

## LETTER OF INTENT

This Letter of Intent ("LOI") is entered by and between the Milford Water Company (the "Company") and the Town of Milford (the "Town") (collectively, the "Parties") this 7<sup>th</sup> day of June 2021.

## BACKGROUND

On March 9, 1881, the Legislature incorporated the Company by charter through the passage of St. 1881, c. 77 (the "Charter"). The purpose of the Company was to furnish the inhabitants of the Town "with pure water for the extinguishment of fires, and for domestic and other purposes." Section 9 of the Charter grants the Town the right to purchase the corporate property and all the rights and privileges of the Company at a mutually agreed price. Section 9 further provides that if the Company and the Town are unable to agree on a price, the Supreme Judicial Court (the "SJC") shall, upon application of either party, appoint three commissioners to determine the compensation to be paid. On January 29, 2018, the Town filed a petition, No. SJ-2018-0029 (the "SJC Action"), with the SJC to appoint the Department of Public Utilities (the "DPU") to determine the compensation to be paid for the purchase of the corporate property and all of the rights and privileges of the Company. On May 31, 2018, a single Justice of the SJC appointed the DPU to determine the amount of compensation to be paid by the Town for its planned purchase. In referring the matter to the DPU, the single justice of the SJC stated, in pertinent part, that if either side is aggrieved by the DPU's valuation, they may challenge it when it is presented to the SJC for acceptance.

On February 26, 2021, the DPU filed with the SJC a *Report and Determination of the Department of Public Utilities* in D.P.U. 18-60 pursuant to the appointment by the SJC according to St. 1881, c. 77 (the "Report"). In the Report, the DPU found that the purchase price to be paid for the assets of the Company is \$66,395,908 as of December 31, 2018.

On January 7, 2015, the Legislature amended Section 9 of the Charter to state that the Town's authority to purchase the Company's corporate property and all rights and privileges of the Company is granted upon the condition that the price, either as agreed upon or determined by the DPU, must be accepted by the Town by a 2/3 vote of the voters present and voting thereon at a meeting called for that purpose (the "Special Town Meeting").

Accordingly, the Town's vote to acquire the Company assets comes after the purchase price has been established. It is anticipated that the Town will schedule the necessary Special Town Meeting for a vote to authorize the acquisition of the Company assets on or before August \_\_\_, 2021.

The Company has consistently filed journal entries with the DPU on a monthly basis to reflect its most significant post-2018 capital expenditures and continued to provide these entries after the evidentiary hearings concluded in D.P.U. 18-60. Additional monthly updates have been provided to the Town subsequent to the issuance of the Report. It is anticipated that the total of the post-2018 capital expenditures of the Company through December of 2021 will be in excess of \$10 million; although the Town agrees in principle that the Company may be entitled to compensation for the post-2018 expenditures if the Town exercises its right to purchase the Company's assets,

the Parties also acknowledge that the Town is presently conducting its independent review of those expenditures and that a final figure has not been determined as of the date of this LOI. The DPU did not include any of the Company's post-2018 capital expenditures in the amount of compensation to be paid by the Town for the Company's corporate property, rights and privileges. However, the DPU specifically noted that the Parties were not precluded from seeking further relief or negotiations regarding these expenditures.

Since the filing of the Report, the Parties have been in negotiations regarding the total compensation to be paid by the Town for the Company's corporate property, rights and privileges. This LOI reflects the Parties mutual intention for the Town to purchase all the Company's corporate property, rights and privileges for the purchase price of \$66,395,908 plus an amount which will reflect all prudent capital expenditures by the Company since December 31, 2018, adjusted for any applicable depreciation through Closing or another agreed upon date (the "Purchase Price"), based upon the following terms and conditions:

#### **Terms and Conditions**

1. The purchase is conditioned on a Special Town Meeting vote authorizing the purchase and approving the Purchase Price. The Town intends to call a Special Town Meeting at the earliest practical date, currently anticipated to be in July or August of 2021. The Parties also acknowledge and agree that absent such authorizing vote by said Special Town Meeting as necessary to effect this purchase, this LOI shall be null and void.
2. The Parties must agree to the terms of a purchase agreement (the "Agreement") that contains the terms and conditions of this LOI and other typical terms and conditions generally found in an asset purchase agreement. The Parties agree to work diligently and in good faith with each other with a goal of agreeing to a purchase agreement within forty-five (45) days of a favorable vote of the Special Town Meeting vote authorizing the transaction as specified in St. 1881, c. 77, § 9, as amended.
3. The Parties agree that the targeted Closing Date for the transaction is on or before December 1, 2021 and is not subject to extension except by written mutual agreement by the Parties to perfect the terms of the Agreement but to a date no later than December 8, 2021. If the closing does not occur on or before December 8, 2021, at the latest, then this LOI shall be null, void and of no further effect unless otherwise mutually agreed in writing by the Parties.
4. The Corporate property, rights and privileges subject to purchase includes all assets valued in the DPU proceeding and the post-2018 Capital asset additions, but does not include those assets specified on Exhibit A attached hereto. A schedule identifying all such assets (to the extent possible) will be included as a schedule to the Agreement.
5. The transaction is an asset purchase and as such, excludes all Company liabilities, unless specifically included on a schedule to the Agreement reflecting any assumed liabilities.

