

RESOLUTION NUMBER 7657

A RESOLUTION SUPPORTING MUNICIPAL ACQUISITION OF THE WATER SYSTEM, SUPPORTING STIPULATIONS ON A SALE OF THE MOUNTAIN WATER COMPANY TO ENSURE ACCESS TO CLEAN, AFFORDABLE AND RELIABLE WATER, RECOGNIZING THE LETTER AGREEMENT AMONG THE CITY OF MISSOULA, THE CLARK FORK COALITION AND THE CARLYLE GROUP AND CONDITIONALLY SUPPORTING THE SALE.

WHEREAS, the City of Missoula is committed to ensuring all citizens and businesses have access to clean, affordable and reliable water, which is an essential public resource; and

WHEREAS, the City of Missoula is one of the largest customers of the Mountain Water Company; and

WHEREAS, Missoula's privately owned water utility, Mountain Water Company, is being sold by its stockholders as part of its parent company, Park Water Company, to the Carlyle Group; and

WHEREAS, the City of Missoula demonstrates competence and efficiency managing the municipal wastewater utility; and

WHEREAS, the Carlyle Group has no previous experience managing a municipal drinking water system; and

WHEREAS, in the absence of stipulations on a transaction guaranteeing benefits to consumers, the control of the water system by a speculative investor may not be in the interest of the water system users; and

WHEREAS, the City has made previous efforts to acquire the water utility at citizens' requests and Mountain Water Company's management has previously committed to offering the utility for sale to the City of Missoula;

WHEREAS, the City of Missoula and the Clark Fork Coalition entered into a Letter Agreement (Exhibit A) with the Carlyle Group with the following provisions:

- The City shall be afforded the opportunity to meet any offer to purchase Mountain Water, the Missoula water system or stock in Mountain Water.
- The City shall be afforded the opportunity to purchase the Mountain Water system if Mountain Water, Park Water or Park Water's parent company or the stock of any of those companies is proposed to be sold.
- The Carlyle Group agrees to consider in good faith any offer from the City to purchase Mountain Water at any time.
- Rattlesnake Creek will be used by Mountain Water as a backup supply only, with 90 days notice and consultation of any change in use.
- Mountain Water's water rights will not be diverted outside of the Missoula area for use elsewhere.

NOW THEREFORE BE IT RESOLVED that the City Council supports all reasonable efforts by the City of Missoula to acquire Mountain Water Company; and

BE IT FURTHER RESOLVED that the Missoula City Council recognizes the Letter Agreement as an enforceable guarantee of a right of first refusal to purchase the water utility from the Carlyle Group; and

BE IT FURTHER RESOLVED that the Missoula City Council supports placing further stipulations, as requested by the Montana Consumer Counsel, on the sale of Mountain Water Company to the Carlyle Group to ensure clean, affordable and reliable drinking water for Missoula's residents.

BE IT FURTHER RESOLVED that, in the presence of a clear path to public ownership and conditioned on stipulations that protect the assets of Mountain Water as requested by Montana Consumer Counsel, the Missoula City Council finds the sale to Carlyle Group compatible with the public interest.

PASSED AND ADOPTED this 26th day of September, 2011.

ATTEST:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

APPROVED:

/s/ John Engen
John Engen
Mayor



Thorvald A. Nelson
Phone 303-290-1601
Fax 303-290-1606
tnelson@hollandhart.com
77459.0001

September 22, 2011

The Honorable John Engen
Mayor
City of Missoula
435 Ryman
Missoula, MT 59802-4297

Ms. Karen Knudsen
Executive Director
Clark Fork Coalition
140 S. 4th Street West, Unit 1
Missoula, MT 59802

Mr. Robert Dove
Managing Director
The Carlyle Group
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505

Re: Letter Agreement between the City of Missoula, the Clark Fork Coalition, and Carlyle Infrastructure Partners

Mayor Engen, Ms. Knudsen, and Mr. Dove:

