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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

**JOINT MOTION
FOR FINAL APPROVAL
OF THE SETTLEMENT, NOTICE
PLAN, AND FOR ENTRY OF
FINAL JUDGMENT**

Defendant City of Billings and Plaintiff Class Representatives move, pursuant to Mont. R. Civ. P. 23(e), for Final Approval of the Settlement and for the entry of Final Judgment. This motion is intended to bring to conclusion two contentious and hard-fought class action cases that have been extensively litigated over five years. The Court should grant this Motion because: (a) the Parties have satisfied the requirements of Mont. R. Civ. P. 23(e); (b) the Parties provided notice to Class Members as directed by the Court; (c) no objections have been filed to the Settlement;

and (d) no objections have been filed to Plaintiffs' Motion for Attorney Fees and Costs. Thirteen Class Members opted-out of the Settlement¹.

The City and the Class Representatives stipulate and move the Court to enter a Final Judgment consistent with the Proposed Final Judgment attached hereto as Exhibit "A".

On March 31, 2023, the Court made a preliminary determination that the settlement before the Court was fair, adequate and reasonable. (Doc. 288). The Class Representatives brought this case on May 16, 2018. (Doc. 1). The Court certified three classes on April 10, 2019. (Doc. 74). The record reflects that, after class certification, it took the Parties roughly 47 months to achieve settlement.

The Parties conducted extensive discovery, and filed multiple dispositive motions. The record reflects extensive discovery that included the production of more than 83,000 pages of documents, 240 requests for admission, 96 interrogatories, 215 requests for production, 12 depositions, live testimony from at least six individuals, and affidavits from 13 or more individuals. Additionally, there were two unsuccessful Court Ordered mediation conferences. A settlement was achieved after the second mediation failed only because of the extraordinary efforts of mediator Jonathan McDonald. After the second mediation failed, the mediator sent the Parties a letter with his recommendations for settlement, including the settlement amount of \$3.6 million and most of the material settlement terms. It is also worth noting that the mediator was initially selected and designated by Judge Pinski, not the Parties.

This case is unique because the Plaintiff classes are also the parties who ultimately will bear the financial burden of this case, both in terms of the cost of litigation and the settlement

¹ Those who opted-out of the Settlement are: Dick Anderson, Lenard P. Schoemer, Joe R. Pirami, Alan H. Staszczuk, Mary Beth Hennen, Jeff Erin Gray, Josh Vanoast, Ted Joanne Haverland, Eilene Crowder, Elite Industrial, LLC, Wayne Peterson, Jeffrey Magnusson, and Laura Greg Lukasik. (Doc. 333, ¶ 23).

amount. The City imposed an extra fee on the water, wastewater, and solid waste disposal services it provided to its customers, prior to June 30, 2018. Those fees were paid by the City's customers, but the fees were placed into the City's general fund where they were used primarily to fund public safety services, such as the fire and police departments. The cost of this litigation and the settlement amount will be paid by the City from its general fund and not from revenue derived from water, wastewater, or solid waste disposal services. Thus, the ultimate source of funds to pay for this litigation will be the City taxpayers. For the most part, the franchise fees and the taxes are being paid by the same people and companies. That factor weighs in favor of approving the settlement. Continued litigation will increase costs and attorney fees in this matter, which will further burden the Class Members as taxpayers. The Settlement Amount of \$3.6 million is substantial, but considerably less than the initial amounts sought by the Plaintiffs. However, since the only source of repayment comes from the Class Members in their capacity as taxpayers, a larger settlement amount would not necessarily provide further benefit to the Class Members.

“Settlement is a strongly favored method for resolving disputes, particularly ‘where complex class litigation is concerned.’ *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ... The court need not ask whether the proposed settlement is ideal or the best possible; it determines only whether the settlement is fair, free of collusion, and consistent with the named plaintiffs fiduciary obligations to the class.”, *Kinney v. Nat'l Express Transit Servs. Corp.*, 2018 U.S. Dist. LEXIS 10808 (E.D. Cal. Jan. 22, 2018).

I. Procedural Background.

On March 31, 2023, The Court granted Preliminary Approval of the Settlement, (Doc. 288); issued an Order Amending the Class Definitions in the *Houser* Case, (Doc. 290); issued an Order on Hearing Dates and other deadlines, (Doc 289); and issued an Order Approving the

Settlement Notice and Other Settlement Documents, (287). The Parties notified the Court regarding problems with the Notices sent to some Class Members. Thereafter, the Court approved a Cure Plan to provide additional Notices to Class Members. (Doc. 302). Pursuant to the Cure Plan, an additional Notice called “The Important Additional Information Notice” was provided to Class Members. (Docs. 305, 306, & 333). The Parties and the Class Administrator have complied with the Court’s Orders. Since the Court granted preliminary approval of the Settlement, they have provided multiple notices to Class Members as required by the Court’s Orders. (Doc. 333). The Court’s Preliminary approval of the Settlement, the Cure Plan, and the City’s approval of the Settlement have also been the subject of extensive media attention. (See Exhibit “B” hereto).

The Class Administrator’s Declaration addressed the Court approved Notice Plan:

Simpluris believes that the extensive, multi-layered, multi-channel notice accomplished between the efforts undertaken by Simpluris and the City comprise the best notice plan for maximizing inclusion and participation of Class Members and will result in the highest number of payments to Class Members in the Settlement.” (Doc. 333, ¶ 14).

A Summary of Recent Material Events, including details on efforts to provide notice to Class Members is summarized at the end of this Motion.

II. Background of the Class Action

On April 13, 1992, the Billings City Council enacted a resolution establishing a franchise fee on water and wastewater services. The Billings City Council also assessed a franchise fee on solid waste disposal services, which was increased by resolution beginning on July 1, 2012. The franchise fees were established by City resolution and were charged in connection with using City water, wastewater, and solid waste disposal services.

On May 14, 2018, the City Council decided to stop charging franchise fees on water, wastewater, and solid waste disposal services effective June 30, 2018. On November 12, 2019, the

Billings City Council formally adopted a resolution repealing Resolution 92-16531, the resolution that originally added a franchise fee to the cost of water and wastewater service beginning in 1992.

On May 16, 2018, Class Plaintiffs filed their Complaint against the City. Class Plaintiffs challenged the legality of the franchise fees and sought a declaration that the franchise fees imposed by the City were sales taxes that violated Mont. Code Ann. § 7-1-112(1).

The Court certified this case as a class action on April 10, 2019, more than four years ago. (Doc. 74). This case was not certified for settlement purposes. This case was certified for litigation. The record demonstrates that this case involved extensive, time-consuming, and expensive discovery and litigation. There have been no allegations of collusion or conflicts of interest. There is no evidence of collusion or conflicts of interest. The Parties achieved a settlement after multiple Court rulings on dispositive motions and through Court ordered mediation.

III. Mediation and Settlement

After more than 4.5 years of complex and contentious litigation, this Court has before it a global resolution of the remaining outstanding issues involved in both *Houser* and *McDaniel*. The proposed Settlement Agreement is the result of extensive efforts by the parties and Mediator Jonathan McDonald to achieve a resolution that will fully and finally resolve the substantial, complex issues raised in this action. The settlement was reached in arm's-length negotiations conducted in good faith, after substantial discovery and after the Court ruled on multiple substantive motions.

The City filed a motion to compel Plaintiffs to mediate this case on December 13, 2019. (Doc. 126). The Court granted the City's motion on March 2, 2022. (Doc. 129). The Parties formally mediated this case before Jonathan McDonald on May 13, 2020. The mediation failed and did not achieve a settlement.

On March 11, 2022, the City filed a second Motion to compel the Plaintiffs to mediate this case. (Doc. 248). The Court granted the City's motion. (Doc. 267). The Court ordered the Parties to mediate these cases a second time again using independent mediator, Jonathan McDonald. The Parties participated in a second formal mediation conference in Billings on September 15, 2022. The second mediation conference was not successful. However, after the failed mediation conference, the Mediator continued to press for a settlement. On October 17, 2022, the Mediator wrote to Class Counsel and counsel for the City stating the Mediator's recommendations for the terms of a settlement, including the settlement amount of \$3.6 million. Ultimately, the Parties agreed to settle these cases when Plaintiffs and the Defendant accepted and agreed to the settlement terms proposed and recommended by the Mediator. The proposed Settlement Agreement is based upon the Mediator's recommendations.

The record before the Court demonstrates that the Settlement was not the result of any collusion, but rather was achieved because of the of the Mediator, after years of extensive litigation. The fact that the Settlement Amount (\$3.6 million) and many of the material terms of the Settlement were suggested by the Mediator, and not the parties, demonstrates the absence of any collusion in connection with the Settlement. The record of litigation over 4.5 years and the manner in which the Settlement was achieved demonstrates that the proposed Settlement is fair, adequate and reasonable.

The Court has previously found that Class Counsel met the requirements to serve as Class Counsel under Rule 23(g). The Court has also recognized Class Counsel's diligence in pursuing the present litigation. *See Houser*, (Doc. No. 230, p. 27). Class Counsel has adequately represented the Water Class, the Wastewater Class, and the Solid Waste Disposal Class.

IV. Legal Authority Authorizing Settlement

Under Mont. R. Civ. P. 23(e), a settlement can only be entered with the Court's approval. Under Mont. R. Civ. P. 23(e)(1), the Court must direct notice of a proposed settlement "in a reasonable manner to all class members who would be bound by the proposal." Mont. R. Civ. P. 23(e)(1). The Court has entered certain Orders regarding the delivery of class notice in this case. (Doc. 257, Order Granting City of Billings' Motion to Extend Time to Send Out Notices); (Doc. 259, Order Requiring Additional Class Notice). The Parties and the Class Administrator have provided reasonable notice to the Class Members through mailings, emails, advertisements, public announcements at locally televised City Council meetings, and various websites including those for the City, Facebook, and others. (Doc. 333, ¶ 14). Additional Notices were provided through the Court approved Cure Plan to provide additional Notices and Corrected Notices to some Class Members. (Doc. 302).

In Pallister v. Blue Cross & Blue Shield of Mont., Inc., 2012 MT 198, 366 Mont. 175, 285 P.3d 562, the Court identified the factors to be considered by the Court in approving a settlement when class certification was for litigation:

"Generally speaking, "[a] proposed settlement agreement is entitled to a presumption of fairness where: '(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) **only a small fraction of the class objected.**'" *In re CertainTeed Corp. Roofing Shingle Prods Liab Litg.*, 269 F.R.D. 468, 484 (E.D. Pa. 2010). (Emphasis added).

The uncontroverted facts and the Court record demonstrate that the Settlement meets all of the factors identified above:

Arm's Length Negotiations. Settlement was achieved after years of contentious litigation, extensive discovery, multiple dispositive motions, several adversarial hearings, and two

failed mediations. The actual settlement terms were suggested by the mediator, not any of the Parties. The negotiations were at arm's length.

Sufficient Discovery. The Parties spent years engaged in extensive discovery, including more than 83,000 pages of documents, 12 depositions, 240 requests for admission, 96 interrogatories, and 215 requests for production. Additionally, there were more than 13 affidavits filed and there were several adversarial hearings where at least six individuals presented live testimony. The extent of discovery was sufficient for the purposes of settlement.

