions to Include Subdivision Ratepayers and (2) Appoint Gary and Susan McDaniel as Class Representatives. (*McDaniel*, Doc. 234). In its Order, the Court recognized that “A significant factor to be considered when a modification or alteration of a class certification is sought is whether the proposed modification or alteration is in compliance with Rule 23.” (*Id.* at p. 18). The Court indicated that “there are no new class representatives who are typical with the class representatives in this case [because] there may be a conclusion that the *McDaniel* plaintiffs were obligated to pay the ‘franchise fees’ by virtue of the SIA for their subdivision which was annexed into the City.” (*Id.* at p. 20). This distinction was effectively eliminated by the Court's Partial Summary Judgment Order in *McDaniel* recognizing that “[a]ny provisions in the Subdivision Improvement Agreement relating to Plaintiffs' property and purporting to obligate

Plaintiffs to pay an illegal sales tax are unenforceable.” (*McDaniel*, Doc. No. 102). Since this distinction has been resolved, the differences between *McDaniel* and *Houser* plaintiffs no longer exist, meaning the two cases can effectively be resolved for one global resolution.

Under Rule 23(c), the claims and defenses that made the respective plaintiff classes uncommon and untypical have been settled or compromised. The parties have agreed to a tentative global resolution of all outstanding claims. Concurrently with this Motion, the parties will separately seek this Court’s approval of the Settlement Agreement documenting this global resolution. As part of such Settlement Agreement, the parties do agree to settle or compromise any claims that the *McDaniel* plaintiffs are contractually bound to pay the franchise fees by virtue of the SIAs.

The barriers to commonality and typicality have now been resolved. In its Order re: Legality of City Ordinances and SIA Provisions Imposing “Franchise Fees,” the Court found that “[t]he ‘franchise fee’ provisions in the Plaintiffs’ SIA are unlawful” (*McDaniel*, Doc. 99, p. 44). The Court reasoned that “[i]nclusion of the illegal ‘franchise fee’ in the SIA did not transform their illegality to legal fees.” (*Id.*, at 45). The Court’s Order found the SIA provisions to be an illegal sales tax and unenforceable. Based upon the proposed settlement, the parties have effectively elected to compromise any remaining claims that the City was entitled to charge a franchise fee under any of the SIAs entered between the City and its residents. With this compromise, none of the *McDaniel* plaintiffs were obligated to pay the franchise fees by virtue of SIAs. Further, the parties have elected to compromise any argument surrounding whether the *McDaniel* claims were tolled after those plaintiffs were excluded from the *Houser* classes. This compromise causes all plaintiffs to share the same time periods for inclusion in the class settlement—from February 2, 2015 to June 30, 2018. Thus, any differences between *McDaniel* and *Houser* plaintiff classes

relating to the SIAs have been resolved for purposes of settlement. The *McDaniel* and *Houser* plaintiffs now share commonality and typicality.

Further, the *McDaniel* and *Houser* claims share commonality and typicality with Counts IV and V—the federal and state Due Process claims. As the Court noted in its Decision and Order Re: City of Billings’ Motion for Summary Judgment Under Mont. R. Civ. P. 56, “Because the City did not provide Plaintiffs a constitutionally adequate predeprivation procedure for challenging these sales taxes, federal Due Process entitled them to relief.” (*McDaniel* Doc. 131, p. 26). The Court has not issued rulings on substantive issues in *Houser*; however, the Court’s comments in *McDaniel* highlight that the Due Process claims in both cases can be resolved without relying upon any legal question involving the SIAs. The legal issues that precluded approval of Plaintiffs’ previous motions to modify class definitions are no longer present. These legal issues surrounding the SIAs have either been resolved by the Court or will be resolved by the proposed compromise of the parties in the settlement agreement that is before this Court for approval. Following such approval by the Court, the class definitions can properly be modified in accordance with Mont. R. Civ. P. 23(c)(1).

Finally, judicial economy favors consolidation of these two cases at this stage in the litigation. As described in detail above, the Orders entered by the Court and the parties’ compromise in the Settlement Agreement mean that the requirements under Mont. R. Civ. P. 23(a) and (b) for bringing the *McDaniel* plaintiffs into the plaintiff classes in *Houser* are met. Additionally, consolidation will simplify the administration of the cases, the settlement, and it will mitigate much of the confusion and issues that would result from adjudicating the cases separately. As the Court previously noted, “it is not possible to distinguish between the class members in [*Houser*] and all other ratepayers in the City.” (*Houser*, Doc. No. 297). Plaintiffs have not

separately identified the individual plaintiffs in the *Houser* class or the putative *McDaniel* class. The City's records do not distinguish between SIA and non-SIA ratepayers, meaning each individual land parcel in a subdivision governed by an SIA would need to be associated with the respective City accounts. Those accounts, in turn, would need to be tied to the individual customer or customers that reside at a specified address. Consolidation saves the enormous time and effort that would be required to separate the roughly 32,000 water, 36,000 wastewater, and 37,000 solid waste disposal service accounts into two distinct, independent plaintiff classes.

Consolidation will make settling these cases more cost-effective, as well. The Court previously recognized that class notice would be best distributed to all ratepayers with an explanation to distinguish between the *Houser* class members and the *McDaniel* class members that would be excluded from the *Houser* class action. This approach would require that notice be distributed twice—once for the *Houser* classes and once for the *McDaniel* classes. Consolidation allows for a single class notice to be distributed to all class members. Consolidation will also simplify the burden upon the class administrator by allowing the majority of the settlement funds to be distributed by the City as a rebate upon future City water, wastewater, or solid waste disposal bills. The substantial administrative benefits of consolidation will ensure that more of the settlement amount will be received by the plaintiffs themselves, rather than the costs of settlement administration.

## CONCLUSION

This case was litigated as two separate lawsuits largely because certain plaintiffs paid franchise fees under Subdivision Improvements Agreements that specifically provided for the payment of franchise fees within those SIAs. The Court has determined that those provisions of SIAs relating to the payment of franchise fees are unenforceable. The barriers to consolidating the

two cases are now gone. The parties desire that the class definitions in *Houser* be amended to consolidate the *McDaniel* plaintiffs into the *Houser* class definitions identified to greatly reduce the cost and the administrative burden of facilitating the proposed settlement in this case.

• THEREFORE, the parties request that the Court:

- 1) Amend the class definitions as designated above, and
- 2) Designate Susan McDaniel as a class representative in the *Houser* case.

DATED this \_\_\_\_\_ day of March, 2023.

MOULTON BELLINGHAM PC

By \_\_\_\_\_

Doug James  
Bryce Burke  
27 North 27<sup>th</sup> St., Suite 1900  
P. O. Box 2559  
Billings, Montana 59103-2559

Attorneys for City of Billings

MONFORTON LAW OFFICES, PLLC

By   
Matthew Monforton

32 Kelly Court  
Bozeman, MT 59718

Attorneys for Plaintiffs



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 \_\_\_\_ day of March, 2023.

Matthew G. Monforton  
Monforton Law Offices, PLLC  
32 Kelly Court  
Bozeman, MT 59718

---

Doug James  
Bryce Burke

4875-6407-8928, v. 1

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

TERRY HOUSER, TERRY ODEGARD,  
THOMAS ZURBUCHEN, ROGER WEBB, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

-v-

CITY OF BILLINGS,

Defendant.

Cause No. DV 18-0778

Judge Michael Salvagni

**ORDER GRANTING JOINT  
MOTION TO AMEND CLASS  
DEFINITIONS**

Defendant City of Billings and Plaintiffs, through their counsel, filed a joint motion to:

1. Amend the Class Definitions, under Mont. R. Civ. P. 23(c)(1), to include the putative Class Members in *McDaniel v. The City of Billings*, Cause No. DV-19-1444, before the Montana Thirteenth Judicial District Court, Yellowstone County; and
2. Add Susan McDaniel as a Class Representative.

The Joint Motion was filed pursuant to a tentative settlement between the Parties. The Court finds that the requirements of Mont. R. Civ. P. 23(a) and (c)(1) have been satisfied. Based upon the Court's ruling in the *McDaniel* case that the provisions in the Subdivision Improvements Agreements relating to the payment of franchise fees were unlawful, the primary distinction between the *Houser* and *McDaniel* classes has been eliminated. Further, the Parties have stipulated

that the Claim Period for all Class Members and Putative Class Members shall be the time period of February 2, 2015 through June 30, 2018. Based upon the Court's prior orders, the Stipulation to a uniform Claim Period, and the other compromises of the parties contained in the Settlement Agreement, the remaining distinction between the cases has been eliminated. Therefore, the Court finds that commonality and typicality among the members of the proposed newly defined classes are satisfied.

