

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between: (1) Jeff Beck, Amy Weinberg, Zac Weinberg, and Alta Views, LLC, (“Named Plaintiffs”), individually and on behalf of Settlement Class Members (as defined in the Definitions Section below)(together, “Class Plaintiffs”); (2) the City of Whitefish, a Montana municipality (the “City”); and (3) Financial Consulting Solutions Group, Inc. (“FCS Group”) (collectively, the “Parties”), in the action *Jeff Beck, et al. v. City of Whitefish*, Case No. CV-22-44-M-DLC-KLD, pending in the United States District Court for the District of Montana, Missoula Division (the “Action”).

### **RECITALS**

WHEREAS, one class action lawsuit was filed against the City in the United States District Court for the District of Montana, Missoula Division, relating to impact fee rates adopted by the City on November 19, 2018, via Resolution No. 18-44, and on July 15, 2019, via Resolution 19-15 (the “Impact Fees”).

WHEREAS, on February 24, 2022, Named Plaintiffs filed a proposed class action complaint against the City;

WHEREAS, Named Plaintiffs filed a Motion for Class Certification on November 30, 2022;

WHEREAS, the City filed a Third-Party Complaint against FCS Group on December 22, 2022;

WHEREAS, the Court granted Named Plaintiffs’ Motion for Class Certification on September 29, 2023;

WHEREAS, on February 16, 2024, the City and FCS Group filed and/or joined multiple motions for partial summary judgment, to exclude expert witness testimony, and to amend answers;

WHEREAS, the City and FCS Group continue to deny: a) the allegations and all liability with respect to any and all facts and claims alleged in the Action, b) that the Named Plaintiffs in the Action and the class they purport to represent have suffered any damage, and c) that the Action satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23;

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, and without any admission or concession by any Party, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

## **I. DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. “Action” means the class action lawsuit captioned *Jeff Beck, et al. v. City of Whitefish*, Case No. CV-22-44-M-DLC-KLD, pending in the United States District Court for the District of Montana, Missoula Division.
2. “City’s Counsel” means Todd Hammer and Marcel A. Quinn of Hammer, Quinn & Shaw, PLLC, and Natasha Prinzing Jones and Thomas Leonard of Boone Karlberg, PC.
3. “Class Counsel” means Mark M. Kovacich and Caelan G. Brady of Kovacich Snipes Johnson, P.C. and Cory R. Laird, Lindsay A. Mullineaux, and Riley M. Wavra of Laird Cowley, PLLC.
4. “Court” means the United States District Court for the District of Montana, Missoula Division, acting by and through the Honorable Kathleen DeSoto, or such other judge to whom the Action may hereafter be assigned.
5. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.
6. “FCS Group’s Counsel” means Baxter Drennon and Jori Quinlan of Hall Booth Smith, P.C.
7. “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund.
8. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.
9. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, entering judgment in accord with the terms of this Settlement Agreement, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Settlement Agreement.
10. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

11. “Impact Fees” means the impact fees implemented through the City’s November 19, 2018 Resolution No. 18-44 and July 15, 2019 Resolution 19-15 and assessed between January 1, 2019 and December 31, 2023.

12. “Litigation Costs and Expenses” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, and settling the Action.

13. “Net Settlement Amount” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Service Awards Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.

14. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the form attached hereto as **Exhibit 1**.

15. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, which will occur thirty (30) days after entry of the Preliminary Approval Order.

16. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

17. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be forty (40) days after the Notice Deadline.

18. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, that is consistent with all material provisions of this Settlement Agreement.