Experience in Similar Litigation. The Court has recognized the experience and background of Class Council. The experience of Class Council is detailed in their Motion for Approval of Attorney Fees and Costs. The City has never disputed the qualifications, experience, or background of Class Council. Similarly, Class Council has acknowledged that defense counsel has decades of experience litigating complex cases. (Doc. 326, p. 16, This case was “aggressively defended by highly experienced defense counsel.”) The experience of counsel is not at issue.

Objections. There have been no objections filed by any Class Members. (Doc. 333, ¶ 24). As noted above, Montana courts have recognized a presumption of fairness exists when only a small fraction of the class objects. *See Pallister*, 2012 MT 198, ¶ 27, 175, 285 P.3d 562 (*citing In re CertainTeed Corp. Roofing Shingle Products Liability Litigation*, 269 F.R.D. 468, 484 (E.D.Pa.2010)). In the present case, there were zero objections to the settlement and zero objections to Class Counsel's motion for approval of attorney's fees. (Doc. 333, ¶ 24). The fact that not a single party objected to the settlement strongly favors the presumption that the settlement is fair, reasonable, and adequate.

Other Settlement Factors. In addition to the Rule 23(e) and presumption of fairness factors described above, the nature of the Plaintiff classes in this case favors approval of this settlement. First, \$3,600,000 is a substantial financial award. While this amount does not represent the total amount of damages alleged in this case, the attendant costs and litigation risks of continuing with the lawsuit make the settlement reasonable. As other Courts have noted, a cash settlement that is only a fraction of the potential recovery does not per se render a settlement inadequate or unfair. *Officers for Justice v. Civil Service Commission of City & County of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). This factor is especially true in cases where monetary relief is not the only relief requested by the Plaintiffs. *Id.* Instead, “[i]t is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.” *Id.*

The main request for relief in this case was always nonmonetary. Class Plaintiffs’ first claim, and one of their primary stated goals, was to obtain a ruling finding that the City’s franchise fees were illegal sales taxes. Plaintiffs received a Summary Judgment Order in the *McDaniel* case finding the franchise fees to be unlawful and enjoining the City from imposing illegal sales taxes upon Plaintiffs in the future. (*McDaniel*, Doc. No. 102). Since the case remains ongoing, the Order finding the franchise fees to be illegal sales taxes was not a final order. The Settlement Agreement makes the Summary Judgment Order a Final Order. Further, the Settlement Agreement eliminates the City’s ability to appeal and challenge the ruling on the legality of the franchise fees. These two components significantly benefit the class. Any appeal would cause uncertainty and potential risk that the Montana Supreme Court could reverse this Court’s decision. Even if the ruling was affirmed, the appeal would still take significant additional time and result in the accumulation of

more attorney's fees—fees that will indirectly be borne by the class members that remain citizens and taxpayers in the City of Billings.

The Court must also address the amount of the Proposed Settlement. As noted above, the amount of the Settlement is the amount recommended for settlement by independent mediator Jonathan McDonald.

The first mediation conference in May of 2020 did not achieve a final settlement. However, Court pleadings reveal that the Parties agreed upon the amount of a settlement during that mediation conference, but the Parties could not agree upon other material settlement terms. The agreed upon settlement amount in May of 2020 was \$2.6 million, meaning the proposed Settlement is \$1 million more than what the Parties agreed to in May of 2020. Given the extensive litigation since May of 2020, the increased Settlement Amount is not surprising. Since the first mediation conference in May of 2020, the Parties briefed and litigated numerous dispositive motions in both the *Houser* case and the *McDaniel* case. As noted below, the Court's Orders on those dispositive motions substantially narrowed the *McDaniel* case. While the Plaintiffs' damage claims were significantly reduced, those dispositive motions and the ongoing litigation required substantial effort by all of the attorneys involved.

In discussing the amount of the Settlement, it is also important to note that the Settlement will be paid out of the General Fund of the City of Billings. Essentially, this means that the Settlement will be paid by funds primarily collected from the Billings taxpayers. The Settlement will not be paid by the Public Works Department and will not be paid with revenue derived from the provision of water, wastewater, and solid waste disposal services. After the payment of attorney fees to Class Counsel, the expenses of the Class Administrator, and other expenses, the balance of the Settlement Amount will be rebated to customers of the Public Works Department of the City.

With limited exceptions, the class members receiving settlement money are, for the most part, the very taxpayers who will fund the Settlement. Thus, this case is unique in that the claimants themselves are the parties who will bear the burden of the settlement as taxpayers. Any additional litigation will continue to drive up attorney fees and expenses for both the City of Billings and the Plaintiffs. Indirectly, Plaintiffs bear the burden of both parties' attorney's fees. The Settlement Agreement is a fair, reasonable, and adequate means to resolve this litigation, and the Court should approve the Settlement Agreement.

Other factors to consider in connection with the amount of the Settlement include the cost of continued litigation and litigation risk. This case involves a number of complex legal and factual issues. Many of the legal issues, such as the legality of the franchise fees, were questions of first impression that have not previously been addressed by any Montana court. Without a settlement, it is anticipated that the Parties would proceed to trial in 2024. Between now and the time of trial, the Parties are expected to incur substantial expert witness fees in preparation for trial. The Settlement eliminates the need and the expense of expert witnesses. The outcome of trial, for either Party, is uncertain. Regardless of how the trial ends, there is a significant probability that one of the Parties will appeal to the Montana Supreme Court. The Parties recognize that an appeal could delay final resolution of this case for a substantial period of time. Any appeal, regardless of the outcome, would also further increase the attorney fees and costs of this litigation, which further impacts class members as City residents and taxpayers.

The proposed Settlement will minimize future attorney fees and costs and will eliminate litigation risk through a Settlement Agreement that benefits all Parties. The proposed Settlement meets the Rule 23(e) requirements, and it is fair, reasonable, and adequate. The parties believe that the benefits from the proposed Settlement outweigh the risks and costs of continuing this litigation.

Therefore, the Court Should Approve the Settlement and Enter Final Judgment, Exhibit “A” hereto.

Assuming that the Court grants this Motion for Final Approval, the Parties anticipate that the Class Administrator will begin mailing checks to those Class Members who filed Allowed Claims approximately 32 days after the filing of a Notice of Entry of Judgment in this case.² (Assuming No Appeal). The Parties anticipate that all of the checks will be mailed by the end of January 2024. Similarly, the Parties anticipate that the City will rebate settlement funds to those Class Members who are Current Customer Class Members, at that time, with the expectation that all rebates will be completed by the end of January 2024. If some of the settlement checks are returned or are not cashed, the parties request that the Court establish a firm deadline by which time the settlement checks must be checks must be cashed. The Parties stipulate to a 160 day check cashing period, after which any uncashed checks shall be void and those settlement funds shall become Residual Funds.

In the event that any settlement checks are returned to the Class Administrator, the Parties ask the Court to direct the Class Administrator to use its discretion to exercise reasonable efforts to obtain updated mailing addresses for those Class Members, without incurring significant additional costs.

In the event that some Current Customer Class Members have terminated their services in recent months, the Parties ask the Court to direct the City determine if those terminated Class Members now have other water, wastewater, or solid waste disposal accounts with the City which could receive the settlement rebates. Those Current Customer Class Members who terminated

² The City is transitioning to new billing software for the Public Works Department, with an anticipated Go Live date of February 16, 2024. Accordingly, the City desires to initiate the rebates as soon as possible so that they will be completed prior to the software change.

their accounts and established new accounts at different service addresses would then receive their rebate through the new service account. In the event that the City cannot easily and inexpensively locate updated addresses for Class Members with terminated accounts, the City shall provide a list of those Class Members to the Class Administrator, on or before March 1, 2024. The Class Administrator shall use its discretion to identify updated mailing addresses for those Class Members (with terminated accounts) without incurring significant additional costs. If the Class Administrator is able to locate updated addresses for Current Customer Class Members with terminated accounts, the Class Administrator is authorized to issue Settlement checks to those customers. The City shall transfer, from the Rebate Fund to the Claim Fund administered by the Class Administrator, the amount of settlement awards payable to Current Customer Class Members who no longer has any active accounts with the City. The Class Administrator shall attempt to identify new location information for those Class Members. If the Class Administrator identifies new addresses, then the Class Administrator shall be authorized to send each Class Member a check equal to the amount that would have been refunded to them if they still had active accounts with the City. If the Class Administrator is unable to cost-effectively identify new location information, the Class Administrator, in its sole and absolute discretion, may declare any unrebated funds to be Residual Funds.

The Final Judgment should authorize and direct the Class Administrator to place a notice on the Settlement Website informing Class Members that their settlement checks must be cashed within 160 days of the date of mailing and that rebates must be claimed by July 1, 2024 (if not received through a rebate on the customers billing statement). Any Class Member who did not receive a settlement check or a rebate must contact the Class Administrator prior to April 1, 2024 or those Class Members shall be deemed to have waived and forfeited their portion of the

Settlement Funds. All rebates to Current Customer Class Members must be delivered to those customers on or before July 1, 2024. After July 1, 2024, any rebates that have not been claimed shall be declared to be Residual Funds. Effective July 1, 2024, any Current Customer Class Member who has not collected their rebate shall be deemed to have waived their right to a rebate and to a share of the Settlement Amount. To be clear, any check that is not cashed within 160 days of mailing should be declared void and those funds should then become Residual Funds. Similarly, any rebate that is not received or claimed by July 1, 2024 shall be deemed waived and shall be Residual Funds.

Any Settlement payments (checks from the Claim Fund and rebates from the Rebate Fund) that are waived and/or forfeited shall be Residual Funds. The Court should find that the waived and/or forfeited funds are not abandoned or unclaimed funds under Montana's Uniform Unclaimed Property Act, Montana Code Ann. § 70-9-801, et seq. The Residual Funds should be used first to pay the Class Administrator for any services it provided that were not covered by its Declaration Regarding Notice and Administration. (Doc. 333). The remainder of the Residual Funds should be Cy Press Funds that should be divided 50% to the City of Billings for the water, wastewater, and solid waste disposal accounts and 50% to the Billings YWCA, as an Access to Justice Organization. (In 2022, the YWCA's in-house attorney provided consultations to 175 victims).

The Parties jointly move the Court to approve payment of administrative fees and expenses to Simpluris in the amount of \$138,006.25. The amount of administrative fees and costs was disclosed by the Class Administrator through its Declaration. (Doc. 333). Additionally, the Parties jointly move the Court to approve additional compensation to Simpluris out of any Residual Funds for services (not included in the Class Administrator's Declaration) that Simpluris may provide after date upon which it mails the checks from the Claim Fund to Class Members with Allowed

Claims from the Claim Fund. The Class Administrator may provide additional services to Current Customer Class Members who no longer have current City accounts, including attempting to identify new address information for those Class Members and mailing settlement checks to those Class Members. If the Class Administrator provides additional services, it shall be entitled to payment out of the Residual Funds, if any.

Based upon the evidence presented, the Court record, and the absence of any objection to the Settlement, the Court should give Final Approval to the Settlement and enter Final Judgment, in accordance with the Settlement Agreement.

The Final Judgment should include:

1. The class definitions;
2. The full release language;
3. A statement listing those who timely opted-out of the settlement;
4. Final approval of the Settlement as being fair, reasonable, and adequate;
5. Approval of Class Counsel's motion for attorney fees and costs;
6. Approval of the Class Administrator's fees and costs as set forth in its Declaration, Doc. 333, ¶ 28;
7. Reimbursement of allowed expenses to the City; and
8. The agreed-upon Bar Order. Assuming that the Court grants this Motion for Final Approval, the Parties anticipate the Class Administrator mailing checks to those Class Members who filed Allowed Claims sometime in January and February.