Accordingly, the Court grants the Joint Motion of the Parties. The Class definitions in the Houser case are amended to be as follows:

**The Water Class.** All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015, through June 30, 2018.

**The Wastewater Class.** All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015, through June 30, 2018.

**The Solid Waste Disposal Class.** All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

**Excluded Parties.** The Water Class, the Waste Water Class and the Solid Waste Disposal Class shall not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including: County Water District of Billings Heights; Lockwood Area/Yellowstone County Water and Sewer District; Phillips 66 Refinery; Meadowlark Capital, LLC; City of Powell, Wyoming; City of Laurel, Montana; Mackenzie Disposal, Inc.; Republic Services of Montana; Stillwater County, Montana; Two Tough Guy Services, LLC; and Yellowstone County Solid Waste Disposal District. (the “Excluded Class Members”).

The Court further orders that Susan McDaniel shall be added as a Class Representative in this case.

Dated \_\_\_\_\_ of \_\_\_\_\_, 2023.

---

Hon. Mike Salvagni  
Presiding Judge

cc: Matthew G. Monforton  
Doug James  
Bryce Burke  
Jonathan McDonald

## **Exhibit B**

Doug James  
Bryce Burke  
MOULTON BELLINGHAM PC  
27 North 27<sup>th</sup> St., Suite 1900  
P. O. Box 2559  
Billings, Montana 59103-2559  
Telephone: (406) 248-7731  
Doug.James@moultonbellingham.com  
Bryce.Burke@moultonbellingham.com

*Attorneys for City of Billings*

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY

SUSAN McDANIEL, on behalf of herself and all  
others similarly situated,

Plaintiffs,

-v-

CITY OF BILLINGS,

Defendant.

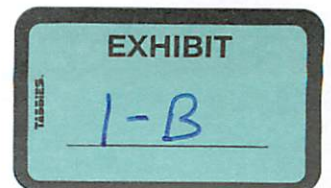
Cause No. DV 19-1444

Judge Michael Salvagni

**JOINT MOTION AND  
STIPULATION TO CERTIFY  
FINAL JUDGMENTS AND FOR  
DISMISSAL WITH PREJUDICE**

Plaintiff Susan McDaniel and Defendant, The City of Billings, by and through their respective counsel, stipulate and move that the remaining issues in this case be dismissed, with prejudice, but for the claims of the putative class members that are now included in and are being asserted in *Houser v. The City of Billings*, Cause No. DV-18-0778, before the Montana Thirteenth Judicial District Court, Yellowstone County, (the "Houser Case"). The Court's Interlocutory Judgments described below shall be certified as Final Judgments:

1. Doc. No. 102 on the Legality of the Franchise Fees and Injunction (Count 1);
2. Doc. No. 103 on Good Faith and Fair Dealing & (Counts II & III);
3. Doc. 110 on Plaintiffs' Water Claims (Counts II & III);



4. Doc. No. 129 on Good Faith and Fair Dealing (Court II);
5. Doc. No. 139 on Gary McDaniel's claims; and
6. Doc. 140 on Due Process (Counts IV & V).

This Stipulation and Motion are filed pursuant to a Global Settlement between the Parties. Pursuant to that Settlement, the Parties filed a Joint Motion to amend the Class Definitions in the Houser Case. The Court recently granted the Joint Motion to amend the Class Definitions. Accordingly, it is therefore now appropriate to dismiss the McDaniel case. The putative members of the McDaniel case are now asserting their claims in the Houser Case and Susan McDaniel has become a Class Representative in the Houser Case.

A proposed Order is attached.

DATED this \_\_\_\_\_ day of March, 2023.

MOULTON BELLINGHAM PC

By \_\_\_\_\_  
Doug James  
Bryce Burke  
27 North 27<sup>th</sup> St., Suite 1900  
P. O. Box 2559  
Billings, Montana 59103-2559  
Attorneys for City of Billings

MONFORTON LAW OFFICES, PLLC

By   
Matthew Monforton  
32 Kelly Court  
Bozeman, MT 59718

Attorneys for Plaintiffs

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 \_\_\_\_\_ day of March, 2023.

Matthew G. Monforton  
Monforton Law Offices, PLLC  
32 Kelly Court  
Bozeman, MT 59718

---

Doug James  
Bryce Burke



IN THE THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY, MONTANA

SUSAN McDANIEL, on behalf of herself and all  
others similarly situated,

Plaintiffs,

-v-

CITY OF BILLINGS,

Defendant.

Cause No. DV 19-1444

Judge Michael Salvagni

**FINAL JUDGMENT AND ORDER  
OF  
DISMISSAL WITH PREJUDICE**

Plaintiff and Defendant, by and through counsel, filed a Joint Motion to certify the Court's earlier Interlocutory Judgments as Final Judgments and to dismiss the remaining claims in the McDaniel case, with prejudice, except for the claims being asserted in *Houser v. The City of Billings*, Cause No. DV-18-0778, before the Montana Thirteenth Judicial District Court, Yellowstone County, (the "Houser Case").

**GOOD CAUSE APPEARING**, the Joint Motion of the Parties is GRANTED. The Court enters Final Judgment with respect to the following Interlocutory Judgments:

- **Doc. No. 102** where on January 19, 2022, the Court entered judgment declaring that the franchise fees were unlawful, finding that provisions in City Subdivision Improvements Agreements obligating Plaintiffs to pay franchise fees were unenforceable, and enjoining the City from imposing sales taxes in the future upon Plaintiffs. As part of the foregoing Judgment, the Court enjoined the City of Billings, its officers, agents, servants, employees, or persons in active concert with any of them from imposing illegal sales taxes in the future on Plaintiffs.
- **Doc. No. 103** where on January 19, 2022, the Court entered judgment in favor of the City and against the Plaintiffs on Counts II (breach of contract) and III (restitution).

- **Doc. No. 110** where on March 11, 2022, the Court entered judgment in favor of the City and against Plaintiffs on their water contract claims pursuant to Mont. Code Ann. § 30-2-607.
- **Doc. No. 129** where on June 7, 2022, the Court entered judgment in favor of the City and against Plaintiffs dismissing Count II (breach of contract) of Plaintiffs' Complaint.
- **Doc. No. 139** where on July 27, 2022, the Court dismissed Gary McDaniel's claims against the City.
- **Doc. No. 140** where on July 27, 2022, the Court entered partial summary judgment in favor of the City and against Defendants on Counts IV and V (due process).

By earlier Order, the Court amended the Class Definitions in the Houser Case to include the putative class members in this case. Accordingly, the putative class members in this case are now part of the Houser Case.

Good Cause Appearing, all remaining claims in this case are dismissed, **WITH PREJUDICE**, except for the claims of the putative class members that are now included in and are being asserted in the Houser Case.

DATED this \_\_\_ day of \_\_\_\_\_, 2023.