Carlyle Infrastructure Partners, LP ("Carlyle"), the City of Missoula ("City"), and the Clark Fork Coalition ("Coalition") are all parties to a proceeding currently pending before the Montana Public Service Commission ("Commission") in Docket No. D2011.1.8. Carlyle, the City, and the Coalition have come to an agreement regarding the issues in dispute in that proceeding. This agreement is reflected in this Letter Agreement signed by authorized representatives of Carlyle, the City, and the Coalition below and dated September 22, 2011. In particular, Carlyle, the City, and the Coalition agree as follows:

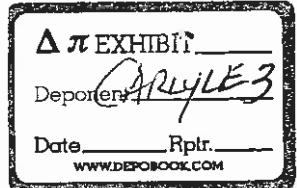
1. The City and the Coalition agree that the proposed transaction described more fully in the application filed by Mountain Water on January 24, 2011 in Docket No. D2011.1.8 is in

Holland & Hart Attorneys at Law

Phone (303) 290-1600 Fax (303) 290-1606 www.hollandhart.com

6380 S. Federal Green Circle Suite 500 Englewood, CO 80111

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the public interest and should be approved by the Commission. The City and the Coalition further agree to make this position known to the Commission at the public hearings currently scheduled for September 26 and 27, 2011 and in subsequent legal filings or briefs as may be requested by the Commission.

2. Carlyle, the City, and the Coalition agree that the Commission does not need to address the future sale of Mountain Water to the City or any other person or entity in Docket No. D2011.1.8. However, in consideration of the City's and the Coalition's agreement to support the proposed transaction, if the Commission approves the transaction and the transaction successfully closes, Carlyle, the City, and the Coalition agree as follows:
 - a. If Park Water, Western Water, or any other upstream owner of Mountain Water receives an offer to purchase Mountain Water, the Missoula water system, or the stock in Mountain Water and, further, having received such an offer, if Park Water, Western Water, or any other upstream owner of Mountain Water proposes to sell Mountain Water, the Missoula water system, or the stock in Mountain Water independent of a sale or transfer of Park Water, Western Water, or any other upstream owner of Mountain Water, the City will be notified of that decision prior to any such sale. The notice shall indicate that a sale is proposed and will disclose, unless such disclosure is prohibited by a confidentiality agreement, the proposed price, terms, or conditions. It is recognized that in such an event, it would be necessary for the City to have a reasonable time to determine whether it wished to purchase the system and, as a consequence, Carlyle agrees that it would not sell the system to any third party for a minimum of 120 days after the notice. During that time period, the City shall have the option to submit its own proposal to Carlyle to acquire Mountain Water, the Missoula water system, or the stock in Mountain Water. In the event the City submits a proposal, Carlyle shall accept such a proposal and sell Mountain Water to the City provided the City's proposed price meets or exceeds the price offered by the third party for a like transaction on substantially similar or preferable terms and conditions in the reasonable judgment of Carlyle.

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- b. If any of Mountain Water, the Missoula water system, Mountain Water's parent company (currently Park Water Company), the company that owns Mountain Water's parent company (proposed to be Western Water Holdings, LLC); or the stock in either is proposed to be sold, the City will be notified by Carlyle of that decision prior to any such sale provided the City first agrees to a reasonable nondisclosure agreement. It is recognized that in such an event, it would be necessary for the City to have a reasonable time to determine whether it wished to purchase the Mountain Water system, and as a consequence, the City shall be granted a minimum of 120 days after the notice of Carlyle's intention to sell and Carlyle agrees that it would not sell the company or companies to any third party during such period or an extension of that period if granted by Carlyle. During this minimum 120 day period, Carlyle will consider in good faith any offer from the City to purchase Mountain Water, the Missoula water system, or the stock in Mountain Water.
- c. For the avoidance of doubt, Paragraphs 2.a. and 2.b. are intended to be mutually exclusive. In the event a proposed transaction could invoke both Paragraphs 2.a. and 2.b. above, the 120-day time periods shall run concurrently and the City shall have the option to proceed under either Paragraph 2.a. or 2.b. at its discretion, but not both.
- d. Carlyle also agrees to consider in good faith any offer from the City to purchase Mountain Water, the Missoula water system, each in its entirety, or the stock in Mountain Water at any time.
- e. This Paragraph 2 of this Letter Agreement shall be construed in accordance with and governed by the internal Laws of the State of Montana applicable to contracts executed and performed within the State of Montana, but without reference to the choice of law provisions thereof. Any and all disputes, controversies and claims arising out of or relating to this Paragraph 2 or concerning the respective rights or obligations of the parties hereto shall be settled and determined by arbitration in or near Missoula, Montana before a panel of three (3) arbitrators pursuant to the