19. “Released Claims” means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses) that the Settlement Class Representatives and Settlement Class had, have or may claim now or in the future to have (including, but not limited to, assigned claims and any and all “Unknown Claims” as

defined below) that were or could have been asserted or alleged arising out of the same factual predicate as any of the claims alleged or asserted in the Action, including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act arising out of, related to, and/or concerning in any way 1) the development, calculation, and adoption of the Impact Fees; 2) the City's administration, assessment, and/or collection of the Impact Fees, including any and all work, analysis, communications, actions or omissions related to the Impact Fees; 3) any and all work, analysis, communications, or any other actions or omissions FCS Group performed or failed to perform, whether or not through a contract with the City, in aiding the City with the development, calculation, assessment, and defense of the Impact Fees; 4) costs and attorney's fees related to the Action; and 5) the purported or actual obligations of FCS Group's insurer StarStone Specialty Insurance Company's under any part of any insurance policy applicable to the Released Claims, and from any and all claims arising out of the investigation, handling, adjusting, defense or settlement of the claim including, without limitation, any claims for breach of contract, in tort, violation of the covenant of good faith and fair dealing, violation of Montana Code Annotated §§ 33-18-201 *et seq.*, and all claims for bad faith (whether statutory or in common law), claims for punitive or exemplary damages, and claims for breach of fiduciary duty.

20. "Service Award Payment" means compensation awarded by the Court and paid to the Settlement Class Representatives in recognition of their role in this litigation.

21. "Settlement" means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

22. "Settlement Administrator" means Class Counsel. Reasonable means are available to Class Counsel to direct individual Notice to Settlement Class Members, maintain and administer the Settlement Fund on behalf of Settlement Class Members, and issue Settlement Payments to each entitled Settlement Class Member. Class Counsel, City's Counsel, and FCS Group's Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.

23. "Settlement Class" means the individuals identified on the Settlement Class List, including all individuals who were notified, including by direct notice and publication by Plaintiffs. Excluded from the Settlement Class is any judge presiding over this Action and members of their direct family.

24. "Settlement Class List" means the list generated by Class Counsel containing the full names, current or last known addresses where known, and personal email addresses where known, for all persons who fall under or are an agent/contact of an entity falling under the class definition in the Court's September 29, 2023 class certification order (Doc. 121) and did not request exclusion from the Action during the initial class notice and opt-out period.

25. "Settlement Class Member" means an individual who falls within the definition of the Settlement Class.

26. "Settlement Class Representatives" means Named Plaintiffs.

27. “Settlement Fund” means one million four-hundred thousand dollars and no cents (\$1,400,000.00) to be paid by the City and FCS Group as specified in Section II, Settlement Fund. This payment is the limit and extent of the City’s and FCS Group’s obligations with respect to the Settlement.

28. “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check and/or electronic payment to a Settlement Class Member pursuant to Paragraphs 37-43.

29. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ Fee Application, and the operative complaint in the Action. The Settlement Website shall also include a telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

30. “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund.

## **II. SETTLEMENT FUND**

31. **Establishment of Settlement Fund.** Within twenty-one (21) days of the Preliminary Approval Order, the City shall deposit \$400,000.00 and FCS Group shall deposit \$1,000,000.00, for a total of \$1,400,000.00, into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, the City, and FCS Group.

32. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of the City or FCS Group in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 55.

33. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date



possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

34. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 55.

35. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Awards Payments approved by the Court; (iv) Fee Award and Costs; and (v) Payments to Class Members. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

36. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Settlement Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

### **III. PAYMENTS TO SETTLEMENT CLASS MEMBERS**

37. **Settlement Class Member Payments.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute a payment from the Net Settlement Amount to each Settlement Class Member. The Settlement Payment amount to be distributed to each Settlement Class Member will be calculated as follows, understanding that the formulas below do not constitute an admission by any party, and are intended only to provide a practical means to simplify and administer the claims process:

- (1) for each Settlement Class Member, the Settlement Administrator shall first utilize the City's fixture count audit files and "Water and Wastewater Impact Fee Audit and Potential Refund" letters to determine whether the Settlement Class Member paid impact fees for any developments affected by an error in the calculation of water and

wastewater impact fees from January 1, 2019, to July 31, 2021, involving fixture counts assigned to single-head, standalone showers;