DATED this 16th day of October, 2023.

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Summary of Material Events

March 31, 2023. The Court entered Final Judgment in *McDaniel*. Earlier judgments were certified as final and all remaining claims were dismissed with prejudice, except for the claims of the putative class members that are being asserted in the *Houser* case. The Court enjoined the City from imposing illegal sales taxes in the future on the plaintiffs. (McDaniel Doc. 150). The City filed Notice of Entry of Final Judgment. (McDaniel Doc. 151).

Settlement Website. Simpluris established a website for the Settlement. The Class Administrator posted the Settlement Notice, the Summary Notice, the Important Additional Information Notice, the claim form, the opt-out form, key court documents, the Order for

Preliminary Approval of the Settlement; and Plaintiffs' Motion for Attorney Fees and Costs on the website: <https://www.cityofbillingsfranchisefeesettlement.com/faq/>. As of September 20, 2023, there had been 14756 visitors to the settlement website. The total page views on the settlement website was 15,008. (Doc. 333, ¶ 20).

April 17, 2023. The City posted the Summary Notice of Settlement of the following social media platforms and/or websites: BillingsMT.gov; Twitter, Facebook, Instagram, Nextdoor, and LinkedIn. (Doc. 294).

April 17, 2023. Copies of the Settlement Notice were mailed and/or emailed to the Billings Gazette, Yellowstone County News, Laurel Outlook, KTVQ, KULR, Community Seven Television, KSVI, Montana Free Press, The Daily Montanan, Bismarck Tribune, Missoulian, Great Falls Tribune, Independent Record, Bozeman Daily Chronicle, Casper Star-Tribune, Montana Standard, and Billings Times. (Doc. 293).

April 18, 2023. Copies of the Summary Notice of Class Action Settlement were posted at: Billings City Hall, Billings Public Library, Municipal Court; Billings Logan International Airport; City of Billings Planning Department; Public Works Department for the City (Montana Avenue); Public Works Department for the City (Belknap Avenue); Yellowstone County Courthouse; Yellowstone County Sheriff's Office; Yellowstone County Treasurer's Office; and Yellowstone County Clerk and Recorder. (Doc. 295).

April 19, 2023. Simpluris, the Class Administrator, emailed copies of the Summary Notice of Class Action Settlement to 21,421 email addresses for current and former customers. (Doc. 306).

April 19, 2023. Simpluris mailed color coded postcard notices to 24,913 former customers (White card). The Postcard Notices directed customers to the Class Administrator's website for additional information. (Doc. 306).

April 21, 2023. The City mailed 38,141 copies of the Summary Notice of Class Action Settlement to its current customers. (Doc. 296).

May 1, 2023. The Court issued an Order approving a Cure Plan to provide additional Notice (Important Additional Information Notice) to current and former City customers. (Doc. 302). The same day, the City mailed the Important Additional Information Notice to the Billings Gazette, Yellowstone County News, Laurel Outlook, KTVQ, KULR, Community Seven Television, KSVI, Montana Free Press, The Daily Montanan, Bismarck Tribune, Missoulian, Great Falls Tribune, Independent Record, Bozeman Daily Chronicle, Casper Star-Tribune, Montana Standard, and Billings Times. (Doc. 303).

May 2, 2023. Simpluris emailed the Important Additional Information Notice to 21,421 current and former customers. (Doc. 306).

May 4, 2023. The City mailed the Important Additional Information Notice to 38,141 current customers. (Doc. 305).

May 5, 2023. Simpluris mailed color coded postcard notices to current customers: Eligible Current Customers (Blue card) 24,466; and Excluded Current Customers (Cherry card) 12,367. The Postcard Notices directed customers to the Class Administrator's website for additional information. (Doc. 309).

May 22, 2023. The City formally approved the Settlement at a regular (public) City Council meeting. (Doc. 310). The Settlement was discussed at an open public meeting that was broadcast on community television. Additionally, in accordance with the Court's Order Granting

Preliminary Approval, the Mayor read a statement during the meeting regarding the Settlement at four consecutive City Council meetings or work sessions. (Doc. 312). Copies of the Settlement Notice were available for the public at each of the City Council meeting and/or work sessions. (Doc. 312).

May 22, 2023. Simpluris provided Proof of Publication of the Summary Settlement Notice in: the Billings Gazette (April 21, April 27, & May 4, 2023); Missoulian (April 21, April 27, & May 4, 2023); Yellowstone County News (April 21, April 27, & May 4, 2023); The Great Falls Tribune (April 20, April 27, & May 4, 2023); The Billings Times (April 20, April 27, & May 4, 2023); and the Big Sky Business Journal (May 1 & May 15, 2023). (Doc. 309).

August 31, 2023. The Class Administrator has reported on its activity each week. As of October 4, 2023, the Class Administrator reports: (a) Former Customer Claims Filed 2,460 claims; and (b) Excluded Customer Claims Filed 802 claims.

August 31, 2023. The Court's Order granting Preliminary Approval of the Settlement established August 31, 2023 as the deadline for filing objections to the Settlement as well as objections to Plaintiff's Motion for Attorney's Fees and Costs. As of the August 31st deadline, no objections were filed.

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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 A

**PROPOSED
FINAL JUDGMENT**

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

TERRY HOUSER, TERRY ODEGARD,
THOMAS ZURBUCHEN, ROGER WEBB, on
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Plaintiffs,

-v-

CITY OF BILLINGS,
Defendant.

Cause No. DV 18-0778

Judge Michael Salvagni

**FINAL JUDGMENT
AND ORDER**

The Court certified three classes on April 10, 2019. (Doc. 74). Roughly 47 months later, on March 20, 2023, the Class Representatives and the City of Billings filed a Joint Motion for Preliminary Approval of a Settlement. (Doc. 282). On March 31, 2023, the Court entered a preliminary determination that the settlement was fair, adequate and reasonable. (Doc. 288). Also on March 31, 2023, the Court entered an Orders: (a) amending the Class Definitions to include the putative Class Members in the McDaniel case, referenced below; (Doc. 290); (b) Setting Hearing Dates and Other Deadlines; and (c) Approving Notice procedures and other Settlement Documents. Subsequently, the Court entered an Order on April 14, 2023 approving Revised Notices and a Mailing Plan. (Doc. 292). On May 22, 2023, the City Council of the City of Billings unanimously approved the Settlement during a regularly noticed City Council meeting. (Doc. 310).

There is a related companion case captioned *McDaniel v. City of Billings*, Case No. DV-19-1444, before the Thirteenth Judicial District in and for the State of Montana. Pursuant to the Settlement, the Court entered Final Judgment in the McDaniel case on March 31, 2023. (Doc.

150). The Court entered Final Judgment on McDaniel's injunction claim and dismissed all remaining claims with prejudice, except to the extent that those claims were included in this case. (Doc. 150). On June 19, 2023, the City of Billings filed Notice of Entry of Judgment. (Doc. 151).

The Court appointed Simpluris as the Class Administrator to facilitate Notices and the Settlement. (Doc. 279). Subsequently, the Class Administrator and the Parties have reported to the Court on their compliance with the Notice Plan. (Docs. 293-296, 304, 303-320, 321, 324, 327-330). On October 13, 2023, the City filed the Declaration of Simpluris by Jacob J. Kamenir Regarding Notice and Administration. (Doc. 333).

Based upon the evidence and the record before the Court, the Court finds that the Class Administrator and the Parties have complied with the Court Ordered Notice Plan and have provided Class Members with the best possible notice. Notice was provided to Class Members by multiple methods over a period of months. In addition to the initial Notices, the parties sought and obtained Court approval to provide an additional Notice to Class Members, the "Important Additional Information Notice". (Doc. 302). The methods and manner of providing Notice included: (a) two direct mailings from the City to 38,141 City customers; (b) two email notices to those current and former customers for whom the City had email addresses (21,419 [21,345 received] on April 19, 2023 & the Important Additional Information Notice – 21,395 [17,877 received] on May 2, 2023). (c) nine public postings; (d) mailings to 17 local, state, and regional media outlets; (e) advertising in local and state publications, including (1) the Billings Gazette; (2) the Yellowstone County News; (3) the Billings Times; (4) the Missoulian; (5) the Great Falls Tribune; and (6) the Big Sky Business Journal; (f) postings on the City's website and various social media platforms, including Facebook, Twitter, Instagram, Nextdoor, and LinkedIn; (g) announcements at four locally televised consecutive City Council meetings and Work Sessions;

(h) distributions of copies of the Notice of Settlement available at four consecutive City Council meetings and Work Sessions; (i) postings of notices and key documents on the Settlement Website established and maintained by the Class Administrator; and (j) mailings of postcard notices from the Class Administrator to: (a) 24,913 Former Customers (white card); (b) 24,466 Eligible Current Customers (blue card); and (c) 12,367 Excluded Current Customers (cherry card). (Doc. 329). The Class Administrator's Reports that the Settlement website has been visited by 14,756 unique visitors with 15,008 page views. (Doc. 333). Additionally, the Court notes that there has been substantial and significant media coverage of the Settlement and the notices that were mailed to Class Members. (Joint Motion for Final Approval, Doc. __, Exhibit "B").

Based upon the record before the Court, including the numerous Reports filed by the City and the Declaration of Simpluris, the Court finds that the extensive, multi-layered, multi-channel notice accomplished by Simpluris and the City comprised the best notice plan for maximizing inclusion and participation of Class Members, resulting in the highest number of payments to Class Members. (Doc. 333, ¶ 14),

The mailing deadline for objections to the Settlement and to the Class Representatives Motion for Attorney Fees and Costs was August 31, 2023. The Class Administrator received no objections to the Settlement and no objections to the Motion for Attorney Fees and Costs. (Doc. 333).

On October ____, 2023, the Class Representatives and the City moved for Final Approval of the Settlement and entry of Final Judgment in accordance with their Settlement Agreement. The Court held a Fairness Hearing on November 16, 2023 at which time additional evidence and argument were presented to the Court. Jennifer Duray, the Deputy Director of the Public Works

Department of the City testified as did _____, the _____ for Class Administrator Simpluris, and Class Representative _____.

ACCORDINGLY, GOOD CAUSE APPEARING, the Joint Motion of the Class Representatives and the City for Final Approval of the Settlement is **GRANTED**.

CLASS MEMBERS. Pursuant to the Court's Order of March 31, 2023 (Doc. 290), the Class Members include:

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, 2105, 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 Customer. The foregoing classes do not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including pursuant to the written contracts between the City and the 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.

Customers Who Opted Out. The following individuals or entities opted out of the Settlement: (1) Dick Anderson; (2) Lenard P. Schoemer; (3) Joe R. Pirami; (4) Alan H. Staszczuk; (5) Mary Beth Hennen; (6) Jeff Erin Gray; (7) Josh Vanoast; (8) Ted Joanne Haverland; (9) Eilene Crowder; (10) Elite Industrial, LLC; (11) Wayne Peterson; (12) Jeffrey Magnusson; and (13) Laura Greg Lukasik. (Doc. 333, ¶ 23). Accordingly, the foregoing customers who opted out of the Settlement shall not be bound by the Settlement and this Final Judgment and Order, and these customers will not participate in or receive any funds from the Settlement.