---

Hon. Mike Salvagni  
Presiding Judge

cc: Matthew G. Monforton  
Doug James  
Bryce Burke  
Jonathan McDonald

4893-4253-5510, v. 1

# Exhibit C

Exhibit C – Settlement Distribution

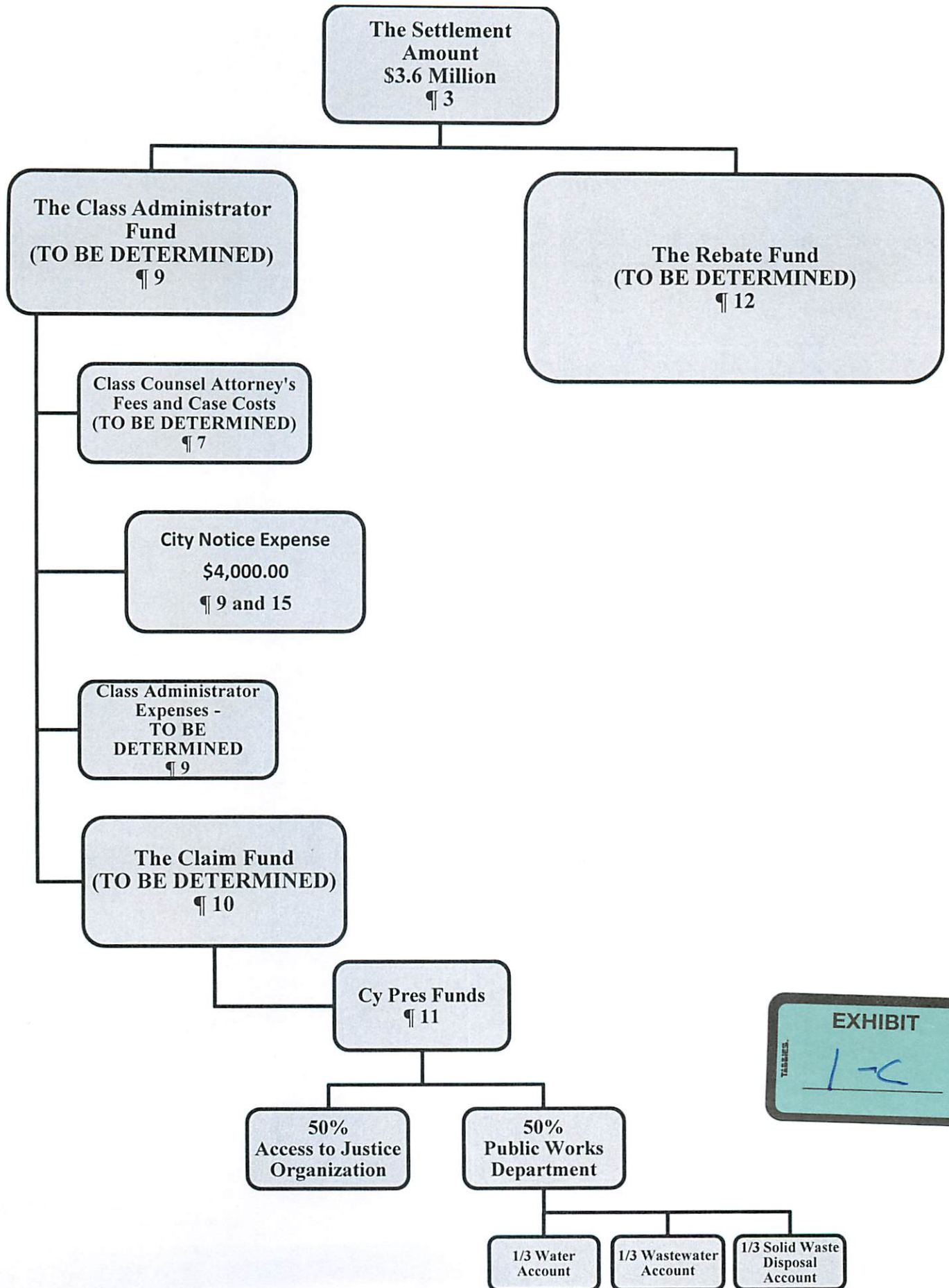


EXHIBIT  
TAMM  
1-C

# Exhibit D

## CLASS ACTION CLAIM FORM

*Terry Houser, et al. v. City of Billings*, Cause No. DV 18-0778, Montana Thirteenth Judicial District Court, Yellowstone County

You must fill out this form if you are an **Eligible Former Customer** or an **Excluded Current Customer**.

**Eligible Former Customer** means any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City between February 2, 2015 and June 30, 2018.

**Excluded Current Customer** means any individual or entity that is a current City Public Works Department customer who paid franchise fees during the Claim Period (February 2, 2015, through June 30, 2018) and who did not receive a postcard notice from the Class Administrator informing them that they are Members of the Class.

**Eligible Class Members.** Class Members are those individuals and entities who had water, wastewater, and/or solid waste disposal accounts with the City of Billings, at any time, during the Claim Period (February 2, 2015 through June 30, 2018).

**Current Customers who are Class Members.** The Class Administrator mailed postcards to Current Customers who are Class Members identifying them as Class Members. If you received a postcard from the Class Administrator that identified you as a Class Member, then you do not have to file a Claim. You will automatically receive a settlement payment as a rebate on a monthly bill from the Public Works Department of the City.

**Claim Form.** This claim form is only for those: (a) who have not been identified as Eligible Class Members but who believe that they actually are Members of the Class; and (b) for Eligible Former Customers who are Class Members. If you previously mailed the Class Administrator a Postcard Claim Form, you do not need to file another claim.

**DO NOT FILL OUT THIS FORM IF YOU ARE A CURRENT CUSTOMER AND YOU RECEIVED A POSTCARD FROM THE CLAIMS ADMINISTRATOR TELLING YOU THAT YOU ARE A MEMBER OF THE CLASS. IF YOU ARE AN ELIGIBLE FORMER CUSTOMER OR AN EXCLUDED CURRENT CUSTOMER, YOU MUST FILE A CLAIM IN ORDER TO RECEIVE ANY PAYMENT PURSUANT TO THE SETTLEMENT.**

You must mail this Claim Form with a postmark **NO LATER THAN AUGUST 31, 2023** if you want to receive money from the Former Claim Fund. If your Claim Form is not mailed by August 31, 2023, you still will be bound by the settlement, and you will not receive any money. **DO NOT DELAY.**

The information given in this Claim Form is private, and will be held in strictest confidence, except as needed by the Parties and the Settlement Administrator. If you have any questions about this lawsuit, call or write to us at

Class Administrator  
PO Box 25199  
Santa Ana, CA 92799  
Telephone: (888) 654-1271



Name(s): \_\_\_\_\_

Telephone: \_\_\_\_\_

(Please print all names on the account, including former names)

Current Address: \_\_\_\_\_  
Street City State Postal Code

**I WISH TO MAKE A CLAIM**, and I certify that I am entitled to a claim from the Claim Fund

**I am an Eligible Former Customer**

- I had an account with the City of Billings and paid for the services marked below between the dates of February 2, 2015 and June 30, 2018 at \_\_\_\_\_ \*

Service Address

- Water Service  
 Wastewater Service  
 Solid Waste Disposal Service

**AND**

- I no longer have an account with the City of Billings.

**I am an Excluded Current Customer**

- I am a current customer of the City of Billings;  
 I did not receive a postcard telling me that I am a member of the Class;

**AND**

- I had an account with the City of Billings between the dates of February 2, 2015 and June 30, 2018 at \_\_\_\_\_ \*

Service Address for February 2, 2015 through June 30, 2018

For the following services:

- Water Service  
 Wastewater Service  
 Solid Waste Disposal Service

By signing this form below, I am confirming that the above information is correct and that:

1. I am the person identified above.
2. I have not received money or compensation for any of the claims involved in this case.
3. I will abide by, and be limited to, the payment amount approved by the Court.
4. I will notify the Settlement Administrator if my address changes.

**I declare under penalty of perjury that the information given above is true and correct.**

\* If you paid for services between February 2, 2015 and June 30, 2018 at multiple addresses, please separately list each address and the date you resided at the address on the Class Action Claim Form Supplement.

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Account Holder

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Account Holder

\* If you paid for services between February 2, 2015 and June 30, 2018 at multiple addresses, please separately list each address and the date you resided at the address on the Class Action Claim Form Supplement.



**CLASS ACTION CLAIM FORM SUPPLEMENT**

Please fill out this Supplement ONLY if you had accounts with the City of Billings at multiple service addresses between February 2, 2015 and June 30, 2018.

I had multiple accounts with the City of Billings and paid for City services at the following service addresses:

\_\_\_\_\_  
Service Address

\_\_\_\_\_  
Dates at Service Address

\_\_\_\_\_  
Service Address

\_\_\_\_\_  
Dates at Service Address

\_\_\_\_\_  
Service Address

\_\_\_\_\_  
Dates at Service Address

\_\_\_\_\_  
Service Address

\_\_\_\_\_  
Dates at Service Address

**I declare under penalty of perjury that the supplemental information given above is true and correct.**

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Account Holder

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Account Holder

4876-5873-0580, v. 1

# **Exhibit E**

**If you paid monthly water, wastewater, or solid waste disposal charges to the City of Billings between February 2, 2015, and June 30, 2018, you could get a payment from a class action settlement.**

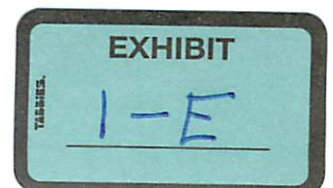
*A court authorized this Notice. This is not a solicitation.  
 This is not a lawsuit against you and you are not being sued.  
 However, your legal rights may be affected by a class action settlement.*

Several water, wastewater, and solid waste disposal customers of the City of Billings (“City”) filed a lawsuit against the City challenging the legality of franchise fees added by the City on all monthly charges for water, wastewater, and solid waste disposal services and seek a refund of those franchise fees on behalf of the customers who paid them. The Parties have reached a preliminary settlement of the case.

Your rights and each option you may follow, and related deadlines, are explained in this Notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>CLASS MEMBERS DO NOTHING AND YOU WILL AUTOMATICALLY RECEIVE REBATES</b>	If the Court grants final approval of the Settlement, Rebates will be deducted from future utility bills for Class Members who are current utility customers, with the exception of certain excluded customers who paid franchise fees pursuant to written contracts. If you have been notified that you are a Class Member and you want to participate in the Settlement by receiving these payments, then you do not need to take any further action. You will be bound by the terms of the Settlement and releases described in this Notice. If you do not receive a postcard from the City of Billings Class Administrator identifying you as a Class Member, then you must file a claim in order to receive a portion of the Settlement Fund.
<b>ASK TO BE EXCLUDED Deadline: August 31, 2023</b>	You can exclude yourself from the Settlement if you do not wish to participate in the Settlement. This is the only option that allows you to pursue your own lawsuit against the City about the legal claims in this case. If you exclude yourself, you will not receive any rebate. If you want to exclude yourself, you must complete and return the Opt-Out Form attached as Exhibit “H”.
<b>CLASS MEMBERS</b>	Class Members are those customers who paid franchise fees to the City of Billings in connection with their water, wastewater, and/or solid waste accounts between February 2, 2015 and June 30, 2018, with the exception of certain commercial entities who paid franchise fees pursuant to written contracts. If you received a postcard from the City of Billings Class Administrator identifying you as a Class

Questions? Visit \_\_\_\_\_ or call (888) 654-1271



*Houser v. City of Billings*, Cause No. DV-18-0778  
 Montana Thirteenth Judicial District Court, Yellowstone County

	Member, you do not have to do anything. You will automatically receive a rebate.
<b>OBJECT TO THE SETTLEMENT</b> <b>Deadline: August 31, 2023</b>	If you think the Settlement or Class Counsel’s request for Attorney Fees is not fair, you can submit a written objection (“Notice of Objection”) to the Class Administrator, and it will be considered by the Court. If the Settlement is approved, you will receive payment and will be bound by the terms of the Settlement and releases described in this Notice.