- (2) for each Settlement Class Member affected by the single-head, standalone shower fixture count issue, the Settlement Administrator shall then utilize the building plans submitted to the City as part of the development permitting process to calculate a "Fixture Count Rebate," which reflects the difference between what the Settlement Class Member paid in water and wastewater impact fees and what the Settlement Class Member would have paid under the City's Impact Fees with the proposed number of water and/or wastewater fixture units calculated in accordance with the International Association of Plumbing & Mechanical Officials Uniform Plumbing Code;
- (3) the Settlement Administrator shall then calculate a "Settlement Ratio" for every Settlement Class Member by dividing what the Settlement Class Member paid in water and wastewater fees, minus any Fixture Count Rebate they will receive, by the combined total paid in water and wastewater impact fees for all Settlement Class Members, minus the total to be paid for all Fixture Count Rebates:
  - $$\text{Settlement Ratio} = \frac{(\text{Settlement Class Member Impact Fees Paid} - \text{Fixture Count Rebate Receivable})}{(\text{Total Impact Fees Paid} - \text{Total Fixture Count Rebates})};$$
- (4) the Settlement Administrator shall then calculate a "Settlement Share" for every Settlement Class Member by multiplying each Settlement Class Member's Settlement Ratio by the Net Settlement Amount, minus the total to be paid for all Fixture Count Rebates:
  - $$\text{Settlement Share} = \text{Settlement Ratio} * (\text{Net Settlement Amount} - \text{Total Fixture Count Rebates});$$

and
- (5) the Settlement Administrator shall finally calculate a Settlement Payment for every Settlement Class Member by adding each Settlement Class Member's total Fixture Count Rebate, if any, to their Settlement Share.

The Settlement Payments shall be paid in exchange for the Settlement Class Members' release of the Released Claims.

38. **Payment Timing.** Payments shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.

39. **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member reminding him/her of the deadline to cash such check.

40. **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.

41. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to the City or FCS Group after the Effective Date. To the extent any monies remain in the Net Settlement Fund more than 150 days after the distribution of Settlement payments to the Participating Settlement Class Members, any remaining monies shall be distributed to Montana Justice Foundation.

42. **Deceased Class Members.** If the Settlement Administrator is notified that a Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Settlement Class Member is deceased.

43. **Order of Distribution of Funds.** The Settlement Administrator must first use the Net Settlement Fund to make Settlement Payments. The Settlement Administrator shall then utilize the remaining funds in the Net Settlement Fund to make distributions to the Montana Justice Foundation in accordance with Paragraph 41.

#### **IV. SETTLEMENT CLASS NOTICE**

44. **Notice.** By the Notice Deadline, Notice shall be disseminated via U.S. mail to all Settlement Class members and also via e-mail to Settlement Class Members whose personal e-mail addresses are known.

#### **V. OBJECTIONS**

45. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Settlement Administrator postmarked no later than forty (40) days after the Notice Deadline. The written objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.



The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

#### **VIII. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

46. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Maintaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;
- d. Establishing and maintaining the Settlement Website;
- e. Maintaining a telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- f. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- g. Calculating, reviewing, determining the validity of, and processing Settlement Class Member payments;
- h. Receiving objections from Settlement Class Members and providing counsel for all Parties a copy thereof no later than three (3) days following the Objection Deadline. If the Settlement Administrator receives any objections or other requests from Settlement Class Members after the Objection Deadline, the Settlement Administrator shall promptly provide copies thereof to counsel for all Parties;
- i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- j. Providing weekly or other periodic reports to counsel for all Parties that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by any Parties' counsel, and from time to time, provide the amounts remaining in the Net Settlement Fund;

- k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted an objection; and
- l. Performing any function related to Settlement administration at the agreed-upon instruction of the Parties' counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

47. **Limitation of Liability.** The Parties, and the Parties' counsel, shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

48. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties and Parties' counsel for: (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

## **IX. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

49. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.

50. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of the settlement within ten (10) days.

51. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline and Objection Deadline.

52. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement

and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

**X. MODIFICATION AND TERMINATION**

53. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

54. **Decertification of the Settlement Class if Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2) the Effective Date does not occur, the certification of the Settlement Class shall be void. The City and FCS Group reserve the right to contest class certification in the Action and/or any appeal taken therefrom for all other purposes. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that the City or FCS Group did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification.

55. **Termination.** Settlement Class Representatives and the City and FCS Group shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice") within seven (7) days of: (1) the Court's refusal to issue the Preliminary Approval Order; or (2) within fourteen (14) days of any of the following: (i) the Court's refusal to enter the Final Approval Order and Judgment, or (ii) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court.

56. **Effect of Termination.** In the event of a termination as provided in Paragraph 55, this Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement or the Settlement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

## **XI. RELEASES**

57. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Representatives and Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against the City and/or FCS Group and each of their respective present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing.

58. **Unknown Claims.** The Released Claims include the release of Unknown Claims. “Unknown Claims” means any claims that the Settlement Class Representatives and the Settlement Class Members could have raised implicating or arising from the Impact Fees including those that are not known or suspected to exist, which, if known, might affect the agreement to the foregoing Release or the decision to agree, object, or not to object to the Settlement. Additional or different facts may be discovered from those now known or believed to be true with respect to the subject matter of the Release, but the Parties’ intention is to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims as that term is defined in this Paragraph.

59. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, no person shall have any claim against any of the Parties, their attorneys of record, any Settlement Class Member, Class Counsel, or the Settlement Administrator based on distributions or payments made in accordance with this Settlement Agreement. The Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in this Settlement Agreement. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

60. **Mutual Releases Between the City and FCS Group.** Upon the Effective Date, the City and FCS Group and each of their respective present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing shall be deemed to have mutually released, acquitted, and forever discharged each other for any and all claims arising out of, related to, or based upon the Released Claims, including contribution, defense, indemnity, costs and attorney’s fees.

The City and FCS Group and each of their present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing acknowledge this release includes a

release of StarStone Specialty Insurance Company ("StarStone") from any and all claims against StarStone and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns arising out of, related to, or based upon the Released Claims, including any claims concerning the investigation, handling, adjusting, defense, or settlement of the Released Claims, claims for breach of contract, tort claims, claims for violation of the covenant of good faith and fair dealing, claims for violation of Montana Code Annotated §§ 33-18-201 et. seq., claims for bad faith (whether statutory or in common law of any jurisdiction), claims for punitive or exemplary damages, and claims for breach of fiduciary duty.

61. **Satisfaction of Judgment.** Once all obligations in this Settlement Agreement have been satisfied, the Parties agree to file a satisfaction of judgment with the Court.

62. **Dismissal with Prejudice.** Once the Court accepts the satisfaction of judgment described in Paragraph 61 Class Plaintiffs and the City stipulate and agree that Class Counsel and the City's Counsel shall dismiss with prejudice, as fully settled upon the merits, the above-described civil action. The City further stipulates and agrees that the City's Counsel shall dismiss with prejudice, as fully settled upon the merits, its Third-Party Complaint against FCS Group. Each party shall pay their respective costs and attorneys' fees.

## **XII. SERVICE AWARD PAYMENTS**

63. **Service Award Payments.** At least twenty-one (21) days before the Objection Deadline, Class Counsel will file a Fee Application that will include a request for Service Award Payments for the Settlement Class Representatives in recognition for their contributions to this Action. The City and FCS Group agree not to oppose Class Counsel's request for a service award not to exceed \$3,500.00 per representative. The Settlement Administrator shall make the Service Award Payments to the Settlement Class Representatives from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

64. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

## **XIII. ATTORNEYS' FEES, COSTS, EXPENSES**

65. **Attorneys' Fees and Costs and Expenses.** Prior to the Final Fairness Hearing, Class Counsel will file a Fee Application for an award of attorneys' fees and Litigation Costs and Expenses to be paid from the Settlement Fund. The City and FCS Group agree not to oppose Class Counsel's request for an award of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of litigation costs and expenses not to exceed \$175,000.00.



Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to the City and FCS Group a properly completed and duly executed IRS Form W-9. Fee Award and Costs (plus any interest accrued thereon) shall be paid from the Settlement Fund by the Settlement Administrator in the amount approved by the Court no later than three (3) days after the Effective Date.

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

#### **XIV. NO ADMISSION OF LIABILITY**

67. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

68. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Class Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by the City and/or FCS Group in the Action or in any proceeding in any court, administrative agency or other tribunal.

#### **XV. MISCELLANEOUS**

69. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

70. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

71. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.

72. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

73. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

74. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other in good faith prior to seeking Court intervention.

75. **No Tax Advice.** The Parties acknowledges and agree that no provision of this Settlement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

76. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

77. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the state of Montana, without regard to the principles thereof regarding choice of law.

78. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through e-mail of an Adobe PDF shall be deemed an original.

79. **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.

80. **Notices.** All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Mark M. Kovacich  
Caelan G. Brady  
KOVACICH SNIPES JOHNSON, P.C.  
P.O. Box 2325  
Great Falls, MT 59403  
mark@justicemt.com  
caelan@justicemt.com

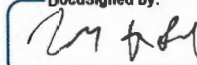
Cory R. Laird  
Lindsay A. Mullineaux  
Riley M. Wavra  
LAIRD COWLEY, PLLC  
P.O. Box 4066  
Missoula, MT 59806  
claird@lairdcowley.com  
lmullineaux@lairdcowley.com  
rwavra@lairdcowley.com

**[SIGNATURES ON FOLLOWING PAGES]**

**CAUTION: READ BEFORE SIGNING!**

DATED this \_\_\_\_ day of 8/8/2024 2024.

**Class Plaintiffs:**

DocuSigned by:  
  
6AFDF9B10E0B47F...

Jeff Beck, individually and on behalf of the  
class of similarly situated persons or entities

Amy Weinberg, individually and on behalf  
of the class of similarly situated persons or  
entities


Zac Weinberg, individually and on behalf of  
the class of similarly situated persons or  
entities

ALTA VIEWS, LLC

By: \_\_\_\_\_, individually  
and on behalf of the class of similarly  
situated persons or entities

**APPROVED BY:**

Attorneys for Releasor Class Plaintiffs  
LAIRD COWLEY, PLLC  
KOVACICH SNIPES JOHNSON, P.C.

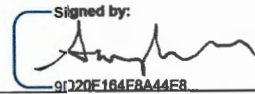
  
Cory R. Laird  
Lindsay A. Mullineaux  
Riley M. Wavra  
Mark M. Kovacich  
Caelan G. Brady

**CAUTION: READ BEFORE SIGNING!**

DATED this \_\_\_\_ day of 8/8/2024 2024.

**Class Plaintiffs:**

\_\_\_\_\_  
Jeff Beck, individually and on behalf of the  
class of similarly situated persons or entities

Signed by:  
  
91720F184F8A44F8

\_\_\_\_\_  
Amy Weinberg, individually and on behalf  
of the class of similarly situated persons or  
entities

\_\_\_\_\_  
Zac Weinberg, individually and on behalf of  
the class of similarly situated persons or  
entities

ALTA VIEWS, LLC

\_\_\_\_\_  
By: \_\_\_\_\_, individually  
and on behalf of the class of similarly  
situated persons or entities

**APPROVED BY:**

Attorneys for Releasor Class Plaintiffs  
LAIRD COWLEY, PLLC  
KOVACICH SNIPES JOHNSON, P.C.

\_\_\_\_\_  
Cory R. Laird  
Lindsay A. Mullineaux  
Riley M. Wavra  
Mark M. Kovacich  
Caelan G. Brady



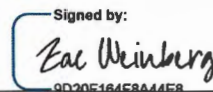
**CAUTION: READ BEFORE SIGNING!**

DATED this \_\_\_\_ day of 8/8/2024 2024.

