

SETTLEMENT AGREEMENT

between

THE CITY OF BILLINGS (the “City”)

and

THE COUNTY WATER DISTRICT OF
BILLINGS HEIGHTS (the “District”)

Dated March ____, 2022.

RELEASE AND SETTLEMENT AGREEMENT

RELEASOR: The City of Billings, a Montana municipal corporation.

RELEASEE: County Water District of Billings Heights, a Montana local government unit.

DESCRIPTION OF CLAIMS: (1) Breach of Contract/Collection for amounts due under the Water Supply and Purchase Agreement dated December 14, 1998 between the City and the Water District for amounts owed by the District to the City for water purchased by the District between February 27, 2015 and December 15, 2017; and

(2) counterclaims for Negligence (Count I), Collection and Declaratory Judgment (Count II).

SETTLEMENT AMOUNT: \$2,936,251.80 (Two Million, Nine Hundred Thirty-Six Thousand, Two Hundred Fifty-One Dollars and 80 cents).

CIVIL CAUSE: The City of Billings v. County Water District of Billings Heights, before the Thirteenth Judicial District Court, in and for the State of Montana, Cause No. DV 20-1653.

1. Releases

Releasor releases the Releasee Water District of and from all amounts that Releasee owes to the City under and pursuant to the Water Supply and Purchase Agreement dated December 14, 1998 for water purchased by the District between February 27, 2015 and December 15, 2017. The City agrees to accept the Settlement Amount stated above in full satisfaction of all amounts owed by the Water District to the City under the Water Supply and Purchase Agreement for the time period of February 27, 2015 and December 15, 2017. The Releasor City is expressly reserving and is not releasing its claims: (a) that the Water District is selling water outside of its Service Area in violation of § 27-201 - 207, Billings Montana City Code; and (b) that the Water Supply and Purchase Agreement dated December 14, 1998 is a contract for an indefinite term under the Uniform Commercial Code and may be terminated at any time, pursuant to Montana Code Annotated § 30-2-309.

The Releasee Water District releases the Releasor City of and from the Releasee's claims for: (a) negligence (Count I) in connection with the City's billing practices under

the Water Supply and Purchase Agreement dated December 14, 1998; and (b) for collection and declaratory relief (Count II) with respect to the Water District's claims arising from or related to any franchise fees paid by the Water District to the City. The Releasee Water District expressly reserves and does not release any claims that it may have against the City arising from any service fees that the City may have unlawfully billed to the Water District.

2. No Admission of Liability

It is understood that the above-mentioned sum is accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither the payment of the sum by Releasee nor the negotiations for settlement shall be considered as an admission of liability by either Party. The claims reserved and not released remain disputed and not admitted by the opposing party.

3. Stipulation for Dismissal.

The Parties enter into this Settlement Agreement in order to settle and resolve the above-described civil litigation. Towards that end:

- A. The Releasor's complaint against the Releasee with respect to amounts owed to the Releasor for water purchased by the Releasee between February 27, 2015 and December 15, 2017, shall be dismissed, with prejudice;
- B. Releasee's counterclaim against Releasor for negligence and declaratory relief shall be dismissed with prejudice;
- C. Releasee's counterclaim against Releasor arising from or related to any franchise fees paid by Releasee shall be dismissed, with prejudice; and
- D. Releasor's claims and Releasee's counterclaim against each other as may be alleged in the pleadings but not subject to the prayer of their Complaint and Counterclaim shall be dismissed without prejudice and shall not be subject to the mutual release of all claims.
- E. Each party shall pay their respective costs and attorneys' fees.

4. Approval of Settlement

The Releasor warrants and represents that this Settlement Agreement has been approved by the Billings City Council and that the Mayor of the City of Billings has the power and authority to execute and deliver this Settlement Agreement.

The Releasee warrants and represents that this Settlement Agreement has been approved by the Board of Directors of the County Water District of Billings Heights and

that the undersigned has the power and authority to execute and deliver this Settlement Agreement.

5. Payment

Within thirty (30) days after the approval of this Settlement Agreement and Release by the later of the City of Billings City Council and the Board of Directors of the County Water District of Billings Heights, Releasee shall pay to Releasor the sum of Two Million, Nine Hundred Thirty-Six Thousand, Two Hundred Fifty-One Dollars and 80 cents **(\$2,936,251.80)**.

Upon receipt of payment of the Settlement Amount, counsel for the Parties shall cause a Stipulation for Dismissal of the pending Civil Action to be filed in the District Court. The Stipulation for Dismissal shall be substantially in the form that is attached as Exhibit "A".

6. New Water Purchase Agreement

The Parties through their respective representatives, have mutually agreed to meet to begin addressing issues with the existing Water Purchase Agreement with a goal of drafting a new Water Purchase Agreement that may be acceptable to both the City of Billings and the County Water District of Billings. The Parties acknowledge that many of the customers of the County Water District of Billings Heights are also citizens of the City of Billings. Therefore, it may be in the interest of both Parties to negotiate and finalize a new agreement for the future. However, nothing in this Paragraph 6 shall impose any legal duty upon either party.

