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DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF the Joint Application of ) REGULATORY DIVISION  
Liberty Utilities Co., Liberty WWH, Inc., Western )  
Water Holdings, LLC, and Mountain Water Company ) DOCKET NO. D2014.12.99  
for Approval of a Sale and Transfer of Stock )  
)

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MEMORANDUM OF UNDERSTANDING

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WHEREAS, Montana Public Service Commission’s Advocacy Staff (“Advocacy Staff”) and Mountain Water Company (“Mountain Water”) entered into a Revised Joint Stipulation and Settlement Agreement (“Revised Joint Stipulation”) on July 6, 2016, addressing the unauthorized sale of Mountain Water contemplated in Docket D2014.12.99 before the Montana Public Service Commission (“Commission”).

WHEREAS, the Revised Joint Stipulation requires Mountain Water to “pay \$150,000 to the Human Resource Council designated for use in its low income and renters repair and replacement program, which assists qualifying individuals with the cost of replacing service lines or meter installation costs normally borne by customers within Mountain Water's service area.” *In re Liberty Utilities*, Docket D2014.12.99, Revised Joint Stipulation and Settlement Agreement p. 3 (Mont. Pub. Serv. Comm’n Jul. 6, 2016).

WHEREAS, the Revised Joint Stipulation requires Mountain Water, Advocacy Staff, and the Human Resource Council to “write a memorandum of understanding to ensure, among other things, minimal support of administrative costs through this payment.” *Id.*

WHEREAS, Advocacy Staff and Mountain Water submitted the Revised Joint Stipulation to the Commission on July 6, 2016.

WHEREAS, the Commission approved the Revised Joint Stipulation at a work session held on July 7, 2016, and Final Order 3392r on July, 28, 2016.

## **I) Description of Parties**

Mountain Water is an investor owned public utility providing water service in Missoula, Montana. The Commission is the agency with the duty to supervise and regulate the operations of public utilities in Montana. The Human Resource Council District Eleven is a non-profit corporation working to identify and expand resources to provide opportunities in housing, health, education, training and employment in Mineral, Missoula, and Ravalli Counties. A part of Human Resource Council's responsibilities is providing assistance to homeowners in providing low interest loans to make improvements on water utility connections. *See* Human Rights Council Homeowner Rehab & Repair Loan Program, <http://www.humanresourcecouncil.org/homeowner-rehab-repair-loans.html>.

## **II) History of Relationship**

On December 15, 2014, Liberty Utilities Co., Liberty WWH, Inc. ("Liberty WWH"), Western Water Holdings, and Mountain Water (collectively, "Joint Applicants") submitted an application with the Commission for approval for Liberty WWH to merge with and into Western Water Holdings. As a consequence of such a proposed merger, Liberty Utilities Co. would become the sole-owner of Western Water Holdings stock and the parent company of both Park Water and Mountain Water.

Upon receiving the application, the Commission initiated proceedings to determine if it should approve or deny the application. The Commission granted intervention to the City, the Clark Fork Coalition (CFC), the Montana Consumer Counsel (MCC), and the Employees of Mountain Water Company.

On January 8, 2016, the Joint Applicants closed the sale of Western Water Holdings to Liberty Utilities Co. without Commission approval. On January 11, 2016, the Joint Applicants informed the Commission, the other parties to the proceeding, and the public that the transaction had closed.

On January 13, 2016, the Commission issued a notice of opportunity to comment on the notice of closing and withdrawal with a deadline of January 27, 2016. On January 29, 2016, the Commission held a work session to discuss and act on the Joint Applicants' notice of closing and withdrawal of their application and the comments provided by the parties. The Commission voted five to zero in favor of pursuing fines against Mountain Water for the unauthorized sale

and transfer of upstream controlling stock of the utility under Mont. Code Ann. §§ 69-3-209 and -206. *In re Liberty Utilities Co.*, Docket D2014.12.99, Order 7392q ¶¶ 8-11, 19 (Mont. Pub. Serv. Comm'n Feb. 5, 2016).

On June 22, 2016, Mountain Water filed a Joint Stipulation and Settlement Agreement (“Original Stipulation”) entered into between Mountain Water and the Commission’s advocacy staff. On June 27, 2016, the MCC filed Preliminary Comments of the Montana Consumer Counsel on Joint Stipulation and Settlement Agreement. At a work session on June 27, 2016, the Commission discussed the Original Stipulation and ultimately provided guidance to advocacy staff to reinitiate negotiations with Mountain Water and other parties. On July 6, 2016, Mountain Water filed a Revised Stipulation between Mountain Water and Commission advocacy staff.

The Revised Stipulation stated:

Mountain Water will pay \$150,000 to the Human Resource[] Council designated for use in its low income and renters repair and replacement program, which assists qualifying individuals with the cost of replacing service lines or meter installation costs normally borne by customers within Mountain Water's service area. If this Revised Joint Stipulation is approved by the Commission, Signatories and the Human Resource[] Council will write a memorandum of understanding to ensure, among other things, minimal support of administrative costs through this payment.

Revised Joint Stipulation p. 3.