## WHAT THIS NOTICE CONTAINS

**BASIC INFORMATION** .....PAGE 3

1. Why did I get this notice?
2. What is this lawsuit about?
3. What is a class action and who is involved?
4. Why is there a Settlement?
5. Who are the parties in this lawsuit?
6. Am I part of one of the Classes?
7. Are any City customers not included in the Classes?
8. Do I have a lawyer representing me?
9. Should I get my own lawyer?

**THE TERMS OF THE SETTLEMENT**..... PAGE

10. What is the settlement amount and how will the money be apportioned?
11. How much will my individual settlement payment be?

**HOW TO GET A REBATE AND THE CLAIMS I AM RELEASING** ..... PAGE

12. How do I get a rebate?
13. What am I giving up to get a rebate?

**EXCLUDING YOURSELF FROM THE SETTLEMENT** ..... PAGE

14. How do I exclude myself from the Settlement

**OBJECTING TO THE SETTLEMENT**..... PAGE

15. How do I tell the Court that I don’t like the settlement?
16. What is the difference between objecting and being excluded?

**THE COURT’S FINAL APPROVAL HEARING**

Questions? Visit \_\_\_\_\_  
 or call (888) 654-1271

*Houser v. City of Billings*, Cause No. DV-18-0778  
Montana Thirteenth Judicial District Court, Yellowstone County

- 17. When and where will the Court decide whether to approve the Settlement?
- 18. Do I have to come to the hearing?

**GETTING MORE INFORMATION** ..... PAGE  
19. Are more details available?

## BASIC INFORMATION

### 1. Why did I get this notice?

The Court has given preliminary approval to a settlement of the lawsuit, *Houser v. City of Billings*, Cause No. DV-18-0778, which is pending in the Montana Thirteenth Judicial District Court for Yellowstone County. The Settlement is on behalf of customers who paid franchise fees to the City of Billings for water, wastewater service, and solid waste disposal service during the period from February 2, 2015, to June 30, 2018 (the “Claim Period”).

The City’s records show that you are a current customer of the Public Utilities Department or may have been a customer during the Claim Period and thus you may be a member of one of the Classes (“Class Member”). This notice explains the lawsuit, the settlement, your legal rights, the benefits available for you, and how you can obtain them.

### 2. What is this lawsuit about?

Plaintiff Terry Houser and three other City residents, Terry Odegard, Thomas Zurbuchen, and Roger Webb, sued the City of Billings on behalf of themselves and other customers who paid franchise fees to the City of Billings for water, wastewater service, and solid waste disposal service during the Settlement Period. They have asserted various claims against the City, including the claim that charging the franchise fees violated the customers’ due process rights. The City denies the allegations. To avoid the costs of litigation, however, and in light of the risks and uncertainties of continued litigation, the Parties have agreed to settle this lawsuit.

### 3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of other people who have similar claims. The people they represent are a “Class” or “Class Members.” The Class Representatives and all the Class Members are called the Plaintiffs. The City is called the

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271

*Houser v. City of Billings*, Cause No. DV-18-0778  
Montana Thirteenth Judicial District Court, Yellowstone County

Defendant. One court resolves the issues for everyone in the Classes—except for those people who choose to exclude themselves from the Classes.

The Court has appointed Simpluris as the City of Billings Class Administrator. If you have questions, you may contact the Class Administrator at PO Box 25190, Santa Ana, CA 92799 or by calling (888) 654-1271. Please do not contact the Court.

#### **4. Why is there a Settlement?**

The Court has not decided whether or not the City violated the due process rights of their customers. There has not been a trial. Instead, both sides agreed to a settlement of the lawsuit (“Settlement”) following a mediation and with the assistance of an independent class action attorney appointed by the Court. By agreeing to settle this lawsuit, the parties are able to avoid the cost and further delay of continued litigation and a trial, and the Class Members will receive reasonable compensation. Plaintiffs and Class Counsel believe the Settlement is in the best interests of the Class and is fair, reasonable, and adequate.

#### **5. Who are the Parties in this lawsuit?**

The Plaintiffs are customers who paid for water, wastewater service, and solid waste disposal service from the City and also paid franchise fees during the Claim Period. The City is the Defendant in this lawsuit.

#### **6. Am I part of one of the Classes?**

The Court has defined three separate Classes of City utility customers who have paid franchise fees: the Water Class, the Wastewater Class, and the Solid Waste Disposal Class. You may be a member of one, two, or all three of these Classes if you were a customer and paid franchise fees between February 2, 2015 and June 30, 2018.

#### **7. Are any City customers not included in the Classes?**

The Court has excluded from the Classes certain large commercial customers who have negotiated written contracts with the City for the provision of water, wastewater, or solid waste disposal services. If a City customer first initiated water, wastewater, or solid waste disposal services after June 30, 2018, they are not Class Members and they will not receive a settlement.

#### **8. Do I have a lawyer representing me?**

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271

*Houser v. City of Billings*, Cause No. DV-18-0778  
Montana Thirteenth Judicial District Court, Yellowstone County

The Court decided that lawyer Matthew Monforton of Bozeman, Montana, is qualified to represent you and all Class Members. The lawyer representing a class in a class action is called "Class Counsel." He is experienced in handling similar cases. His contact information is:

Matthew Monforton  
Monforton Law Offices, P.C.  
P.O. Box \_\_\_\_\_  
Bozeman, Montana 59718  
Telephone No. (406) 570-2949  
Facsimile: (406) 551-6919  
Email: \_\_\_\_\_@\_\_\_\_\_.com

If you have questions regarding this Settlement, you should contact Simpluris, the Class Administrator, at (888) 654-1271. If the Class Administrator is not able to answer your question, you may contact the Class Counsel at \_\_\_\_\_@\_\_\_\_\_.com or (406) 570-2949. You may also view documents relating to the Settlement (including, but not limited to, the Settlement Agreement and key documents filed in connection with the motion for preliminary approval of the Settlement, the order granting preliminary approval of the Settlement, and other documents) by visiting the following website: \_\_\_\_\_

#### 9. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

### THE TERMS OF THE SETTLEMENT

#### 10. What is the settlement amount and how will the money be apportioned?

Under the proposed Settlement, which the Court has preliminarily approved, the City will pay \$3,600,000.00 (the "Settlement Amount") to fully and finally resolve all claims in the lawsuit. Subject to final approval from the Court, the following amounts will be paid out of the Settlement Fund:

**Class Members:** If you received a postcard from the Class Administrator identifying you as a Class Member, you do not have to do anything to participate in the settlement. If the Class Administrator did not identify you as a Class Member, then you must file a Claim in order to receive a portion of the settlement. If you were a water, wastewater, and/or solid waste disposal customer between February 2, 2015 and June 30, 2018 and you are no longer a customer, then you must file a Claim in order to receive a settlement payment.

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271

**Attorney's Fees and Costs:** Class Counsel have spent nearly 5 years prosecuting this lawsuit on behalf of the Classes but have not yet received any payment. During this time, Class Counsel have, among other tasks: (i) reviewed tens of thousands of documents relating to Plaintiffs' claims and allegations; (ii) taken and defended nearly a dozen depositions of City employees and the Class representatives; (iii) prepared multiple briefs and attended multiple hearings before the District Court and the Montana Supreme Court, (iv) obtained a ruling from Montana Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in multiple, lengthy mediation sessions. In consideration for these efforts, Class Counsel will ask the Court for 25% of the Settlement Fund as an award of attorneys' fees for the services provided to the Plaintiffs in the lawsuit. The payment of the Attorneys' Fees from out of the Settlement Fund will constitute full and complete compensation for all legal fees of the attorneys representing Plaintiffs in the Action. Class Counsel will also ask the Court for litigation expenses totaling no more than \$25,000.00

**Settlement Administration Costs:** The Settlement Administration Costs refer to the fees and expenses reasonably incurred by the Class Administrator to, among other things, distribute notices to Class Members, process Requests to Opt-Out and Notices of Objection, and facilitate payments under the Settlement.