7. Taxation

Neither Party makes any representation about the taxability of any portion of this Settlement. Each Party warrants and represents to the Other Party that it has consulted such accountants, attorneys, and advisors as it deemed appropriate regarding this settlement and that it is not relying upon any statement from the Other Party or its attorneys

8. Severability

Should any provision of this Agreement be determined to be unenforceable, all remaining terms and clauses shall remain in force and shall be fully severable.

9. Choice of Law

The laws of the State of Montana shall apply to the interpretation of this Agreement.

10. Final Agreement

This written Agreement constitutes the final agreement between the parties and shall supersede any oral agreements to the contrary.

CITY OF BILLINGS, MONTANA

By: _____
Mayor, William A. Cole

**COUNTY WATER DISTRICT OF
BILLINGS HEIGHTS**

By: _____
Ming Cabrera, President

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of March, 2022, by **William A. Cole**, Mayor of the City of Billings.

Notary Public for the State of Montana

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of March, 2022, by **Ming Cabrera**, President of the County Water District of Billings Heights.

Notary Public for the State of Montana

Doug James
Jordan W. FitzGerald
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Attorneys for Plaintiff & Counter-Defendant City of Billings

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mark@hendricksonlawmt.com

Attorneys for Defendant & Counterclaimant

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

CITY OF BILLINGS, a Montana municipal
corporation,

Plaintiff & Counter-Defendant,

-v-

COUNTY WATER DISTRICT OF BILLINGS
HEIGHTS, a Montana local government unit,

Defendant & Counterclaimant.

Cause No. DV 20-1653

Judge Rod Souza

JOINT MOTION FOR DISMISSAL

The City of Billings and the County Water District of Billings Heights, by and through their respective counsel, stipulate and agree:

- A. The prayer for relief under Counts I, II, and III of The City's complaint against the Water District for amounts owed to the City for water purchased by the County Water District between February 27, 2015 and December 15, 2017, shall be dismissed, **with prejudice**;
- B. The prayer for relief under Counts I and II of The Water District's counterclaim against the City for negligence and declaratory relief, including any claim based on "franchise fees," shall be dismissed, **with prejudice**. Provided, however, that any claims in Count II of the Water District's counterclaim against the City that the City had unlawfully billed Releasee for various service fees shall be dismissed, **without prejudice**;
- C. Allegations not included in the prayers of the complaint or counterclaim, or included above shall be dismissed **without prejudice**; and
- D. Each Party shall pay its own respective costs and attorneys' fees.

DATED this ____ day of March, 2022.

MOULTON BELLINGHAM PC

By _____
Doug James
Jordan W. FitzGerald
27 North 27th Street, Suite 1900
P. O. Box 2559
Billings, Montana 59103-2559

*Attorneys for Plaintiff & Counter-
Defendant City of Billings*

HENDRICKSON LAW FIRM, P.C.

By _____

Mark Noennig
Hendrickson Law Firm, P.C.
208 North Broadway, Suite 324
P. O. Box 2502
Billings, Mt 59103-2502

*Attorneys for Defendant &
Counterclaimant*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was duly served upon the following persons and counsel of record by depositing the same, postage prepaid, in the United States mail this _____ day of March, 2022:

Mark Noennig
Hendrickson Law Firm
P. O. Box 2502
Billings, Mt 59103-2502

Attorneys for Defendant & Counterclaimant

By: _____

Doug James
Jordan W. FitzGerald

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

CITY OF BILLINGS, a Montana municipal
corporation,

Plaintiff & Counter-Defendant,

-v-

COUNTY WATER DISTRICT OF BILLINGS
HEIGHTS, a Montana local government unit,

Defendant & Counterclaimant.

Cause No. DV 20-1653

Judge Rod Souza

ORDER OF DISMISSAL

The City of Billings and the County Water District of Billings Heights, by and through their respective counsel, filed a Joint Motion for Dismissal of this action. Good cause appearing, the Parties Motion is GRANTED.

In accordance with the Joint Motion of the Parties:

- A. The prayer for relief under Counts I, II, and III of The City's complaint against the Water District for amounts owed to the City for water purchased by the District between February 27, 2015 and December 15, 2017, is hereby dismissed, **with prejudice**;
- B. The prayer for relief under Counts I and II, of The Water District's counterclaim against the City for negligence and declaratory relief,

including any claim based on “franchise fees,” except for claims pertaining to service fees, is hereby dismissed **with prejudice**;

C. Any claims in Count II of The Water District’s counterclaim against the City that the City had unlawfully billed Releasee for various service fees are hereby dismissed, **without prejudice**.

D. Allegations not included in the prayers of the complaint or counterclaim, or included above, are hereby dismissed **without prejudice**.

Each party shall pay its respective costs and attorneys' fees.

DATED this ____ day of _____, 2022.

Judge Rod Souza

Cc: Doug James
Jordan Fitzgerald
Mark Noennig