RELEASE OF ALL CLAIMS. The Settlement is a global settlement that includes a comprehensive Release of All Claims. The Class Representatives are directed to execute and deliver to the City of Billings the Release of All Claims referenced in the Settlement Agreement as **Exhibit “1-G”**, which is attached hereto and is incorporated herein by reference as though fully set forth. The Release of All Claims is binding upon all Class Representatives and All Participating Class Members, (All Class Members, excluding those 13 who opted out of the Settlement and who were listed above). As a material part of the Settlement, All Participating Class Members have released and discharged the City and other Released Parties of and from any and all claims pled or that could have been pled in the Complaint deriving from and/or related to and/or arising from the franchise fees. The Release is binding upon all Participating Class Members and shall fully, finally, and forever release, compromise, settle, and discharge any and all claims that the Participating Class Members may have against the City arising from or related to the franchise fees. The Participating Class Members are not reserving or retaining any claims, but are knowingly

and intentionally releasing any and all claims that arose prior to the date the Class Representatives sign the Release of All Claims, "Exhibit 1-G" to the Settlement Agreement. The Release and the Released Claims shall 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, meaning 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 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, her, or its decision to agree, object or not to object to the Settlement.

BAR ORDER. The Court further Orders that no party and no Participating Class Member may take any future action against any party (including, but not limited to the City of Billings) to the Settlement with respect to the subject matter of the Litigation described in **Exhibit "1-G"**. Specifically, this Bar Order is the Court's Order that all Releasing Parties, including all Participating Class Members are hereby 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 Claim(s) pursuant to the 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 the Settlement Agreement and this Final Judgment and Order. This Settlement

may be pled as a complete defense to any proceeding subject to the Settlement Agreement, Release of All Claims, and/or this Bar Order. This Bar Order prohibits all Participating Class Members from asserting, prosecuting, or making any claim that would be a Released Claim under the Settlement, this Final Judgment and Order, and/or the Release of All Claims, **Exhibit "1-G"** hereto. The Global Settlement ended, settled, and permanently resolved any and all disputes and controversies arising out of and/or related to the franchise fees charged by the City of Billings from April 1992 through June 2018. This Bar Order expressly prohibits any further litigation regarding the franchise fees.

The Settlement Amount. The City of Billings shall pay the Settlement Amount of \$3.6 million, which amount shall be disbursed as follows:

The Claim Fund (paid to and managed by the Class Administrator).

1. \$892,000.00 to Class Counsel for attorney fees, payable to Class Counsel. [Class Counsel shall provide the Class Administrator with payment information, the mailing address for the payment; and the tax identification number for any person or entity receiving a payment]. The payment of attorney fees to Class Counsel has been reduced by \$8,000, per the Motion for Attorney Fees, in order to pay service awards to the Class Representatives listed below. Class Counsel shall provide the Class Administrator with the social security number or tax identification number for any Class Representative receiving a service award.
2. \$25,000.00 to Class Counsel for costs; Class Counsel shall provide the Class Administrator with payment information, the mailing address for the payment; and the tax identification number for any person or entity receiving a payment].
3. \$2,000.00 to Tom Zurbuchen as a Service Award;

4. \$2,000.00 to Terry Odegard as a Service Award;
5. \$2,000.00 to Roger Webb as a Service Award;
6. \$2,000.00 to Susan McDaniel as a Service Award;
7. \$138,006.25 to Simpluris to cover its fees and expenses for acting at the Class Administrator. The Court approves payment from the Claim Fund to Simpluris of \$138,006.25 as compensation as Class Administrator. (See Doc. 303). The Class Administrator may provide additional services related to Current Customer Class Members who no longer have current City accounts, including attempting to identify new address information for those Class Members and mailing settlement checks to those Class Members. If the Class Administrator provides additional services, it shall be entitled to payment out of the Residual Funds, if any. Future compensation to the Class Administrator shall not exceed the amount of any Residual Funds. In the event that the Class Administrator seeks additional compensation, the Parties shall file a motion with the Court for approval of any additional compensation.
8. An amount to be determined to the Claim Fund to be managed by the Class Administrator from which the Class Administrator will send rebate checks to Former Customers who have Allowed Claims, and to Excluded Current Customers who have Allowed Claims, who will receive rebate checks. Within thirty (30) days of this Final Judgment, the Parties shall file a motion with the Court specifying:
 - A. The amount of the Claim Fund;
 - B. The number of Former Customers and Excluded Current Customers who have allowed Claims;

- C. The amount of money to be paid from the Claim Fund for each account (for Allowed Claims).

Simpluris reported that it received 802 claims from Excluded Current Customers, of which 748 were approved and are Allowed Claims. Similarly, Simpluris received 2,460 claims from Former Customers, of which 2,299 were approved and are Allowed Claims. Accordingly, pursuant to the Settlement, the Claim Fund shall include 3,047 Allowed Claims (748 Excluded Current Customers and 2,299 Former Customers). Only those Former Customer and Excluded Current Customer Class Members with Allowed Claims shall receive a portion of the Settlement Amount from the Claim Fund. All other Former Customer Class Members and all other Excluded Current Customer Class Members shall not receive any payment as part of the Settlement. Those claims that were disallowed by the Class Administrator or were filed after the mailing deadline are expressly denied.

The Rebate Fund (managed by the City).

9. \$4,000.00 to the City of Billings for mailing costs, pursuant to Section 9(d) of the Settlement Agreement;
10. \$18,988.14 to the City of Billings as reimbursement for mailing costs associated with the Important Additional Information Notice. (Docs. 302 & 303).
11. An amount to be determined to the Rebate Fund pursuant to which the City shall rebate to Participating Class Members who are Current Customers.

Court Approval of Payment Amounts.

The Parties, with the assistance of the Class Administrator, shall file a motion with the Court to approve the pro rata distribution of Settlement Funds to Class Members. The motion shall detail:

1. The number of Allowed Claims for (a) water, (b) wastewater, and (c) solid waste disposal to be paid by the Class Administrator from the Claim Fund.
2. The number of claims for Current Customer Class Members for (a) water, (b) wastewater, and (c) solid waste disposal to receive rebates from the City from the Rebate Fund.
3. The total number of Allowed Claims to receive payments or rebates from the Claim Fund and the Rebate Fund.
4. The amount of money remaining to pay or rebate to Class Members after the payment of allowed costs and expenses.
5. The Class Administrator's calculation of the dollar amount to be paid or rebated to each Allowed Claim, per account.

Upon review of the foregoing information, the Court will issue an additional Order authorizing the payment of the remaining amount of the Settlement Amount to Allowed Claims.

Payments to Class Members.

After this Final Judgment is entered, the City shall file a Notice of Entry of Judgment. Thereafter, assuming that no appeals have been filed in the 31 days following the filing of the Notice of Entry of Judgment, the Class Administrator may begin sending settlement checks to Former Customer Class Members and Excluded Current Customer Class Members who have Allowed Claims and the City may begin making rebates to Current Customer Class Members. The Class Administrator shall make reasonable efforts to make payments from the Claim Fund to Former Customers and Excluded Customers by the end of January, 2024. Similarly, the City shall make reasonable efforts to make payments from the Rebate Fund to Current Customer Class Members by the end of January, 2024. The Parties stipulate to a 160 day check cashing period,

after which any uncashed checks shall be void and those Settlement Funds shall become Residual Funds.

The Court authorizes and directs the Class Administrator to place a notice on the Settlement Website informing Class Members that their settlement checks must be cashed within 160 days of the date of mailing and that rebates must be claimed by July 1, 2024 (if not received through a rebate on the customers billing statement). Any Class Member who did not receive a settlement check or a rebate must contact the Class Administrator prior to April 1, 2024 or those Class Members shall be deemed to have waived and forfeited their portion of the Settlement Funds. All rebates to Current Customer Class Members must be delivered to those customers on or before July 1, 2024. After July 1, 2024, any rebates that have not been claimed by Current Customer Class Members are declared to be Residual Funds. Effective July 1, 2024, any Current Customer Class Member who has not collected their rebate is deemed to have waived their right to a rebate and to a share of the Settlement Amount. To be clear, any check that is not cashed within 160 days of mailing is declared void and those funds are Residual Funds. Similarly, any rebate that is not received or claimed by July 1, 2024 is deemed waived and is Residual Funds.

Any Settlement payments (checks from the Claim Fund and rebates from the Rebate Fund) that are waived and/or forfeited shall be Residual Funds. The Court finds that the waived and/or forfeited funds are not abandoned or unclaimed funds under Montana's Uniform Unclaimed Property Act, Montana Code Ann. § 70-9-801, et seq. The Residual Funds shall be used first to pay the Class Administrator for any services it provided that were not covered by its Declaration. (Doc. 333). The remainder of the Residual Funds are Cy Press Funds and shall be divided 50% to the City of Billings for the water, wastewater, and solid waste disposal accounts and 50% to the Billings YWCA, as an Access to Justice Organization.

In the event that any settlement checks are returned to the Class Administrator, the Class Administrator shall use its discretion to exercise reasonable efforts to obtain updated mailing addresses for those Class Members, without incurring significant additional costs. The Class Administrator shall make reasonable efforts to deliver the settlement amounts from the Claim Fund to all Class Members who filed Allowed Claims with the Class Administrator.

The waiver with respect to checks that were not cashed within 160 days of mailing is prudent and necessary to prevent the Class Administrator from incurring additional costs and expenses that would further diminish the amount of the Claim Fund to the detriment of all Class Members with Allowed Claims. Similarly, requiring Current Customer Class Members to receive (or claim their refund if not rebated to their account) by July 1, 2024 is prudent and necessary to prevent the City and the Class Administrator from incurring additional costs and expenses that would further diminish the amount of the Rebate Fund to the detriment of all Current Customer Class Members.

In the event that some Current Customer Class Members have terminated their services in recent months, the City shall attempt to determine if those terminated Class Members now have other water, wastewater, or solid waste disposal accounts with the City that could receive the settlement rebates. Those Current Customer Class Members who terminated their accounts and established new accounts at different service addresses shall then receive their rebates through the new service accounts. In the event that the City cannot easily and inexpensively locate updated addresses for Class Members with terminated accounts, the City shall provide a list of those Class Members to the Class Administrator, on or before April 1, 2024. The Class Administrator shall use its discretion to identify updated mailing addresses for those Class Members (with terminated accounts) without incurring significant additional costs. The City shall transfer, from the Rebate

Fund to the Claim Fund administered by the Class Administrator, the amount of settlement awards payable to Current Customer Class Members who no longer have any active accounts with the City.. The amount transferred shall be the combined pro rata amount for all of the Current Customer Class Members (with terminated accounts who do not have other active accounts with the City through which the settlement rebates may be paid). The Class Administrator is authorized to issue Settlement checks from the Claim Fund to those Class Members who were classified as Current Members, but who no longer have any accounts with the City, if the Class Administrator is able to locate new delivery addresses for those Class Members.