**The Rebate Fund:** Most of the Settlement Amount will be rebated to current customers. This amount is known as the Rebate Fund. The rebates will reduce the monthly invoices of Class Members who are current customers by the Rebate Amount, for one month. After the Effective Date, the City shall rebate the full amount of the Rebate Fund to those Class Members identified by the Class Administrator who are current water, wastewater, and solid waste disposal customers, excluding: (a) Excluded Parties; and (b) Excluded Current Customers

The "Excluded Parties" are larger commercial companies or governmental units that obtained services from the City pursuant to a written contract.

"Eligible Former Customers" means any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City during the Settlement Class Period.

**The Claim Fund:** A portion of the Settlement Amount will be available for Excluded Current Customers and Eligible Former Customers who file a claim for payment from the Settlement.

**NOTE: Excluded Current Customers and Eligible Former Customers must file a claim to receive payment from the Settlement. The Claim Form and instructions are attached as Exhibit "D".**

**Residual Funds:** Any portion of the Settlement Fund that is not paid to customers or otherwise disbursed in accordance with the Settlement Agreement and the Court's Orders, is considered Residual Funds. As required by state law, fifty percent (50%) of any Residual Funds shall be paid

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271



*Houser v. City of Billings*, Cause No. DV-18-0778  
Montana Thirteenth Judicial District Court, Yellowstone County

to the Access to Justice Organization approved by the Court. The remaining fifty percent (50%) of the Residual Funds shall be paid to the City's Public Works Department and shall be split as equally as possible among the following Public Works Department accounts: (a) the Water Fund; (b) the Wastewater Fund; and (c) the Solid Waste Disposal Fund.

**11. How much will my Individual Settlement Payment be?**

The dollar amount of individual settlements will be dependent upon how many claims are filed. The settlement funds will be divided on a pro rata basis among all Allowed Claims that are filed and all current customers who are Class Members.

**12. How do I get a payment?**

**Current Customers who have been identified as Class Members.** If you received a postcard from the Class Administrator identifying you as a Class Member, you do not need to do anything -- you will automatically receive your Individual Settlement.

**Eligible Former Customers.** If you were a water, wastewater, and/or solid waste disposal customer sometime during the Claim Period (February 2, 2015 and June 30, 2018) and you are not a current customer, you are an "Eligible Former Customers" and must file a claim form in order to receive a settlement payment. (See the Claim Form, Exhibit "D").

**Excluded Current Customers who have not been identified as Class Members.** If you are a current water, wastewater, and/or solid waste disposal customer and you have not been identified by the Class Administrator as a Class Member, then you are an "Excluded Current Customer" and you must file a Claim Form to participate in the settlement. (See the Claim Form, Exhibit "D"). In order to be eligible to receive a settlement payment you must have been a water, wastewater, or solid waste disposal customer between February 2, 2015 and June 30, 2018.

Eligible Former Customers and Excluded Current Customers must complete the Claim Form and return it to the Class Administrator with a postmark not later than August 31, 2023. Current Customers who have been identified as Class Members do not have to file a Claim Form.

If you do not know if you are a Class Member, please contact the Class Administrator at PO Box 25190, Santa Ana, CA 92799 or by calling (888) 654-1271. Please do not contact the Court.

**If final approval of the Settlement is granted, current monthly customers will receive rebates that will be shown on their monthly statements, while Former Customers and Recent Service Address Customers must file a claim for reimbursement.**

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271

**13. What am I giving up to get a Rebate?**

Unless you exclude yourself, you remain in one or more of the Classes, which means you will not be able to sue, continue to sue, or be part of any other lawsuit against the City for the same legal issues in this lawsuit. Specifically, you will be giving up or “releasing” the claims described in the First Amended Complaint of the lawsuit, a copy of which can be found at:

---

If the Court approves the Settlement, each Class Member who does not exclude himself or herself from this lawsuit will be bound by the Settlement, and release the City of Billings (including all of the City’s past, present and/or future, direct and/or indirect, subsidiaries, parents, divisions, joint venturers, predecessors, successors, insurers, assigns, consultants, and subcontractors, the City’s employee benefit plans and the trustees, fiduciaries, and administrators of those plans, and any of the City’s current or former employees, officers, directors, servants, agents, investors, representatives, attorneys, executors, administrators, and assigns, and all persons acting under, by, through, or in concert with any of them, and each of them) from all claims and causes of action raised or that reasonably could have been raised in the Lawsuit (the “Released Claims”).

The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or Settlement Class Members may discover new facts or legal theories or legal arguments not alleged in the Lawsuit but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims. The Settlement shall result in a final judgment, permanently barring and enjoining all participating Class Members from prosecuting any of the Released Claims against the City and the Released Parties.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

**14. How do I exclude myself from the Settlement?**

If you want to retain the right to pursue claims related to this case against the City and/or you do NOT want a payment from this Settlement, then you must exclude yourself by submitting a written request for exclusion. Excluding yourself is also referred to as “opting-out.” If you exclude yourself, you will not receive money from this settlement.

To ask to be excluded, you must send an “Opt-Out Form Request” in the form of a letter sent by mail, stating that you want to be excluded from *Houser v. City of Billings* and *McDaniel v. City of Billings*. Be sure to include your name and address, and sign the letter. You must mail your Opt-Out Form postmarked by **August 31, 2023** to City of Billings Class Administrator, PO Box 25190, Santa Ana, CA 92799 or by calling (888) 654-1271. Please do not contact the Court.

You may ask to be excluded from the Classes by completing and mailing the “Opt-Out Form” that is attached as Exhibit “H”. You may also get an OPT OUT Request form at the website.

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271

## OBJECTING TO THE SETTLEMENT

### 15. How do I tell the Court that I don't like the Settlement?

If you think anything about the Settlement is unfair, you can object to the Settlement and tell the Court that you do not agree with the Settlement or some part of it. The Court will consider your views when deciding whether to grant final approval of the Settlement.

To object to the Settlement, you must mail a written Notice of Objection to the Class Administrator at the above address by **August 31, 2023**. The administrator will mail all objections to the parties' counsel and to the Court. The Court will consider all objections in deciding whether to approve the Settlement. All written objections should:

- (a) include the case name and number (*Houser v. City of Billings*, Cause No. DV-18-0778, Montana Thirteenth Judicial District Court, Yellowstone County);
- (b) If you are represented by counsel, the name and address of your attorney;
- (c) explain the reason for your objection,
- (d) include your current mailing address;
- (e) state your name and the address(es) associated with any franchise fees paid and the dates of residence at each address;
- (f) state the services for which you contracted from the City of Billings, between February 2, 2015 and June 30, 2018, for water, wastewater service, or solid waste disposal service;
- (d) identify any class action cases in which you have previously objected to a class settlement;
- (e) state whether or not you intend to appear at the final approval hearing; and
- (f) be signed by you.

Unless approved by the Court after a hearing, you cannot receive a payment in exchange for (1) forgoing or withdrawing an objection or (2) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

The Court will rule on the objections it receives, and if they are overruled, then you will be a Settlement Class Member and receive payment.

Questions? Visit \_\_\_\_\_  
or call (888) 654-1271

**16. What is the difference between objecting and being excluded?**

Objecting is telling the Court that you do not like something about the Settlement. You may only object if you remain a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object.

## THE COURT'S FINAL APPROVAL HEARING

**17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing before Judge Mike Salvagni in Department \_\_\_\_\_ at the Yellowstone County Court House located at 217 N. 27th Street, Billings, MT 59107 on \_\_\_\_\_, 2023, at \_\_\_\_\_ a.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, and the Class Administrator's fees and Costs. The Court may reschedule the Final Approval Hearing without further notice to Settlement Class Members.

**18. Do I have to come to the hearing?**

You are not required to attend the Final Approval Hearing, but you or your lawyer may attend if you choose. If you are a participating Settlement Class Member and you wish to speak or have your lawyer speak for you, you may do so. Please visit the case website at [www.\\_\\_\\_\\_\\_](http://www._____) to see whether the Final Approval Hearing will be held on \_\_\_\_\_, 2023 or has been rescheduled to a new hearing date.

## GETTING MORE INFORMATION

**19. Are more details available?**

Yes. Do not contact the Court for legal questions or advice—the **Court and its staff are not allowed to answer your questions**. You may obtain additional information about this lawsuit in several ways:

- a) Review carefully all of the information in this Notice;

Review copies of the court documents that are posted \_\_\_\_\_

Questions? Visit \_\_\_\_\_

or call (888) 654-1271

*Houser v. City of Billings*, Cause No. DV-18-0778  
Montana Thirteenth Judicial District Court, Yellowstone County

. including Orders Certifying the Classes, the Complaints that the Plaintiffs submitted, the Defendant's Answers to the Complaints, Class Counsel's Motion for Attorneys' Fees, the Claim Form, as well as an OPT OUT Request form.

