



# MILFORD BOARD OF SELECTMEN

Room 11, Town Hall, 52 Main St. (Route 16), Milford, Massachusetts 01757-2679  
Tel. 508-634-2303 Fax 508-634-2324

William E. Kingkade Jr., Chairman  
William D. Buckley  
Michael K. Walsh

Richard A. Villani  
Town Administrator

May 2, 2017

Milford Water Company  
Attn: David Condrey, Manager  
66 Dilla Street  
Milford, MA 01757

Re: Possible Acquisition of Milford Water Company (the "Company")

Dear David:

We are writing to indicate the contemplation by the Town of Milford ("Buyer") to purchase all of the outstanding capital stock of the Company directly or in connection with a merger (the "Transaction"); provided however that the tax consequences of the merger to the stockholders of the Company are substantially similar to the tax consequences to the stockholders of a direct sale of the capital stock to the Buyer. If the parties disagree on the tax consequences, within fourteen (14) days after the Special Town Meeting referenced below, the parties will submit the disagreement to a nationally recognized independent accounting firm to resolve the difference. The parties will each pay half the fees and other expenses incurred by such accounting firm (the "Transaction"). This letter of intent ("Agreement") is intended to summarize the principal terms of the Transaction.

## Part I

The parties acknowledge that the Transaction is subject to the execution of a mutually acceptable definitive agreement providing for the Transaction (the "Definitive Agreement"), said Definitive Agreement to be entered into subsequent to but no later than sixty (60) days of a favorable vote of the Special Town Meeting specified in St. 1881, c. 77, § 9, as amended, and held no later than September 30, 2017.

Among other items, the parties have discussed the following terms:

- Buyer to purchase all of the outstanding shares of capital stock of the Company, free and clear of all encumbrances, for \$63 million, subject to a working capital adjustment. Seller to be responsible for all Company's indebtedness. Seller may use sale proceeds to pay Company indebtedness for which it is responsible;
- Buyer and the Company agree that a portion of the \$63 million purchase price shall be held in escrow (the "Escrow"). The amount so held shall be sufficient to satisfy, and will subsequently be used to satisfy, any federal, state, and local tax liability of



- the Company: (1) for the portion of the Company's current taxable year ending on (and including) the closing date of the Transaction, and (2) resulting from either (i) any liquidation of the Company that is deemed to occur as a result of the Transaction pursuant to Treas. Reg. Section 1.337(d)-4 or (ii) the liquidation of the Company by the Buyer after the closing date of the Transaction. The Escrow shall also include an amount sufficient to satisfy, and will subsequently be used to satisfy, all pension liabilities of the Company. The parties shall agree on the Escrow amount prior to execution of the Definitive Agreement after consultation with their applicable tax advisors, with the balance of said funds remaining to be provided to the Company's shareholders as directed pursuant to the applicable escrow agreement;
- Purchase price includes all assets, except those assets specified on Exhibit A, and liabilities of the Company, including its name, good will, franchise rights, rights and licenses, real estate (except parcels listed as contingencies), inventory and accounts receivable;
  - Purchase shall exclude any liabilities associated with litigation by or against the Company prior to closing;
  - Company to adhere to customary restrictions on business in order to preserve the value of the Company (e.g., operate in the ordinary course, etc.);
  - Working capital at closing to be consistent with historical norms; Definitive Agreement to include customary working capital adjustment based on an agreed working capital target at closing;
  - Customary representations, covenants, conditions to closing, covenants not to compete, indemnification and escrow as mutually agreed to by the parties;
  - The Buyer plans to finance the acquisition through standard revenue bonds and as such, the Transaction is subject to a financing contingency, on such terms and in an amount sufficient to effect the closing of the transaction, each as determined to be acceptable by the Buyer in its sole discretion;
  - Closing conditions shall include (A) all covenants to be performed by the parties prior to closing shall be performed in all material respects, (B) all representations and warranties of the parties in the Definitive Agreement shall be accurate with such exceptions as would not be material, (C) necessary approvals (including approvals of boards, stockholders, town meeting, governmental and third party consents) for the Transaction are received, (D) no order of a governmental authority shall be issued or law shall be passed that prohibits or makes illegal the completion of the Transaction, (E) there is no material adverse change in the business, results of operations, prospects, condition (financial or otherwise) or assets of the other party, and (F) other customary closing conditions; and
  - The Buyer anticipates retaining and preserving the goodwill of the employees currently employed by the Company.

Nothing in this Part I shall constitute a binding agreement.