Cy Press Funds. In the event that any of the Settlement Amount is not expended on authorized expenses (as outlined herein) or on payments or rebates to Class Members, then the remaining funds in the Claim Fund and the Rebate Fund shall be designated Residual Funds, pursuant to Mont. R. Civ. P. 23(i). It is the intent of the Parties to disburse all of the Settlement Amount. However, there is a possibility that some rebates will not reach the Class Members. For example, checks to Former Customers and/or Excluded Customers may not be cashed or may be returned to the Class Administrator. If there are any Residual Funds remaining in the Rebate Fund after rebates have been given to all Current Customer Class Members, the City shall pay the Residual Funds to the Class Administrator. Those funds shall be designated as “Residual Funds”. In the event that there are Residual Funds, the Class Administrator shall hold the funds until September 15, 2024. Promptly thereafter, the Class Administrator shall report to the Court the amount of Residual Funds remaining and the outstanding compensation sought by the Class Administrator, if any. After the Court rules on the Class Administrator’s Motion for additional compensation, the Court shall order the Class Administrator to pay 50% of the remaining Residual Funds to the General Fund of the City of Billings where the Funds will be split as equally as

possible amongst: (a) the water fund; (b) the wastewater fund; and (c) the solid waste disposal fund. The Court shall also order the Class Administrator to pay the remaining 50% of the Residual Funds to the Billings YWCA, an Access to Justice Organization, pursuant to Mont. R. Civ. P. 23(i). (In 2022, the YWCA's in-house attorney provided consultations to 175 victims).

Class Administrator Final Report. On or before October 1, 2024, the Class Administrator and the City shall file a Report that shall specify:

1. The date checks were mailed from the Claim Fund, the number of checks mailed, and the total amount of the Claim Fund distributed by check;
2. The number of checks (and the aggregate dollar amount) that were not cashed or deposited prior to July 1, 2024;
3. The number of checks (and the aggregate dollar amount) that were returned to the Class Administrator;
4. The dates the City credited Current Customers with rebates from the Rebate Fund;
5. The amount of money expended from the Rebate Fund to Current Customer Class Members through rebates;
6. The amount of money transferred from the Rebate Fund to the Claim Fund administered by the Class Administrator for Current Customer Class Members who no longer have active accounts with the City. The Report shall identify the number of customers for whom the Class Administrator mailed checks to new addresses and the total amount pay by checks from the Class Administrator to Current Customer Class members who no longer have active accounts with the City;
7. The amount of money remaining in the Rebate Fund, if any, that was not rebated to Current Customer Class Members.

8. The amount of Residual Funds (Cy Press Funds) from the Rebate Fund and the Claim Fund, if any, remaining after: (a) payments have been made from the Claim Fund; (b) Rebates have been given from the Rebate Fund; and (c) payment of any additional compensation to the Class Administrator.
9. The amount of Residual Funds (Cy Press Funds) paid to the Billings YWCA and the date of payment.
10. The amount of Residual Funds (Cy Press Funds) paid to the City to be distributed to its Public Works Department and the date of payment, whether from the Claim Fund or from the Rebate Fund.

Retention of Jurisdiction. The Court retains jurisdiction to approve the amount to be paid to Simpluris, the amount to be paid to the Claim Fund, the amount to be paid to the Rebate Fund, the payment of the Cy Pres Funds, and other matters related thereto.

Dismissal. The Settlement is a global settlement and resolves all issues between the City and the Class Representatives and the Participating Class Members. The Settlement Agreement shall be binding upon the City, the Class Representatives, and the Participating Class Members. The Court shall retain jurisdiction over this case until the Settlement Amount has been distributed and all Cy Pres Funds, if any, are paid to the Billings YWCA. Thereafter, the Class Administrator shall file a Final Report with the Court. Thereafter, the Court will dismiss this case **WITH PREJUDICE**, as having been fully resolved on the merits.

Final Judgment. This judgment is a Final Judgment under Rule 54, M. R. Civ. P. Pursuant to Rule 6.6 of the Montana Rules of Appellate Procedure, the Court certifies this Judgment as a Final Judgment for appeal purposes.

DATED this ____ day of November, 2023.

4879-8302-7079, v. 6

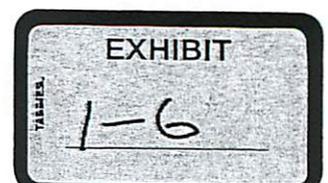
RELEASE OF CLAIMS

- Releasors:** 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, Katheryn 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

Releasors 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 Releasors, 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

Doug James
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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 B

NEWS ARTICLES

1. *Settlement proposed in class action suit against Montana's largest City*, Daily Montanan, March 21, 2023.
2. *Billings settles longstanding class-action lawsuit over contested utility fees*, Billings Gazette, March 22, 2023.
3. *City Ordered to Notify Resident in Bills of Class Action Suit on Franchise Fees*, Yellowstone County News, March 25, 2023.
4. *Notification error forces costly do-over in Billings utility fee lawsuit settlement*, Billings Gazette, April 27, 2023.
5. *Notice of Billings franchise-fee settlement sent out to wrong customers*, KTVQ, April 27, 2023.

6. *City corrects franchise fee settlement error with color-coded notices*, Billings Gazette, May 1, 2023.
7. *Franchise-fee settlement agreement reached in lawsuit against Billings*, KTVQ, May 22, 2023.
8. *Billings City Council approves \$3.6 million settlement in illegal franchise fee case*, Billings Gazette, May 23, 2023.
9. *Attorney Doug James explains class action settlement to Billings City Council*, Billings Gazette (Video), May 23, 2023.



GOVERNMENT & POLITICS JUSTICE

Settlement proposed in class action suit against Montana's largest city

Case dates back nearly five years and centers on 'franchise fees,' which were ruled illegal

BY: **DARRELL EHRICK** - MARCH 21, 2023 6:56 PM



 Thomas Zurbuchen of Billings, one of the plaintiffs in a class action suit testifies in Yellowstone District Court before Judge Mike Salvagni on April 27, 2021 (Darrell Ehrlick of the Daily Montanan).

A case pitting Montana's largest city against itself has been resolved after the City of Billings and a group of residents suing it for billing practices on water bills has announced a settlement after four-and-a-half years of litigation.

The [class-action suit centers](#) on fees the city charged to residential users of its water and sewer service. The residents proved that the

additional fees, which the city called “franchise fees,” were an illegal sales tax.

A new filing in Yellowstone County District Court on Monday shows that after two failed mediation attempts, a third try by the mediator found a solution that will work for both the city and the ratepayers, which includes most of the city’s residential property owners.

The city has agreed to pay \$3.6 million to settle the franchise fees suit. As part of the settlement, the class attorneys will turn in a settlement fee, which is expected to be around 25% or \$900,000. The rest will be applied to rebating residents who were charged the fees, which the court ruled were illegal sales taxes and had already been outlawed by the state’s Supreme Court.

In the case, the City of Billings and attorneys argued that charging an additional “franchise fee” paid for services that the city incurred but could not quantify on a monthly bill, including items like providing police services for the city’s utility department. Billings also argued that it had the right to charge residents for using the right-of-way, like other providers, for example, a telecommunications company.

However, attorney Matthew Monforton, who represented the residents, argued that Montana had already established that cities cannot charge franchise fees to residents for using the right-of-way residents already own. Furthermore, it cannot charge fees to residents without specifically tying that cost back to an expense the city incurs.

For years, the city fought against citizens who said the fees were illegal. However, it dropped the practice in 2018, shortly after the lawsuit was filed. The lawsuit took 4.5 years, generated 87,000 pages of documentation in discovery, and more than 200 requests for documents.

The decision also involved retired district court judge Michael Salvagni, who served Gallatin County, because every member of the Yellowstone County judicial district was a ratepayer of the City of Billings and thus had a conflict of interest.

The residents in the class-action will be anyone who paid a Billings water or wastewater bill for residential service from 2015 through 2018. That time period is determined by analyzing when the City of Billings stopped the practice of charging for franchise fees, and

looking back three years from the point, the maximum allowed by the state's statute of limitations.

From here, the proposed settlement will head to the Billings City Council for approval. Monforton, along with Doug James and Bryce Burke of Moulton Bellingham, who represented the city, have agreed on the terms of the settlement, but the council will need to approve it.

The settlement of \$3.6 million will come out of the city's general fund, and will not come out of the city's enterprise funds, which support the water and wastewater service. The filing on Monday acknowledges the odd position: Those who will likely get money back will actually be paying into city coffers to cover the settlement.

The settlement proposal also outlines how residents will be notified.

Former customers who have already been identified as property owners will be sent postcard notices. Those will include a tear-off claim form that can be sent back. All current rate owners who were not identified will be sent a claim form. A one-page summary notice will be included on monthly bill invoices.

The company that will notify customers will also send notices to those who have email addresses, and those who have an street address.

Charging franchise fees brought in approximately \$2.5 million per year, according to documents in the lawsuit. The practice continued for more than a decade. However, because of the statute of limitations, the city was only liable for three years' worth.

"As other courts have noted, a cash settlement that is only a fraction of the potential recovery does not per se render a settlement inadequate or unfair," the proposed settlement noted. "In discussing the amount of the settlement, it is also important to note that the settlement will be paid out of the general fund of the City of Billings. Essentially, this means that the settlement will be paid by funds primarily collected from the Billings taxpayers. The settlement will not be paid by the Public Works Department and will not be paid with revenue derived from the provision of water, wastewater, and solid waste disposal services."

The court filing also notes that because Montana law is not extensive on the subject of rates and franchise fees, the cost of trial, including depositions and expert witnesses, could have driven costs

of litigation much higher, and the settlement also means that decision will not go to the state Supreme Court, which could add expenses on top of that.

“The settlement agreement eliminates the city’s ability to appeal and challenging the ruling on the legality of franchise fees,” the court document said.

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DARRELL EHRICK

Darrell Ehrlick is the editor-in-chief of the Daily Montanan, after leading his native state’s largest paper, The Billings Gazette. He is an award-winning journalist, author, historian and teacher, whose career has taken him to North Dakota, Minnesota, Wisconsin, Utah, and Wyoming.

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TRUTH. TRANSPARENCY. TRUST.

EDITOR'S PICK

Billings settles longstanding class-action lawsuit over contested utility fees

CHRIS JORGENSEN

Mar 22, 2023

A class action lawsuit alleging the City of Billings illegally collected extra fees from residential utility users over decades has been settled.

The suit has languished in the courts for more than four and a half years, the case file ballooning to nearly 90,000 pages. One judge had the case so long he retired before it could be finished.

And, it still could be a year before the 35,000 or so members of the class receive a refund from the city, a rebate estimated to be less than 10% of the amount originally collected by the city.

The stinging paradox of the win for residents is that they essentially have to pay for their own refund. The \$3.6 million the city has agreed to pay in the settlement will come from taxpayers.

The settlement could have been much larger. Plaintiffs in the case claimed the city had collected more than \$50 million in illegal fees over several decades. Bozeman attorney Matthew Monforton, who represented the class, said in one court filing he had offered to settle with the city years ago for \$20,000.

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The suit was filed in early 2018, claiming the city had collected a franchise fee since 1992 on water and wastewater services. The suit called the fees an illegal sales tax. Typically, a franchise fee is charged by a utility or other entity and paid to the city as a sort of rent for using public property to run its pipes, poles or wires. In this case, it was the city providing the services, not a third party.

All along, the city has insisted the fees were legal, but stopped collecting them within a month of being sued.

An unusual condition for settlement in the original suit was that the city acknowledge the fees were illegal and vow publicly to never charge them again. That provision was met when a judge issued a permanent injunction against the city, thereby permanently barring those types of fees.

Now, the proposed \$3.6 million settlement goes to a judge for approval. If approved, the 35,000 members of the class will be notified. The matter would then move on to the Billings City Council which would hold public hearings on paying the settlement.