- b) Review copies of other court documents filed in this case which are public records and are available for inspection during regular business hours at: Office of the Clerk, Montana Thirteenth Judicial District, 217 N. 27<sup>th</sup> Street, P.O. Box 35030, Billings MT 59107. You will need to provide the name of the lawsuit and docket number, which is as follows:

*Houser v. City of Billings*, Cause No. DV 18-0778

- c) If you still have questions, you may contact Simpluris, the Class Administrator at (888) 654-1271 , or Class Counsel by calling (1-406-570-2949)

Visit \_\_\_\_\_

- d) where you will find the Court's Orders Certifying the Classes, the Complaints that the Plaintiffs submitted, the Defendant's Answers to the Complaints, Class Counsel's Motion for Attorneys' Fees, an OPT OUT Request form, and other important documents.

4877-0723-4885, v. 1

Questions? Visit \_\_\_\_\_

or call (888) 654-1271

*Houser v. City of Billings*  
P.O. Box 25190  
Santa Ana, CA 92799

PRESORTED  
FIRST-CLASS MAIL  
US POSTAGE  
PAID  
SIMPLURIS INC

**IMPORTANT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

A Court has preliminarily approved the settlement of a class action lawsuit that will affect you because you paid the City of Billings (“City”) for Water, Wastewater, or Solid Waste Disposal Services between February 2, 2015 and June 30, 2018. You have been identified as a member of one or more of the Settlement Classes that are entitled to payment. This notice has been approved by the court and explains the settlement.

«IMbFullBarcodeEncoded»

«FirstName» «LastName»

«Address1» «Address2»

«City», «State» «Zip»-«ZipDPC3»

SIMID «SIMID»  
«Barcode\_Encoded\_166087»

***Houser v. City of Billings, Cause No. DV 18-0778***  
**Montana Thirteenth Judicial District Court, Yellowstone County**

**WHO'S INCLUDED?** The Settlement Classes include customers who paid the City for (a) water; (b) wastewater services; and/or (c) solid waste disposal services between February 2, 2015, and June 30, 2018.

**HOW DO YOU GET A PAYMENT:** If you are named on this card, then you have been identified as a member of one or more Settlement Classes. You will receive a settlement as a rebate that will be deducted from a future utility bill. You do not need to take any action to receive a rebate. Do not file a claim.

**WHAT ARE YOUR OPTIONS:** If you don't want a payment and you don't want to be legally bound by the settlement, you must exclude yourself by mailing an Opt-Out Form to the Class Administrator, which must be postmarked by August 31, 2023. If you exclude yourself, you will not get a payment from this settlement.

If you stay in the class, you may also object to the proposed settlement. The Detailed Notice describes how to exclude yourself or object. You must exclude yourself or object by mailing your Opt-Out Form or objection which must be postmarked by August 31, 2023, and sent via first-class mail to the Class Administrator at the address below.

**FAIRNESS HEARING:** The Court will hold a Fairness hearing on \_\_\_\_\_, 2023, at \_\_\_\_\_ a.m. to consider whether to approve the Settlement and Class Counsel's attorney fees and costs in the amount of \$925,000.00. You may appear at the Fairness Hearing personally or with an attorney, but you don't have to.

**Please review the Detailed Notice for additional details.** The Detailed Notice and Forms are available online at [WEBSITE] or you can also contact the Class Administrator toll-free at (888) 654-1271 or by mail at *Houser v. City of Billings*, PO Box 25190, Santa Ana, CA 92799.

***Houser v. City of Billings, Cause No. DV 18-0778***  
**Montana Thirteenth Judicial District Court, Yellowstone County**

**WHO'S INCLUDED?** The Settlement Classes include customers who paid the City for (a) water; (b) wastewater services; and/or (c) solid waste disposal services between February 2, 2015, and June 30, 2018.

**HOW DO YOU GET A PAYMENT:** You will not automatically receive a settlement in this case. If you paid the City for the services described above between February 2, 2015, and June 30, 2018, then you are a Class Member. You must file a Claim Form to receive a settlement payment. You can obtain a Claim Form by calling or visiting the website below. Claim forms are due by August 15, 2023. Do not file a Claim Form unless you are a Class Member.

**WHAT ARE YOUR OPTIONS:** If you are a class member, you have other options. If you don't want a payment and you don't want to be legally bound by the settlement, you must exclude yourself by mailing an Opt-Out Form to the Class Administrator, which must be postmarked by August 31, 2023. If you exclude yourself, you will not get a payment from this settlement.

If you stay in the class, you may also object to the proposed settlement. The Detailed Notice describes how to exclude yourself or object. You must exclude yourself or object by mailing your Opt-Out Form or objection which must be postmarked by August 31, 2023, and sent via first-class mail to the settlement administrator at the address below.

**FAIRNESS HEARING:** The Court will hold a Fairness hearing on \_\_\_\_\_, 2023, at \_\_\_\_\_ a.m. to consider whether to approve the Settlement and Class Counsel's attorney fees and costs in the amount of \$925,000.00. You may appear at the Fairness Hearing personally or with an attorney, but you don't have to. If you do not file a claim, you will not receive a settlement payment.

**Please review the Full Notice for additional details.** The Detailed Notice and Forms are available online at [WEBSITE] or you can also contact the Class Administrator toll-free at (888) 654-1271 or by mail at *Houser v. City of Billings*, PO Box 25190, Santa Ana, CA 92799.



*Houser v. City of Billings, Cause No. DV 18-0778*  
Montana Thirteenth Judicial District Court, Yellowstone County

**WHO'S INCLUDED?** The Settlement Classes include customers who paid the City for (a) water; (b) wastewater services; and/or (c) solid waste disposal services between February 2, 2015, and June 30, 2018.

**HOW DO YOU GET A PAYMENT:** You may or may not be a member of the Settlement Classes. If you paid the City for the services described above between February 2, 2015, and June 30, 2018, then you are a Class Member. You must file a Claim Form to receive a settlement payment. You can obtain a Claim Form by calling or visiting the website below. Claim forms are due by August 31, 2023. Do not file a Claim Form unless you are a Class Member.

**WHAT ARE YOUR OPTIONS:** If you are a Class Member, you have other options. If you don't want a payment and you don't want to be legally bound by the settlement, you must exclude yourself by mailing an Opt-Out Form to the Class Administrator, which must be postmarked by August 31, 2023. If you exclude yourself, you will not get a payment from this settlement.

If you stay in the class, you may also object to the proposed settlement. The Detailed Notice describes how to exclude yourself or object. You must exclude yourself or object by mailing your Opt-Out Form or objection which must be postmarked by August 31, 2023, and sent via first-class mail to the Class Administrator at the address below.

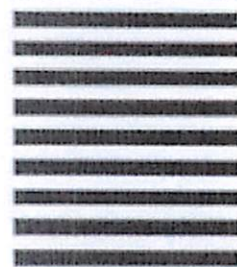
**FAIRNESS HEARING:** The Court will hold a Fairness hearing on \_\_\_\_\_, 2023, at \_\_\_\_\_ a.m. to consider whether to approve the Settlement and Class Counsel's attorney fees and costs in the amount of \$925,000.00. You may appear at the Fairness Hearing personally or with an attorney, but you don't have to. If you do not file a claim, you will not receive a settlement payment.

**Please review the Detailed Notice for additional details.** The Detailed Notice and Forms are available online at [WEBSITE] or you can also contact the Class Administrator toll-free at (888) 654-1271 or by mail at *Houser v. City of Billings*, PO Box 25190, Santa Ana, CA 92799.

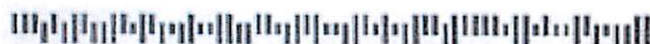


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UNITED STATES

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SANTA ANA CA 92799-9874



*Houser v. City of Billings*  
P.O. Box 25190  
Santa Ana, CA 92799

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PAID  
SIMPLURIS INC

**IMPORTANT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

A Court has preliminarily approved the settlement of a class action lawsuit that may affect you if you paid the City of Billings (“City”) for Water, Wastewater, or Solid Waste Disposal Services between February 2, 2015 and June 30, 2018. You may be a member of one or more of the Settlement Classes that are entitled to payment. This notice has been approved by the court and explains the settlement.

«IMbFullBarcodeEncoded»

«FirstName» «LastName»

«Address1» «Address2»

«City», «State» «Zip»-«ZipDPC3»

SIMID «SIMID»  
«Barcode\_Encoded\_166087»

Houser v. City of Billings  
P.O. Box 25190  
Santa Ana, CA 92799

PRESORTED  
FIRST-CLASS MAIL  
US POSTAGE  
PAID  
SIMPLURIS INC

## IMPORTANT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A Court has preliminarily approved the settlement of a class action lawsuit that may affect you if you paid the City of Billings ("City") for Water, Wastewater, or Solid Waste Disposal Services between February 2, 2015 and June 30, 2018. You may or may not be a member of one or more of the Settlement Classes that are entitled to payment. This notice has been approved by the court and explains the settlement.