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Commercial Rules then obtaining of the American Arbitration Association. Each party shall select one arbitrator, and the two chosen arbitrators shall mutually agree upon the third arbitrator. The parties agree that the arbitrators shall have the power to award damages, injunctive relief and reasonable attorneys' fees and expenses to any party in such arbitration. The arbitration award shall be final and binding upon the parties and judgment thereon may be entered in any court having competent jurisdiction.

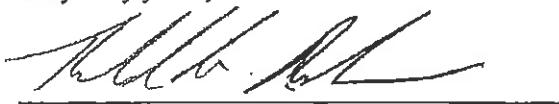
- f. If the Commission approves the transaction and the transaction successfully closes and, as a result, this Paragraph 2 of this Letter Agreement becomes effective, this Letter Agreement will replace the August 14, 1997 letter from Mountain to the City (Mayor Kadas) regarding notification to the City in the event of a sale of Mountain and the August 14, 1997 letter shall have no further effect or applicability.
3. Carlyle, the City, and the Coalition agree that the Commission should not establish a condition regarding the future use of Mountain Water's water rights, as they are under the jurisdiction of the Montana Department of Natural Resources and Conservation, and the Montana Water Courts. In consideration of the City's and the Coalition's agreement to support the proposed transaction, if the Commission approves the transaction and the transaction successfully closes, Carlyle, the City, and the Coalition agree as follows:
 - a. Mountain Water anticipates that its water facility infrastructure in the Rattlesnake drainage will continue to be beneficially used as a backup water supply for the Missoula community's needs.
 - b. Mountain Water will continue to beneficially use its Rattlesnake drainage water rights for the benefit of the Missoula community. Prior to Mountain Water using these rights in any manner other than it currently uses them (alternative supply, emergency supply, and diversion out of eight (8) wells), no later than 90 days prior to such change in use, Mountain Water shall notify the City and the CFC of its plans and discuss those plans with the City and the CFC.



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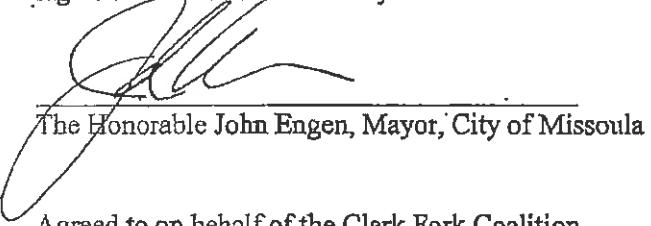
c. Mountain Water's water rights will continue to be used beneficially by Mountain Water to provide water for its customers and the Missoula community and will not be diverted outside of the Missoula area for use elsewhere.

Very truly yours,



Thorvald A. Nelson
for Holland & Hart LLP

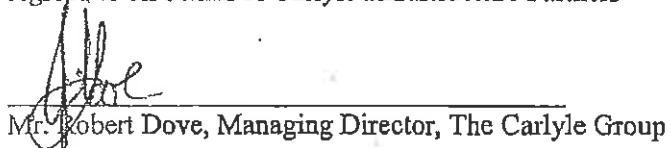
Agreed to on behalf of the City of Missoula


The Honorable John Engen, Mayor, City of Missoula

Agreed to on behalf of the Clark Fork Coalition


Ms. Karen Knudsen, Executive Director, Clark Fork Coalition

Agreed to on behalf of Carlyle Infrastructure Partners


Mr. Robert Dove, Managing Director, The Carlyle Group