Monforton is requesting attorneys' fees for class counsel at about \$900,000. It would cost another \$130,000 to notify class members and administer the rebates.

That leaves about \$2.5 million to be split evenly 35,000 ways — around \$70 each. The individual refund could be slightly more because not all eligible class members will respond to the offer of rebate.

Plaintiffs weren't able to claw back all of the collected fees because state statute limits the collection to three years, Monforton said.

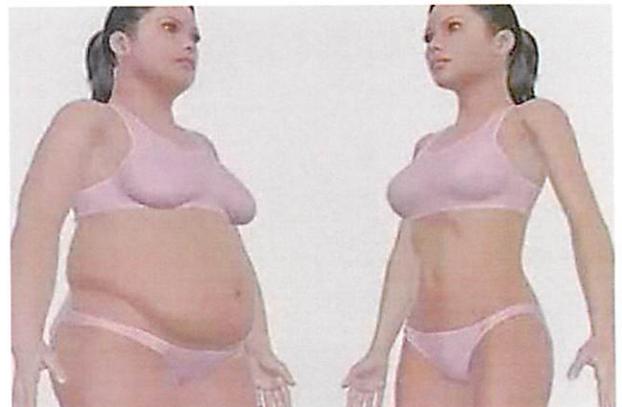
"We're pleased to have a permanent end to the sales taxes and to have at least some of them returned to customers," Monforton said Tuesday.

Because the city is named as a defendant in the case, city officials can't comment publicly without the approval of a judge. That approval would also have to come before the City Council can hold a public hearing on the settlement.



Visitors from Billings, Missouri, visit officials from Billings, Montana, present Mayor Bill Cole with rail spikes. Both cities were named for Frederick Billings.

■ Around The Web



City Ordered to Notify Residents in Bills of Class Action Suit on Franchise Fee

 Evelyn Pyburn (<https://www.yellowstonecountynews.com/author/evelyn/>)  Top Stories (<https://www.yellowstonecountynews.com/category/top-stories/>)

Utility customers of the City of Billings will receive a notice in their bills sometime in the next few weeks informing them that they may be part of a class action suit against the city regarding the imposition of "franchise fees", which the Montana District Court has since declared to have been an illegal sales tax.

Judge Michael Salvagni of the 13th District Court has ordered the City to make the notifications to past ratepayers.

The suit was initially filed by six impacted Billings ratepayers in the spring of 2018. The court expanded the case into a class action suit in April 2019. A sub-group of ratepayers has emerged from the broader group of ratepayers, given the city's claim that they should be considered separately because they became ratepayers as property owners in subdivisions that were later annexed into the city under a different contract. The first class of ratepayers are referred to as the Houser Group, in court documents, and the subdivision group as the McDaniels Group, which has not been recognized by the court as being a separate class.

The court has instructed that notices shall be sent to all ratepayers in both groups.

A draft of the notice that the city will send out must be submitted to the court by March 28, 2022. After the court's approval, the city will have 45 days in which to mail out the notices.

It is estimated that the number of ratepayers who must be notified is about 37,000 persons who paid monthly bills to the city for water, wastewater or solid waste disposal over a period of 26 years, which included the "franchise fee." The notice will provide information about the nature of the suit and include an opt-out form. "...the court will exclude from the class any member who requests exclusion."

While the court has not issued an order determining liability, the court it is expected to render an opinion in the future about whether the city is obligated to make restitution of payments, pay legal fees or what action should occur, considering the illegality of the city's actions.

[CLICK HERE TO READ ENTIRE STORY](https://www.yellowstonecountynews.com/membership-join/) (<https://www.yellowstonecountynews.com/membership-join/>)

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ALERT EDITOR'S PICK

Notification error forces costly do-over in Billings utility fee lawsuit settlement

Billings Gazette

Apr 27, 2023

After finally settling a four-year-old class-action lawsuit over illegal utility fees collected by the City of Billings, a private court administrator recently mailed more than 37,000 postcards notifying customers of their eligibility for a refund.

Those customers were all sent the wrong postcard, and will have to be notified again.

In March, the City of Billings agreed to settle the lawsuit for \$3.6 million. Of that settlement amount, as much as \$925,000 could go to pay plaintiff attorneys fees, and \$130,000 was earmarked to pay a private administrator to notify classmates of their potential rebate.

The remainder of the settlement, just over \$2.5 million, is to be split evenly among eligible class members — about \$70 each. Most eligible class members will get their rebate as a reduction in a future utility bill.

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It hasn't been settled yet who will pay to have the class re-notified, although it's likely to be the private administrator.

According to the lawsuit, the city had collected more than \$50 million in illegal fees over several decades. After being sued over the fees in early 2018, the city stopped charging the fees.

An unusual condition for settlement in the original suit was that the city acknowledge the fees were illegal and vow publicly to never charge them again. That provision was met when a judge issued an injunction against the city, thereby permanently barring those types of fees.

A second unusual twist in the suit is that Billings residents will essentially have to pay for their own refund. The \$3.6 million the city has agreed to pay will come from taxpayers.

Those currently eligible for a refund will be notified by postcard from a court administrator and don't have to take any further action, according to instructions from the court.

If you are not a current Billings City customer, but were a city customer between Feb. 2, 2015, and June 30, 2018, and you receive a postcard from the class administrator identifying you as a "former customer class member" you must file a claim form to receive a settlement payment.

If you are a current customer and you receive a postcard from the class administrator identifying you as an "excluded current customer class member," you must file a claim in order to receive a settlement payment.

For more details: (a) call the City of Billings Class Administrator at (833) 513-0862 or by mail at PO Box 25199, Santa Ana, CA 92799; or (b) Class Counsel Matthew Monforton by phone at (406) 570-2949, by mail at Monforton Law Offices, P.C., 40 Spanish Peak Drive, Suite 101, Bozeman, MT 59718, or by e-mail at

ClassCounselMonforton@mail.com. The Detailed Notice describing the Settlement and other court documents is available online at **www.CityofBillingsFranchiseFeesSettlement.com.**

Claim forms are due by Aug. 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.

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 Aug. 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 court will hold a fairness hearing in this case at the Yellowstone County Court House, 217 N. 27th Street, Billings, on Nov. 16, at 9 a.m. in Room 414. At the hearing, the court will consider whether to approve the settlement and class counsel's attorney fees and costs. You may appear at the Fairness Hearing personally or with counsel, but you don't have to.



Notice of Billings franchise-fee settlement sent out to wrong customers

Attorney offers clarification

For more Billings and Montana content, visit <https://www.ktvq.com>



By: Kelsey Boggs (Merison)

Posted at 6:32 PM, Apr 27, 2023 and last updated 6:32 PM, Apr 27, 2023

BILLINGS — After five years of back-and-forth litigation, [a settlement has tentatively been agreed upon](#) for Billings residents who were charged illegal fees by the city beginning in 1992. Notifications were sent out to residents informing them they were qualified to receive the settlement, but they weren't sent to the right people.

solid waste disposal services between Feb. 2, 2013, and June 30, 2018. The total amount of \$3.6 million will be shared, in the form of a rebate deducted from a future utility bill that will likely be between \$50 and \$100. Or, if you're no longer a customer, a check will be mailed to you after you fill out a claim form.

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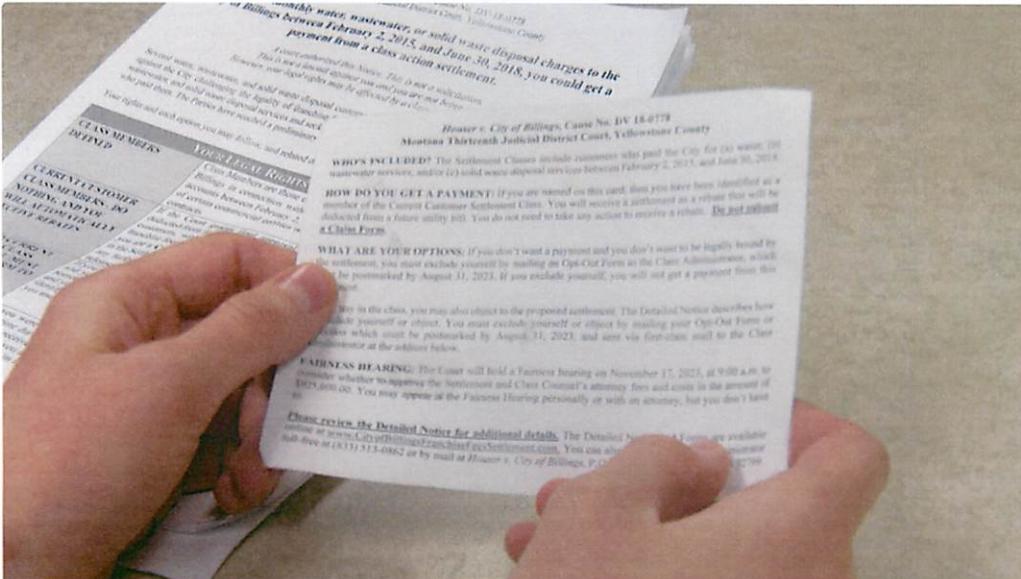
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"Approximately 12,000 people received what are called 'excluded customer notices'. Unfortunately, the class administrator that was hired to handle this in California mixed up the current customer postcards with the excluded customer postcards," said Matthew Monforton, the attorney representing the plaintiffs, on Thursday. "Each set of postcards went to the wrong group."

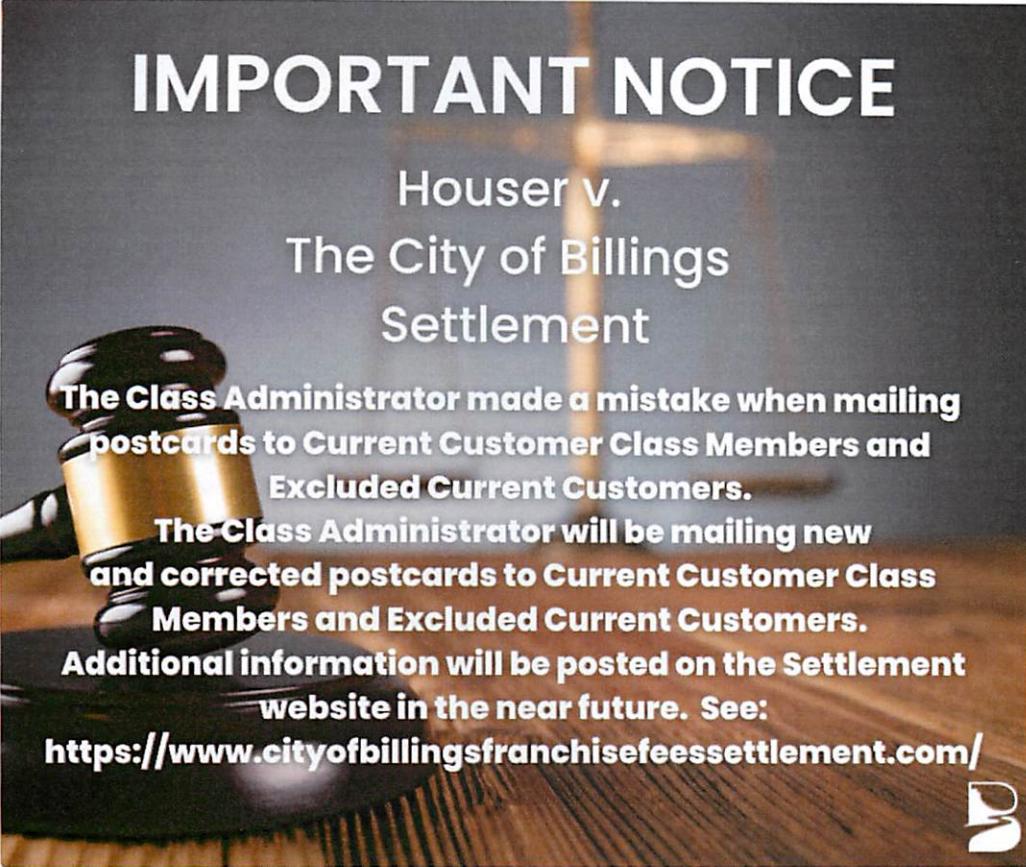


Kelsey Merison/MTN News

Notices sent out by the class action administrator

And now Monforton, a Bozeman-based attorney practicing law for nearly 26 years, is attempting to set the record straight. He urges residents to check the [informational website](#) if they have any questions.

working together to prepare corrected notices. Those corrected notices will be submitted to the court on Monday for the court's review," Monforton said. "And assuming that the court approves of those notices, a new set of notices will go out in the next two to three weeks alerting all of the customers what they need to do in terms of preserving any claims that they might have."



