

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

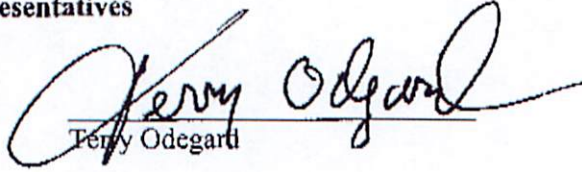
Approved as to form and content:

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]

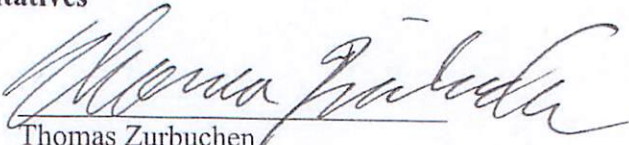
By: **The Class Representatives**


Terry Odegard

Dated this 16 day of March, 2023

[Signatures to follow]

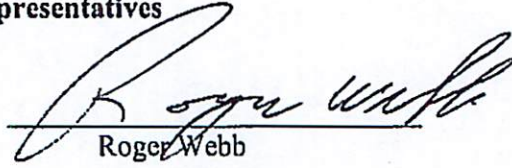
By: **The Class Representatives**


Thomas Zurbuchen

Dated this 16 day of March, 2023

[Signatures to follow]

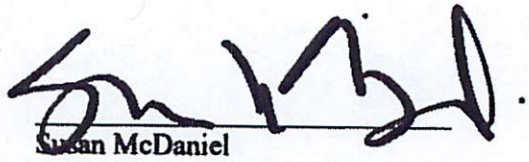
By: **The Class Representatives**


Roger Webb

Dated this 16th day of March, 2023

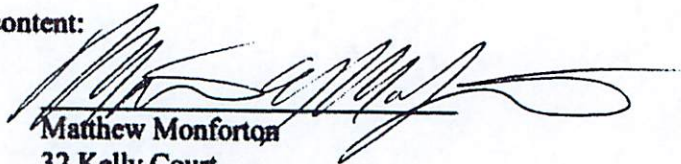
[Signatures to follow]

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