**Class Plaintiffs:**

\_\_\_\_\_  
Jeff Beck, individually and on behalf of the  
class of similarly situated persons or entities

\_\_\_\_\_  
Amy Weinberg, individually and on behalf  
of the class of similarly situated persons or  
entities

Signed by:  
  
9D30F184F8A44E8...

\_\_\_\_\_  
Zac Weinberg, individually and on behalf of  
the class of similarly situated persons or  
entities

ALTA VIEWS, LLC

By: \_\_\_\_\_, individually  
and on behalf of the class of similarly  
situated persons or entities

**APPROVED BY:**

Attorneys for Releasor Class Plaintiffs  
LAIRD COWLEY, PLLC  
KOVACICH SNIPES JOHNSON, P.C.

\_\_\_\_\_  
Cory R. Laird  
Lindsay A. Mullineaux  
Riley M. Wavra  
Mark M. Kovacich  
Caelan G. Brady

**CAUTION: READ BEFORE SIGNING!**

DATED this \_\_\_\_ day of 8/9/2024 2024.

**Class Plaintiffs:**

\_\_\_\_\_  
Jeff Beck, individually and on behalf of the  
class of similarly situated persons or entities

\_\_\_\_\_  
Amy Weinberg, individually and on behalf  
of the class of similarly situated persons or  
entities

\_\_\_\_\_  
Zac Weinberg, individually and on behalf of  
the class of similarly situated persons or  
entities

ALTA VIEWS, LLC

DocuSigned by:

BJ Lepinski

By: BJ Lepinski, individually  
and on behalf of the class of similarly  
situated persons or entities

**APPROVED BY:**


Attorneys for Releasor Class Plaintiffs  
LAIRD COWLEY, PLLC  
KOVACICH SNIPES JOHNSON, P.C.

\_\_\_\_\_  
Cory R. Laird  
Lindsay A. Mullineaux  
Riley M. Wavra  
Mark M. Kovacich  
Caelan G. Brady

**CAUTION: READ BEFORE SIGNING!**

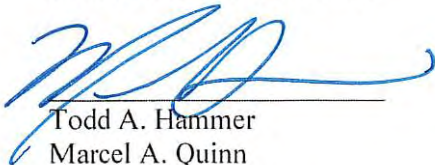
DATED this 9<sup>th</sup> day of August 2024.

**City of Whitefish**

By:   
Dana Smith, City Manager

**APPROVED BY:**

Attorneys for Releasee/Releasor City of Whitefish  
HAMMER, QUINN & SHAW PLLC  
BOONE KARLBERG P.C.

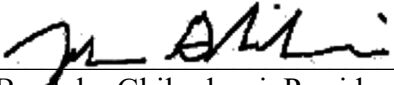


Todd A. Hammer  
Marcel A. Quinn  
Natasha Prinzing Jones  
Thomas J. Leonard

**CAUTION: READ BEFORE SIGNING!**

DATED this 15th day of August 2024.

**Financial Consulting Solutions Group, Inc. (FCS Group):**

  
By: John Ghilarducci, President

APPROVED BY:

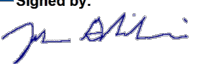
Attorneys for Releasee/Releasor FCS Group  
HALL BOOTH SMITH, P.C.

\_\_\_\_\_  
Baxter Drennon  
Jori Quinlan

**CAUTION: READ BEFORE SIGNING!**

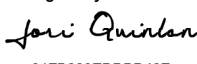
DATED this 15th day of August 2024.

**Financial Consulting Solutions Group, Inc. (FCS Group):**

Signed by:  
  
5A0B4831FB754D3...  
By: John Ghilarducci, President

APPROVED BY:

Attorneys for Releasee/Releasor FCS Group  
HALL BOOTH SMITH, P.C.

Signed by:  
  
81FB229EDDBD42F...  
Baxter Drennon  
Jori Quinlan