IMPORTANT NOTICE

Houser v.
The City of Billings
Settlement

The Class Administrator made a mistake when mailing postcards to Current Customer Class Members and Excluded Current Customers.

The Class Administrator will be mailing new and corrected postcards to Current Customer Class Members and Excluded Current Customers.

Additional information will be posted on the Settlement website in the near future. See:

<https://www.cityofbillingsfranchisefeesettlement.com/>



City of Billings Government/Facebook

Notice from the City of Billings

According to Monforton, this settlement agreement has been a long time coming.

"In 1992, the Billings City Council enacted what it refers to as 'franchise fees', which amounted to a 4% payment required of water customers, waste water customers, and garbage customers. That went on until 2018. Before that, some citizens in Billings contacted us and told us they believed these were illegal sales taxes. We did some research into that and determined [these franchise fees were indeed sales taxes](#) and therefore prohibited under Montana law," Monforton said. "So we filed suit in District Court in Billings. The lawsuit turned into a Class Action Lawsuit, and we're happy to say we reached a tentative settlement a few months ago, and now we are making sure that customers have notice of that settlement so that all Billings residents know about the terms of the settlement."

Monforton explained the difference between the two main groups of class members.

"People who are current customers who were customers between 2015 and 2018, those are the customers who are entitled to a rebate. After 2018 the city stopped imposing illegal

said. There may be some people who are considered excluded customers after 2010 because they moved to a different location within the city. Or because of marriage or divorce or the death of a spouse, there was a name change on the account. The city's software may treat them as a new customer and therefore excluded from rebates, even though they may have a valid claim. So we want to make sure those folks are included as well, and that's why we're asking those folks to fill out a claim form and fill those out as well."



Kelsey Merison/MTN News
Matthew Monforton

And those that have moved out of town will need to do some extra work.

"It's important to note that they will need to file an actual claim with the class administrator if they've moved out of the city of Billings. Because since they're no longer customers, we don't necessarily have a record of where those folks are, so they'll need to file a claim," Monforton said. "If they do file a claim, those claims will be verified by the class administrator, and if those claims are valid, then they will receive the same amount that they would have if they remained in the city."

According to Monforton, corrected notices will be sent out soon. In November, a fairness hearing will be held to determine whether to approve the settlement and class counsel's attorney fees—a hearing that could be contested.

"If customers have questions, the first and best place to look is [our website](#). Check with the website, and there are phone numbers that customers can use," Monforton said. "If the website doesn't answer the question, they can call the class administrator. If the class administrator's not able to answer those questions, they're welcome to call me and I would be able to answer those questions as well."

Montana Thirteenth Judicial District Court, Yellowstone County

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.

YOUR LEGAL RIGHTS AND OPTIONS	
CLASS MEMBERS DEFINED	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.
CURRENT CUSTOMER CLASS MEMBERS - DO NOTHING AND YOU WILL AUTOMATICALLY RECEIVE REBATES	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 Current Customer 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.
EXCLUDED CURRENT CUSTOMERS CLASS MEMBERS - YOU MUST FILE A CLAIM FORM TO RECEIVE REBATES Deadline: August 31, 2023	If you are a current water, wastewater, and/or solid waste disposal customer and you were a water, wastewater, and/or solid waste disposal customer sometime during the Claim Period of February 2, 2015 and June 30, 2018, and you received a postcard from the City of Billings Class Administrator identifying you as an Excluded Current Customer Class Member , then you must file a claim in order to receive a portion of the Settlement Fund.
ELIGIBLE FORMER CUSTOMERS CLASS MEMBERS - YOU MUST FILE A CLAIM FORM TO RECEIVE REBATES Deadline: August 31, 2023	If you were a water, wastewater, and/or solid waste disposal customer sometime during the Claim Period of February 2, 2015 and June 30, 2018, and you received a postcard from the City of Billings Class Administrator identifying you as a Eligible Former Customer Class Member , then you must file a claim in order to receive a portion of the Settlement Fund.

Questions? Visit www.CityofBillingsFranchiseFeesSettlement.com or call (833) 513-0862
Page 1 of 9

Yellowstone County Courthouse
Notice of Class Action Settlement

MTN News reached out to the City of Billings for comment, but it declined.

To learn more about the settlement or to fill out a claim, [click here](#).

"Our clients are very grateful that after five years of litigation we've been able to reach a successful settlement. A settlement that we think is fair not only for the city, but for all of the residents who were assessed illegal sales taxes for many years," Monforton said. "We can't get all of those illegal taxes returned, but we can at least get some of those taxes returned. And we're happy to be able to accomplish that."

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ALERT EDITOR'S PICK

City corrects franchise fee settlement error with color-coded notices

Billings Gazette

May 1, 2023

Billings Gazette

After an initial attempt to notify the successful members of a class action lawsuit against the City of Billings went badly, the parties have settled on a plan for a do-over.

The case has dragged on in the courts for nearly five years, reaching a settlement in March with the city agreeing to pay \$3.6 million to the class. The dispute was over the claim by class members that the city had illegally collected a utility fee for decades. As part of the settlement, a judge ordered a permanent injunction barring the city from ever charging the fee again.

Of the \$3.6 million awarded, as much as \$925,000 will go to plaintiff attorneys' fees, and \$130,000 will go to a private court administrator to notify class members. That leaves just over \$2.5 million to be split by the 35,000 or so class members, about \$70 each.

But, most of the notices sent to class members informing them of their options were sent to the wrong people. As a remedy, the private administrator – at its own expense – is resending the postcards, this time color-coded to help clarify class member options.

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-

That initial remedy, however, also contained an error. In a section of the notice labeled “Important Additional Information,” an incorrect email address was listed that class members could use to contact class counsel. That error was caught before the new notices were mailed.

Fixing the mailing error is estimated to cost “in excess of \$18,000,” according to court records.

Two different postcards will now be mailed, a blue card for “current customer class members” and a cherry-colored card for “excluded current customers.”

Current customer class members are those who paid the franchise fees between Feb. 2, 2015 and June 30, 2018, and are still customers of the city’s public works department. Current qualifying customers would get a one-time credit on their utility bill.

Excluded current members are those who are current Billings public works customers who didn’t establish service until after June 30, 2018. Excluded current customers will not receive a rebate but can file a claim before Aug. 31.

In the lawsuit, claims were made that the city over decades collected more than \$50 million in what plaintiff’s alleged were illegal fees. After being sued in early 2018, the city stopped collecting the fees.

Ironically, because the settlement is being paid for by taxpayers, members of the class are essentially paying for their own rebate.

Important additional information

More information is available on the Settlement Website. The Notice of Class Action Settlement provides additional information on the Settlement and how the Settlement Amount will be distributed. See:

<https://www.cityofbillingsfranchisefeesettlement.com>

If you cannot determine whether you are a Current Customer Class Member, an Excluded Current Customer, or a Former Customer Class Member, you may contact the Class Administrator for clarification. Please do not contact the Court.

Class Administrator

PO Box 25199 Santa Ana, CA 92799

(833) 513-0862

Problems or concerns

The Court has appointed Matthew G. Monforton as Class Counsel. If you have any problems or concerns, you may reach out to Class Counsel:

Matthew G. Monforton, Esq.

Monforton Law Offices, PLLC

40 Spanish Peak Drive, Suite 101

Bozeman, Montana 59718

Telephone: (406) 570-2949

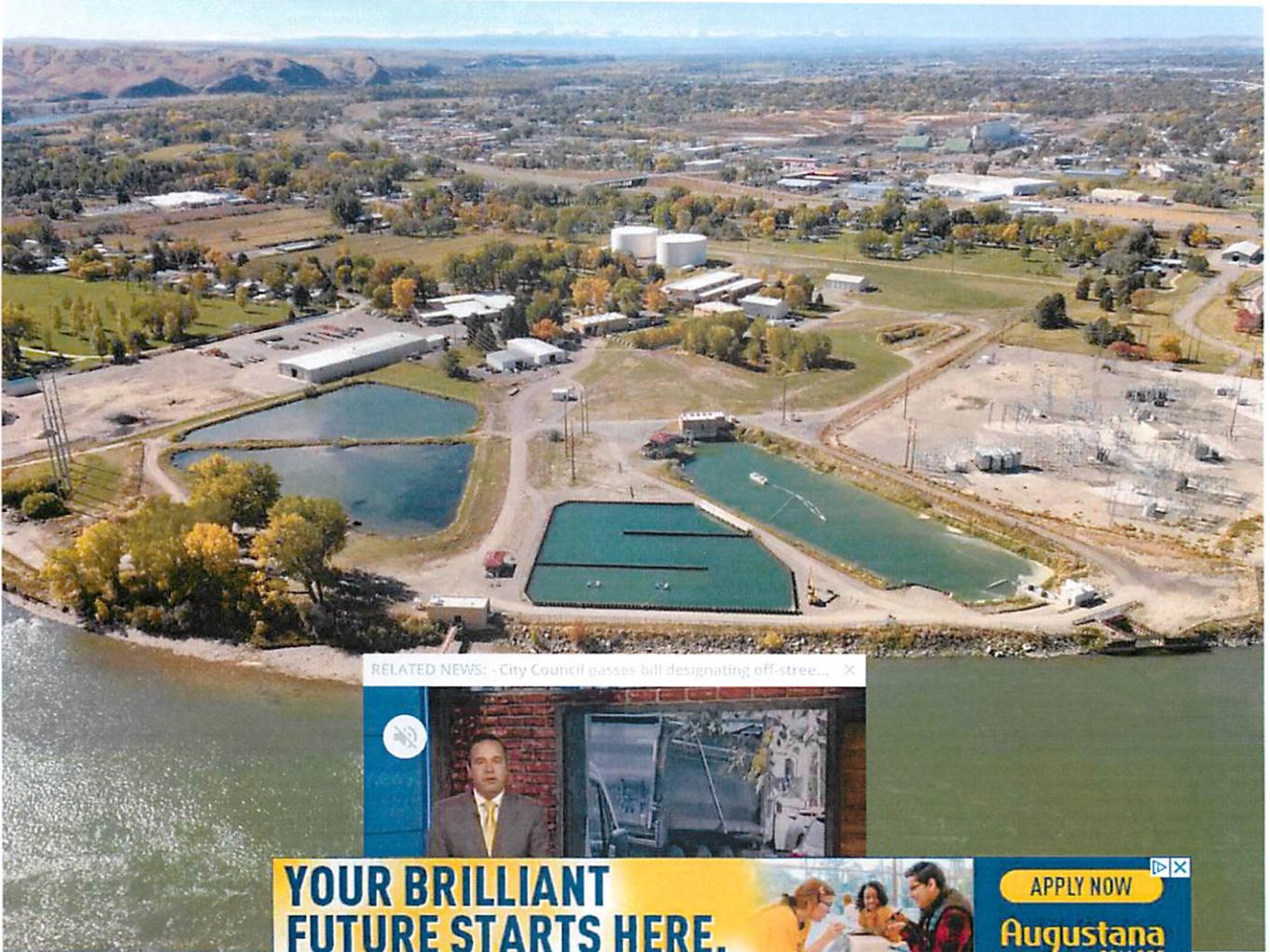
E-Mail: **ClassCounselMonforton@mail.com**

ALERT EDITOR'S PICK

Billings City Council approves \$3.6 million settlement in illegal franchise fee case

CHRIS JORGENSEN

May 23, 2023



An overhead view of the Billings Water Purification Plant. Photo Courtesy of Billings Public Works
Photo Courtesy of Billings Public Works

CHRIS JORGENSEN

The Billings City Council has voted unanimously to approve settling the contentious franchise fees lawsuit that has lingered in the courts for nearly five years.