«IMbFullBarcodeEncoded»

«FirstName» «LastName»

«Address1» «Address2»

SIMID «SIMID»  
«Barcode\_Encoded\_129867»

«City», «State» «Zip»-«ZipDPC3»

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### CLAIM FORM – ELIGIBLE FORMER CUSTOMER

You have been identified as a Eligible Former Customer, defined as any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City between February 2, 2015 and June 30, 2018.

Class Member Name: «FirstName» «LastName»  
Street Address: «Address1» «Address2»  
«City», «State» «Zip»-«ZipDPC3»

Class Member ID: «SIMID»  
Account No: «Account #»

**INSTRUCTIONS:** You must mail this Claim Form **NO LATER THAN AUGUST 31, 2023** if you want to receive money from the Eligible Former Customer Claim Fund. If your Claim Form is not mailed by August 15, 2023, you still will be bound by the settlement, and you will not receive any money. **DO NOT DELAY.**

Name (First, M.I., Last): \_\_\_\_\_

Other Name(s) on the Account, including former names: \_\_\_\_\_

Current Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (You may be contacted if further information is required.)

I certify that I am an Eligible Former Customer because I had an account with the City of Billings and paid for the services marked below between the dates of February 2, 2015 and June 30, 2018 at:

Service Address: \_\_\_\_\_

Services under my Account (*check*):  Water Service  Wastewater Service  Solid Waste Disposal Service

By signing this form below, I am confirming that the above information is correct and that (1) I am the person identified above; (2) I have not received money or compensation for any of the claims involved in this case; (3) I will abide by, and be limited to, the payment amount approved by the Court; and (4) I will notify the Class Administrator if my address changes.

**I declare under penalty of perjury that the information given above is true and correct.**

Signature of Account Holder: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Questions, visit [WEBSITE] or call the Class Administrator at (888) 654-1271

# **Exhibit F**

## SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

The Montana Thirteenth Judicial District Court, Yellowstone County ("Court") authorized this Summary Notice. This is not a solicitation from a lawyer.

This notice is to inform you about a proposed settlement that will resolve the class action lawsuit known as *Houser v. City of Billings*, Cause No. DV 18-0778, which was filed in District Court in Yellowstone County by customers who paid for water, wastewater, and solid waste disposal from the City of Billings ("City"). The customers are also seeking refunds of franchise fees the City charged added to their monthly bills. The customers contend that the City violated their right to due process by charging the franchise fees. The City denies that it violated due process. The parties have agreed, however, to settle this case and have presented a proposed settlement agreement to the Court.

**CLASS:** For purposes of effectuating this settlement, the Court has certified settlement classes consisting of customers who paid the City for (a) water; (b) wastewater services; and/or (c) solid waste disposal services between February 2, 2015, and June 30, 2018.

**HOW DO YOU GET A PAYMENT:** Class Members that are still City customers will receive their settlement as a rebate that will be deducted from a future utility bill. If you receive a postcard from the Class Administrator identifying you as a Class Member and you are a current water, wastewater, and/or solid waste disposal customer, you do not need to take any action to receive a rebate. If you are not a current City customer, but were a City customer between February 2, 2015, and June 30, 2018, you must file a Claim Form to receive a settlement payment. If you are a current customer and you do not receive a postcard from the Class Administrator identifying you as a Class Member, you must file a claim in order to receive a settlement payment. You can obtain a Detailed Notice and claim form package containing everything you need by calling or visiting the website below to get one. **Claim forms are due by August 31, 2023.** If you are unsure about whether you need to file a Claim Form, please review the Detailed Notice and claim form at the website below. If you are not a current customer, but you were a customer at any time between February 2, 2015 and June 30, 2018, you must file a claim to receive a settlement payment. If you are a current customer and you received a postcard identifying you as a Class Member, you do not need to file a Claim.

**WHAT ARE YOUR OPTIONS:** If you don't want a payment and you don't want to be legally bound by the settlement, you must **exclude yourself** by mailing an Opt-Out Form to the City of Billings Class Administrator, which must be postmarked by August 31, 2023, in order for you to be able to sue, or continue to sue, the City about the legal claims in this case. If you exclude yourself, you will not get a payment from this settlement. If you stay in the class, you may also **object to the proposed settlement**. The Detailed Notice describes how to exclude yourself or object. You must exclude yourself or object by mailing your Opt-Out Form or objection which must be postmarked by **August 31, 2023**, and sent via first-class mail to: City of Billings Class Administrator, PO Box 25190, Santa Ana, CA 92799. Please review the Detailed Notice for full details on excluding yourself or objecting to the proposed settlement.

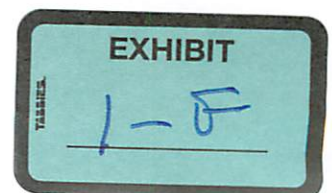
**FAIRNESS HEARING:** The Court will hold a Fairness Hearing in this case at the Yellowstone County Court House located at 217 N. 27th Street, Billings, MT 59107 on \_\_\_\_\_, 2023, at \_\_\_\_\_ a.m. in Department \_\_\_\_\_. At the hearing, the Court will consider whether to approve the Settlement and Class Counsel's attorney fees and costs in the amount of \$925,000.00. You may appear at the Fairness Hearing personally or with counsel, but you don't have to.

### FURTHER INFORMATION:

For more details: (a) call the City of Billings Class Administrator at (888) 654-1271 or by mail at PO Box 25190, Santa Ana, CA 92799; or (b) Class Counsel Matthew Monforton by phone at (406) 570-2949, by mail at Monforton Law Offices, P.C., P.O. Box \_\_\_\_\_, Bozeman, MT 59718, or by e-mail at \_\_\_\_\_ .com. **The Detailed Notice describing the Settlement and other court documents is available online at**

\_\_\_\_\_.

**PLEASE DO NOT CONTACT THE COURT.**



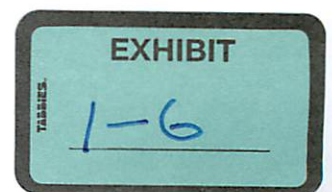
# Exhibit G

## RELEASE OF CLAIMS

- Releasers:** Terry Odegard, Thomas Zurbuchen, Roger Webb, and Susan McDaniel, on behalf of themselves individually and as Class Representatives (“**Class Representatives**”) for the Water Class, Wastewater Class, and Solid Waste Disposal Class (collectively, the “**Plaintiff Classes**”) in the matter of *Terry Houser et al. v. City of Billings*, Cause no DV 18-0778 before the Thirteenth Judicial District Court in Yellowstone County, Montana.
- Releasee:** The City of Billings, and its successors, City Council Members, political subdivisions, subsidiaries, affiliates, representatives, employees, adjusters, successors, assigns, agents, insurers and attorneys, (the “**City**”).
- Litigation:** That Certified Class action known as *Houser v. The City of Billings*, Cause No. DV 18-0778, before Thirteenth Judicial District Court in and for Yellowstone County, Montana.
- Dispute:** Dispute over franchise fees charged by the City upon water, wastewater, and solid waste disposal services from April 1992 through June 30, 2018 on services provided by the City Public Works Department.
- Settlement Amount:** \$3.6 million.

## RECITALS

- A. Between April 1992 and June 2018, the City collected franchise fees from its water, wastewater service, and solid waste disposal service customers.
- B. Terry Houser, Terry Odegard, Roger Webb, Mae Woo, Kathryn Zurbuchen, and Thomas Zurbuchen filed a class action complaint against the City on May 16, 2018. The Complaint was based upon the City’s imposition of franchise fees that were included in the cost of water, wastewater, and solid waste disposal services beginning in April of 1992. Plaintiffs’ complaint was captioned *Houser, et al. v. The City of Billings*, Case No. DV 18-0778, before Montana’s Thirteenth Judicial District Court in and for Yellowstone County.
- C. On September 21, 2018, the *Houser* Plaintiffs filed an Amended Complaint adding Clayton Fiscus as a Plaintiff. (Doc. No. 35).
- D. On April 10, 2019, the District Court certified the *Houser* case as a class action. (Doc. No. 74). The Court excluded from the *Houser* classes, any person or entity who paid a franchise fee under a written contract with the City of Billings or who paid the franchise fee under a Subdivision Improvement Agreement.