On July 6, 2016, the MCC again filed Comments Regarding Revised Joint Stipulation and Settlement Agreement. During a work session on July 7, 2016, the Commission voted to approve the Revised Stipulation. Final Order 7392r approving the Revised Joint Stipulation stated:

Mountain Water is required to make the \$150,000 payment to the Human Resource Council, which will be used to help cover the costs associated with replacing service lines or installing meters of Mountain Water customers. Regardless of the future ownership of the utility, Mountain Water as of the service date of this order, is required to make the \$150,000 payment to the Human Resource Council as agreed to in the Revised Stipulation.

Final Order 7392r ¶ 26 (Jul. 28, 2016).

### **III) Roles and Responsibilities**

NOW, THEREFORE, it is hereby agreed by and between the signatories of this Memorandum of Understanding as follows:

- Human Resource Council will only distribute these funds within Mountain Water's service area.
- Human Resource Council will administer these funds through its existing Homeowner Rehab and Repair Loan Program concerning rate payer owned water system improvements. *See* Human Rights Council Homeowner Rehab & Repair Loan Program, <http://www.humanresourcecouncil.org/homeowner-rehab-repair-loans.html>.
- Rate payer owned water system improvements are defined as:
  - Service line improvement;
  - Meter installation;
  - Repair and replacement of internal water lines, hookups, faucets, and other water appliances; and
  - Any measure aimed at reducing the leakage rate on the Missoula water system on property owned by rate payers and not by the utility.
- Administrative costs or expenses associated with the \$150,000 payment from Mountain Water will not exceed three percent of the total payment.
- At least 97 percent of the \$150,000 payment from Mountain Water will be directly used to assist qualifying individuals with the cost of rate payer owned water system improvements within Mountain Water's service area.
- Administrative costs and expense are the costs and expenses associated with:
  - Performing general administrative and coordination functions, including:
    - Accounting, budgeting, financial, and cash management functions;
    - Procurement and purchasing functions;
    - Property management functions;
    - Personnel management functions;
    - Payroll functions;
    - Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;
    - Audit functions;
    - General legal services functions;
    - Developing systems and procedures, including information systems, required for these administrative functions;
    - Preparing administrative reports; and
    - Other activities necessary for general administration of government funds and associated programs.
  - Oversight and monitoring responsibilities related to administrative functions;
  - Costs of goods and services used for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;
  - Travel costs incurred for official business in carrying out administrative activities or the overall management of the program;
  - Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting, and payroll systems) including the purchase, systems development, and operating costs of such systems and;

- Costs of technical assistance, professional organization membership dues, and evaluating results obtained by the project involved against stated objectives.
- Qualifying individuals are defined as below 80% of the area median income, otherwise categorized as low-income, very low-income, and extremely low-income, pursuant to U.S. Department of Housing and Urban Development's income limits. *See* HUD FY 2016 Income Limits, <https://www.huduser.gov/portal/datasets/il/il16/index.html>.
- In the event the City of Missoula takes possession of the water utility, distribution of these funds will continue under the terms of this Memorandum of Understanding substituting City of Missoula water system for Mountain Water. In the event of condemnation, these funds will not be used for any other municipal utility service or any other municipal purpose.

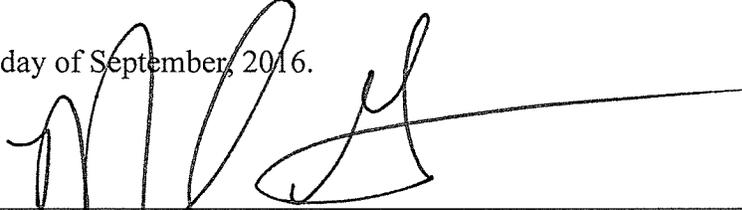
#### **IV) Timeline**

Mountain Water will make payment of these funds no later than two weeks after the Human Resource Council, Advocacy Staff, and Mountain Water have signed this Memorandum of Understanding. Mountain Water will make this payment to the Human Resource Council regardless of whether the Missoula water system is condemned. The Human Resource Council will distribute these funds until the \$150,000 payment is exhausted. The Human Resource Council will provide annual written reports on the status of the funds to the Commission, Mountain Water, the Montana Consumer Counsel, the City of Missoula, and the Clark Fork Coalition. Once the \$150,000 payment is fully distributed, the Human Resource Council will have an informational meeting with the Commission to explain how the \$150,000 was used.

We, the undersigned, have read and agree with this Memorandum of Understanding. Further, we have reviewed the proposed use of payment and approve it.

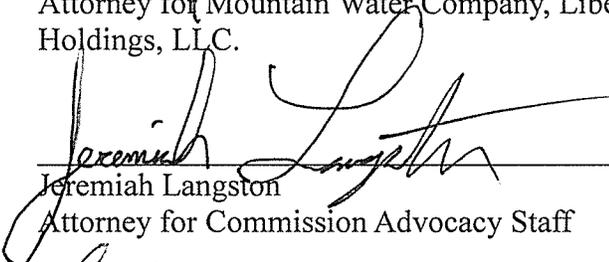
DATED this 14 day of September, 2016.

By:

  
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Michael Green

Attorney for Mountain Water Company, Liberty Utilities Co., and Western Water Holdings, LLC.

By:

  
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Jeremiah Langston

Attorney for Commission Advocacy Staff

By:

  
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Chuck Magraw

Attorney for Human Resource Council District Eleven