The class action suit, pitting around 35,000 residents against the city over millions collected in utility fees, was settled in January. A judge in the case ruled the fees had been collected illegally and barred the city from ever imposing the fees again.

As part of the settlement, the city agreed to pay \$3.6 million to the class. In addition, the city has also paid the private Billings law firm Moulton Bellingham more than \$960,000 so far to represent the city in the case.

Of the \$3.6 million settlement amount, as much as \$925,000 will go to the plaintiffs' attorneys, and \$130,000 will go to a private court administrator to notify classmates. The remainder, just over \$2.5 million, will be split evenly among the 35,000 or so plaintiffs — around \$70 each. For most plaintiffs, the payment will come in the form of a reduced utility bill sometime early in 2024.

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The settlement now moves back to the courts in November for a judge's final approval.

A sore point throughout the case has been that even in winning, city residents lose. Because the settlement will be paid for by taxpayers, city residents are essentially paying themselves.

The cost of paying for the settlement hasn't been budgeted by the city but will come out of the general fund; the settlement cannot be funded by the water, wastewater, or solid waste departments because revenue from those departments must be used for those services.

Another sore point has been the suggestion from plaintiffs' attorney Matthew Monforton that the case could have been settled in March of 2018 for \$20,000.

City officials have been unable until now to address each other, the city couldn't talk about

In a memo sent Monday the \$20,000 offer was made before any legal action was taken to protect the city from other lawsuits related to

"There was no class action lawsuit pending upon the vast majority of people and entities who paid the franchise fees," Dahl wrote the Council.

On May 14, 2018, the City Council at the time voted to halt the fees. Two days later, a group of Billings residents filed a class action lawsuit seeking more than \$100 million.

That's yet another sore point for the city. City officials have complained the suit came after the fees were already eliminated.

"The city actually formally abolished the franchise fees two days before this lawsuit was filed. So, we've spent nearly five years litigating something that does not exist," Moulton Bellingham attorney Doug James told the Council Monday.

The city had been warned over the years, however. State courts had ruled before that the city was beyond its authority in charging some fees, according to the lawsuit.





Attorney Doug James explains class action settlement to Billings City Council

When Billings Mayor Bill Cole, an attorney, was campaigning in 2017, he said the city “had a bad track record in the Montana Supreme Court on a lot of fees that have been determined to be taxes and that go beyond their statutory authority.” The city has lost “about four different lawsuits on that question over time,” he was quoted in court records as saying. Cole suggested the city may have become overly creative in generating new revenue streams because it had “bucked up against the mill levy cap.”

Former mayor Chuck Tooley served on the City Council from 1988 to 1993 and then as mayor from 1996 to 2005. RELATED NEWS: - City Council passes bill designating off-stree... × Council adopted the franchise fees in 1996.

“I would not have sued if I believed that the city was legal.

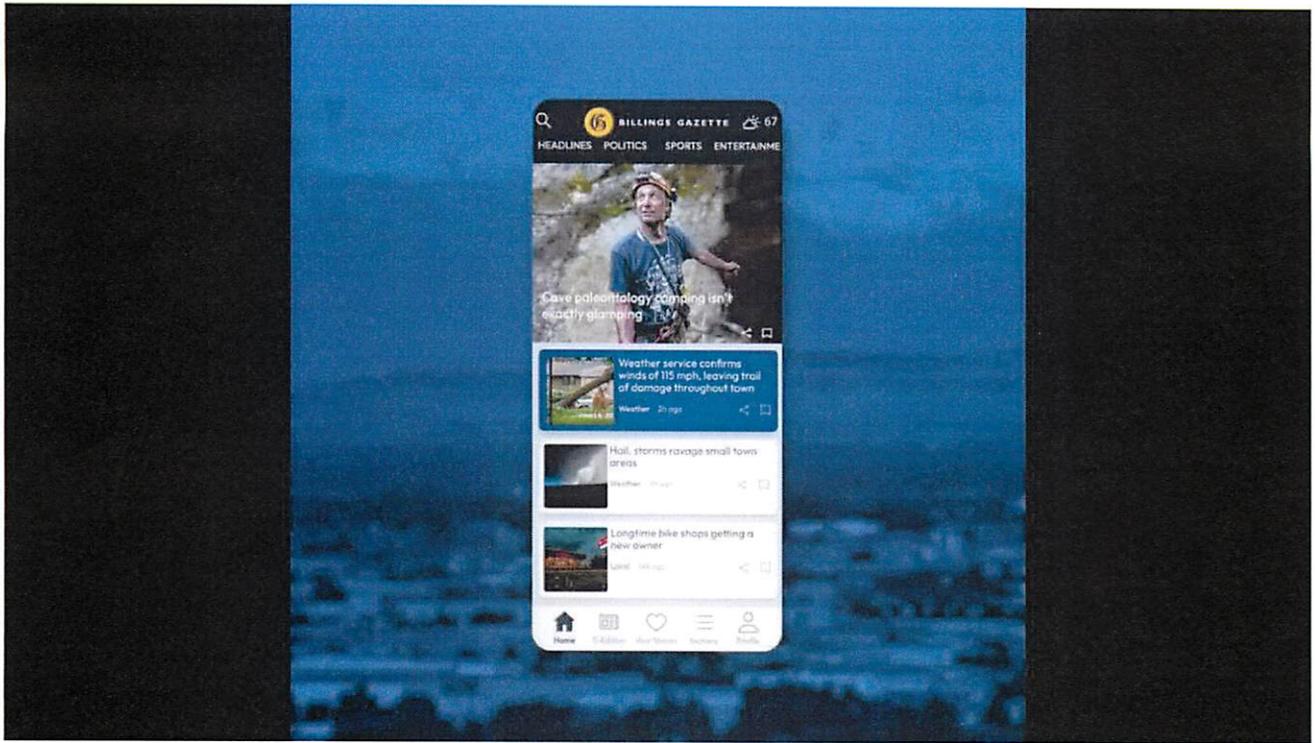
Doug James, the city’s outside attorney, testified that they were illegal or otherwise illegal. Notifying the thousands of franchisees has been extraordinarily complicated, partly because many are franchisees who have been tricky, partly because many are franchisees who have a master list of all utility payers.

“The city has changed a lot since the suit was filed,” James said. “People have died, they’ve married, they’ve divorced, changed names, moved to the city, moved out, moved within the city.”

That challenge was compounded recently when the private court administrator sent thousands of notifications to the wrong addresses. At its own expense, the administrator has since renotified potential class members.

Residents with questions are encouraged to call the class administrator at 833-513-0862 or by mail at PO Box 25199, Santa Ana, CA 92799; or contact class counsel Matthew Monforton by phone at 406-570-2949, by mail at Monforton Law Offices, P.C., 40 Spanish Peak Drive, Suite 101, Bozeman, Montana 59718, or by e-mail at ClassCounselMonforton@mail.com. The Detailed Notice describing the Settlement and other court documents is available online at www.CityofBillingsFranchiseFeesSettlement.com.

“We’re grateful to get this resolved, there have been formal and informal attempts to settle this by elected officials and administration for more than four years,” said Billings City Administrator Chris Kukulski in a statement. “Now, we can focus our time and attention on opportunities for the community.”



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By: [Phil Van Pelt](#)

Posted at 6:13 PM, Mar 22, 2023 and last updated 6:13 PM, Mar 22, 2023

BILLINGS — It's a case that dates back decades, one that led to a class action lawsuits and for people who live or lived in Billings from 2015 to 2018, some money could be headed their way.

In 2018, a group of Billings residents sued the city, centered around franchise fees the city charged residents during that time for water, sewer and trash services. Charges they alleged were illegal.

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"The city of Billings started imposing these sales taxed on utility customers, way back in 1992 and almost immediately after 1992, a number of citizens protested these sales taxes, they called them what they were, they were sales taxes. The city of Billings described them as franchise fees, which they weren't they were simply sales taxes and therefore they were illegal under Montana law," said Matthew Monforton, the plaintiffs' attorney, said Wednesday.

Monforton represents those residents and claims the city collected nearly \$2.5 million each year from those fees, from 1992 to 2018.

In 2022, a judge agreed that the franchise fees were indeed illegal.

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law," added Monforton.

MTN reached out the city for this story – but our requests for comment were denied.

The city had argued previously that it had the right to charge for the use of a public right of way, something municipalities can do for utility providers. But unlike a utility like NorthWestern Energy, the city already owned the right of way.

"In this case, the city was itself the provider of the utilities, and under state law, it couldn't in essence, tax itself and then impose those taxes on the city residents. Which is what the city had been doing for years. It was an illegal scheme and that's why our clients challenged it on behalf of other city residents and ultimately, we were successful," Monforton added.

The \$3.6-million settlement needs to be approved by the Billings City Council but will come out of the city's general fund. Around 25% of that, or \$900,000 will be a settlement fee for the attorneys, with the rest paid out to residents as a rebate.

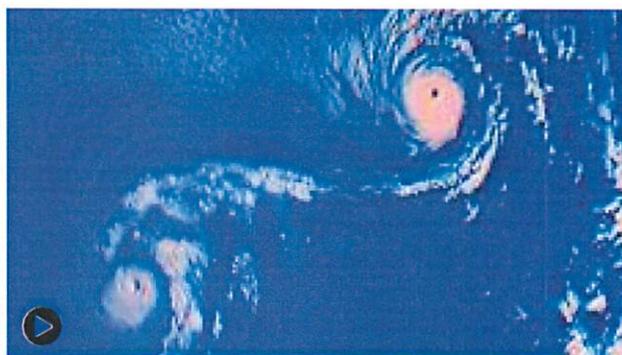
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Attorney Doug James explains class action settlement to Billings City Council

May 23, 2023



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