- E. During the course of the *Houser* litigation, Plaintiffs Terry Houser, Kathryn Zurbuchen and Clayton Fiscus died. Plaintiff Mae Woo withdrew from the case and was dismissed as a Class Representative.
- F. On October 9, 2019, Gary McDaniel and Susan McDaniel filed a class action complaint against the City on behalf of themselves and those who paid franchise fees pursuant to a Subdivision Improvements Agreement. The case was captioned *McDaniel v. the City of Billings*, Case No. DV 19-1444, before the Montana Thirteenth Judicial District Court, in and for Yellowstone County. Subsequently, Gary McDaniel was dismissed from the McDaniel case.
- G. In *McDaniel v. City of Billings*, Cause No. DV 19-1444 (“*McDaniel*”), the Court entered Partial Summary Judgment on January 19, 2022 on Count I, in favor of McDaniel and against the City, declaring the franchise fees to be unlawful sales taxes and permanently enjoined the City from imposing them.
- H. The parties have stipulated to the dismissal of the remaining claims in *McDaniel*.
- I. Pursuant to a Joint Motion of the Class Representatives in the Houser case, the class definitions in the Houser case were amended to include the putative members of the McDaniel case. Pursuant to Court Order, the Amended Class Definitions in the Houser case are as follows:
  - i. The Water Class. All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.
  - ii. The Wastewater Class. All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.
  - iii. The Solid Waste Disposal Class. All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

Excluded Parties. The Certified Classes, as amended above, shall not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including: County Water District of Billings Heights; Lockwood Area/Yellowstone County Water and Sewer District; Phillips 66 Refinery; Meadowlark Capital, LLC; City of Power, Wyoming; City of Laurel, Montana; Mackenzie Disposal, Inc.; Republic Services of Montana; Stillwater County, Montana; Two Tough Guy Services, LLC; and Yellowstone County Solid Waste Disposal District. (the “Excluded Parties”).



- J. The Class Representatives, including Susan McDaniel, entered into a Settlement Agreement with the City of Billings. On \_\_\_\_, January, 2023, the Court issued an Order Preliminarily approving the Settlement.
- K. On \_\_\_\_\_, 2023, the Court held a fairness hearing in connection with the Settlement, after which the Court entered a Final Approval Order and Judgment approving the Settlement.
- L. The Class Representatives execute this RELEASE OF ALL CLAIMS on behalf of themselves and on behalf of all Members of the Certified Classes who did not opt-out of the Settlement, pursuant to the terms of the Settlement Agreement and the Court's approval Order.

## THE RELEASE AGREEMENT

### 1. RELEASE

Upon the Effective Date of the Settlement entered by and between the Class Representatives and the City, and in consideration for payment of the Settlement Amount by the City, the Class Representatives and all members of the Plaintiff Classes who do not timely elect to opt out of the Settlement, for themselves and for their assigns, agents, representatives, attorneys, heirs, executors, administrators, and beneficiaries, release and discharge the City and its successors, City Council Members, political subdivisions, subsidiaries, affiliates, representatives, employees, adjusters, successors, assigns, agents, insurers and attorneys from any and all actions, claims, causes of action, demands, or expenses for any and all damages, injuries, or losses of any kind whatsoever, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of or relating to: (a) the franchise fees imposed by the City prior to June 30, 2018; and (b) claims that were asserted or could have been asserted in *Houser et al. v. City of Billings*, Cause No. DV-18-0778 or *Susan McDaniel v. City of Billings*, Cause No. DV-19-1444, each before the Montana Thirteenth Judicial District Court, Yellowstone County. Releasors release all claims and potential claims against the Releasee, whether arising at law or in equity for damages, or attorney fees, or expenses, in connection with, arising from, or related to the franchise fees imposed and/or charged by the Releasee on water, wastewater, and solid waste disposal services.

Releasors warrant and represent that Releasors are not reserving any claims against the Releasee. Releasors are knowingly and intentionally releasing any and all claims that Releasors may have against the Releasee arising from or related to the franchise fees imposed by the City from April 1992 through June 30, 2018. Releasors further represent that it is Releasors' express intention that this Release be construed to the broadest extent possibly to fully, finally, and forever settle and compromise the Releasors' claims including potential claims, and the claims of the Plaintiff Classes, against the Releasee.

The Releasors acknowledge that Releasors, or a member of the Releasor class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is Releasors' intention to finally and forever settle and release the claims described above against the Releasee. This release remains applicable notwithstanding the discovery or existence of any additional or different facts, as to which the

Releasors, the Class Representatives and the Plaintiff Classes expressly assume the risk, and Releasors, the Class Representatives and the Plaintiff Classes freely and voluntarily give the release as set forth above.

## **2. FUTURE DAMAGES**

Inasmuch as all of the damages, injuries and/or losses arising in any way out of or resulting from the dispute described above may not be fully known, and hence may be more numerous or more serious than it is now understood or expected, the Releasors, the Class Representatives and the Plaintiff Classes expressly agree, as a further consideration of this entire agreement, that this Release applies to any and all damages, injuries, and/or losses of any kind arising out of or resulting in any manner from the City charging franchise fees on water, wastewater, and solid waste disposal services from April 1992 to June 2018, even though now unanticipated, unexpected and unknown, as well as any and all damages, injuries and/or losses which have already developed and which are now known or anticipated.

## **3. NO ADMISSION OF LIABILITY**

Releasors, the Class Representatives and the Plaintiff Classes understand that the Settlement Amount and additional terms contained in the Settlement Agreement (including this Release) are accepted as the sole consideration for full satisfaction and accord to compromise disputed claims, and that neither the payment of the Settlement Amount by the Releasee or agreement to the terms nor the negotiations for the settlement shall be considered as any admission of liability or damages by the Releasee.

## **4. APPORTIONMENT OF PAYMENT TO CLASS MEMBERS**

The Settlement Amount shall be distributed to the Plaintiff Classes in accordance with the distribution provisions contained in the Settlement Agreement, or as otherwise directed by the Court.

## **5. NO ADDITIONAL CLAIMS**

Releasors represent that no additional claims are contemplated against the Releasee or any other party that is or may be potentially liable for the damages, injuries, or losses for which this Release is given. This includes any appellate claim.

## **6. TAXATION**

Neither Releasee nor Releasee's attorney make any representations about the taxability of any portion of the consideration made in exchange for this Release and Settlement. Class Members shall bear sole responsibility for consulting their tax and accounting professionals and shall bear sole responsibility for any and all tax consequences and tax liability arising from the Settlement Payment, this Release and the Settlement Agreement.

## **7. SEVERABILITY**

The parties expressly agree that should any term, provision or clause of this Release be found unenforceable, then the remaining terms shall be fully severable so that all remaining terms, provisions, and clauses shall remain in full force and effect.

**8. FULL AGREEMENT, AMENDMENT, & CHOICE OF LAW**

This Release shall not be modified, amended, or changed in any respect except by prior, written agreement by all parties or as expressly provided by the Court with respect to those matters subject to the Court’s authority under Mont. R. Civ. P. 23. Further, the law of the State of Montana shall apply to any issue raised regarding the interpretation, enforcement, or breadth of this Agreement.

**9. DISCLAIMER AND ACKNOWLEDGMENT**

Releasers and the Class Representatives have carefully read the foregoing, discussed its legal effect with class counsel, understand the contents thereof, and sign the same of their own free will and accord after consultation with class counsel and financial representatives.

**10. BINDING EFFECT**

This Release shall be binding upon the Releasers, the Class Representatives, members of the Plaintiff Classes, and any of their family members, heirs, successors, personal representatives, and assigns.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

By: **The Class Representatives**

\_\_\_\_\_  
Terry Odegard

\_\_\_\_\_  
Thomas Zurbuchen

\_\_\_\_\_  
Roger Webb

\_\_\_\_\_  
Susan McDaniel

Approved as to form and content:

---

Matthew Monforton  
32 Kelly Court  
Bozeman, Montana 59718

Attorney for the Class Representatives and McDaniel

4862-7460-8964, v. 1

# **Exhibit H**

**OPT-OUT FORM**

*Terry Houser, et al. v. City of Billings*, Cause No. DV 18-0778, Montana Thirteenth Judicial District Court, Yellowstone County

**This is NOT a Claim Form. It EXCLUDES you from this Class Action.  
DO NOT use this Form if you wish to remain IN this Class Action.**

Name(s): \_\_\_\_\_  
(Please print all names on the account, including former names)

Address: \_\_\_\_\_  
Street City State Postal Code

Telephone: \_\_\_\_\_ Service Address: \_\_\_\_\_  
Area Code/Phone No. (Ext. if applicable)

By signing and returning this form, I confirm that I do not want to be included in the Class Action lawsuit referenced above.

I understand that by opting out, I am giving up my right to receive any payments from any Settlement. If you exclude yourself, you will not receive any rebate. By opting out, I understand that I retain the right to file my own individual lawsuit against the City of Billings.

I affirm that I want to **opt-out** of this Class Action Lawsuit.

If you wish to opt-out of this Class Action, please mail this completed and signed form to the addresses listed below.

\_\_\_\_\_  
Date Signed Signature of Each Class Member or Executor, Administrative or Personal Representative on the account

\_\_\_\_\_  
Date Signed Signature of Each Class Member or Executor, Administrative or Personal Representative on the account

**This form must be postmarked to the Settlement Administrator  
NO LATER THAN August 31, 2023 at the addresses below,  
or else you will lose your right to opt-out.**

**Class Administrator  
PO Box 25190  
Santa Ana, CA 92799  
(888) 654-1271**

**Or Visit the Website: \_\_\_\_\_**