6. The Company is responsible for the obligations associated with the pensions of and any other obligations to its employees under the Company's pension plan, benefit plans, or the like.
7. **The Company Assets are being sold "As Is – Where Is" with no express or implied warranties, including without limitation any implied warranty of merchantability, other than good title free and clear of any and all liens or encumbrances. To the extent that any such assets are leased, the Town shall have the right to assume or reject such lease; provided however that the Town will assume and be responsible for all costs, expenses and damages related specifically to the rejection or early termination of such leases pursuant to the terms thereof.**
8. The Town, or its agent if it contracts with another entity to operate or assist in the operation of the system, has the right to offer employment to any or all Company employees, but is not obligated to hire said employees; provided however that the Town will make an initial offer of employment no later than September 15, 2021 to those employees it intends to retain.
9. The transaction is conditioned on an updated due diligence assessment by the Town. A list of due diligence action items is attached as Exhibit B to this LOI and includes (among other things) updated environmental testing and review, the findings of which are acceptable to the Town. The Company hereby authorizes the Town to commence, and the Company agrees to cooperate with, any and all due diligence that the Town requires, including, but not limited to, environmental studies. The due diligence period starts upon execution of this LOI and extends until the date of Closing.
10. The transaction is conditioned upon the Town obtaining financing for the purchase of the Company Assets on terms acceptable to the Town in its sole discretion. The Town will use best commercially reasonable efforts, will take all steps necessary to secure bond financing by the date of Closing and will provide periodic updates to the Company concerning its efforts.
11. The Parties will mutually request that the SJC stay any action to accept the Report of the DPU and the Parties shall retain their respective rights to challenge any or all findings of the DPU before the SJC in order to give the Parties the opportunity to Close the transaction as contemplated by this LOI. Within ten (10) days of the Closing, the Town will voluntarily dismiss the SJC Petition without accepting the Report of the DPU. Should the transaction not Close, the Parties retain all rights, claims and/or defenses in regard to challenging the Report and/or exercising their rights under the Charter.

12. This LOI may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement.
13. Each Party expressly represents and warrants that it is fully authorized to enter into this LOI, and that the individuals executing this LOI have the necessary and appropriate authority to do so. If any Party executes this LOI through an agent or representative, each such agent or representative hereby warrants and represents to the other Party to this LOI that he or she is authorized to execute, acknowledge, and deliver this LOI on behalf of such Party and to thereby bind said Party to the same.
14. This LOI will be governed by and construed under the laws of the Commonwealth of Massachusetts, without regard to conflicts of laws principles.
15. Whether or not the transaction contemplated by this LOI is consummated, each of the Parties to this LOI shall bear its own costs related thereto, including the fees and expenses of its financial advisors, lawyers and accountants.

*[Signatures Follow]*

Yours sincerely,

TOWN OF MILFORD

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By: M. K. Walsh  
Name: MICHAEL K. WALSH  
Title: Selectman

By: Thomas J. O'Connell  
Name: THOMAS J. O'CONNELL  
Title: Selectman

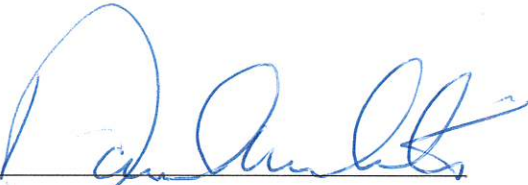
EXCEPTING PARAGRAPH 8 PER G.L. 269A

By: Paul A. Mazzuchelli  
Name: PAUL A. MAZZUCHELLI  
Title: Selectman

Accepted and agreed as of:

June 8, 2021

MILFORD WATER COMPANY

By: 

Name: DAVID H. WHITE

Title: PRESIDENT

Exhibit A – Assets Staying with the Company

Such cash, cash equivalents, receivables, prepaid credits or other credits attributable to its use of solar energy, reserves and such other assets that are not required to fulfill the Company's obligation regarding its working capital at Closing, as the same shall be set forth in the closing agreement.

### Exhibit B – Due Diligence

The following categories are the preliminary areas in which the Town and its counsel expect to request additional diligence information from the Company. Items may be subsequently added, deleted or modified, as appropriate, as the due diligence review progresses.

1. Corporate Records;
2. Contracts and Commitments;
3. Accounting and Financial;
4. Indebtedness;
5. Real Property;
6. Personal Property;
7. Intellectual Property;
8. Environmental Matters;
9. Employees;
10. Litigation;
11. Regulations and Filings; and
12. Miscellaneous.

In addition, the Town has contracted with GZA GeoEnvironmental, Inc. to complete a Phase I Environmental Site Assessment at all Company properties and with Tata & Howard, Inc. to complete an assessment of capital improvements. The Company agrees to cooperate with these third parties to allow them to complete their reviews.