## **Part II**

1. **Termination.** This Agreement will terminate on the earlier of: (i) mutual consent of both parties; (ii) Buyer gives written notice to the Company of its intention not to pursue the



Transaction, (iii) failure to obtain approval from a Special Town Meeting held no later than September 30, 2017 for the express purpose of obtaining the two-thirds approval specified in St. 1881, c. 77, § 9, as amended; (iv) failure to enter into the Definitive Agreement subsequent to but no later than sixty (60) days of such favorable vote of the Special Town Meeting; or (v) December 31, 2017 (as applicable, the "Termination Date"). From and after the Termination Date, the parties will have no further obligations hereunder; provided, however, that the termination of the provisions of this Agreement will not affect the liability of a party for breach of any binding provisions of this Agreement prior to the Termination Date and (ii) the provisions of Sections 6, 7 and 8 of Part II will survive any such termination.

2. Access to Information/Confidentiality. The Company shall give the Buyer and its representatives full and free access at reasonable times to the assets, properties, books, accounting, financial and statistical records, corporate records, tax returns and other business files pertaining to the Company and the Company shall reasonably cooperate fully in making its officers and key employees available to the Buyer and its representatives at reasonable times. The provisions of the non-disclosure agreement executed by the parties dated June 28, 2016 (the "NDA") shall continue to remain in full force and effect in accordance with its terms.

3. Due Diligence.

(a) The Company acknowledges that the purchase price being offered and the structure of the transaction described in this letter is subject to due diligence review of the Transaction and the operations and financial results of the Company by the Buyer and by its advisors and consultants. The Buyer will begin its due diligence investigation promptly after execution of this letter of intent.

(b) The due diligence investigation shall include without limitation: (i) review of the Company's financial statements and projections under generally accepted accounting principles, (ii) review of the Company's material contracts and commitments with customers, vendors and others, (iii) review of the Company's intellectual property, equipment and other tangible assets, and (iv) review and evaluation of any pending or threatened litigation. If major problems, issues or problems are uncovered as part of due diligence, it may result in a change in the purchase price being offered.

4. No Solicitation. Until the Termination Date, neither the Company, nor any of its owners, directors, officers, employees, representatives or agents will, directly or indirectly: (A) encourage, solicit, initiate, engage (including by way of furnishing or disclosing information) or participate in any negotiations with any third person or entity (other than the Buyer) concerning any stock sale, merger, consolidation or other business combination involving the Company, or any acquisition of any portion of the Company's assets or business, or encourage, solicit, or initiate inquiries or proposals concerning, or which could reasonably be expected to lead to, any of the foregoing (an "Acquisition Transaction"); or (B) negotiate or take any other action intended or designed to facilitate the efforts of any third person or entity (other than Buyer) relating to a possible Acquisition Transaction, or enter into any arrangements, agreements or understanding requiring the Company to abandon, terminate or fail to consummate the transactions contemplated by this letter. As of the date of this Agreement, the Company will



promptly notify the Buyer regarding the receipt of any formal offer or proposal for an Acquisition Transaction.

5. Conduct of Business. During the period from the execution hereof until the Termination Date, the Company shall operate its business only in the ordinary course in substantially the same manner as it has operated prior to the date hereof. Said ordinary course of business operation shall include but not be limited to the filing of a Petition with the Massachusetts Department of Public Utilities by September 30, 2017 for the authority to increase rates and no provision contained herein shall be deemed to limit or prohibit the Company's ability to submit such filing. The Buyer reserves all of its rights to participate in the petition process and oppose any petition filed by the Company.

6. Non-Binding Nature of Letter of Intent. Except for Part II, no legally binding agreement or obligation is intended to be created hereby; and, except for Part II, neither party or any of their representative agents or employees, shall be bound or obligated in any respect with respect to the Transaction or other similar transactions unless and until the parties have entered into the Definitive Agreement. Without limiting the generality of the preceding sentence, the parties expressly disclaim any obligation to negotiate a definitive agreement on customary or any other terms, and each expressly reserves the right to negotiate for any provision or concession, whether or not consistent with this letter, and to terminate negotiations at any time for any reason or no reason; provided that any such termination shall have no effect on the Buyer's right to purchase the corporate property and all rights and privileges of the company pursuant to St. 1881, c. 77, § 9. No past or future action, course of conduct, or failure to act relating to the proposed acquisition, or relating to the negotiation of the terms of the proposed acquisition or any Definitive Agreement, will give rise to or serve as a basis for any obligation or other liability on the part of the parties or their owners, directors, officers, employees, agents or professional representatives. The Company acknowledges that the execution of a Definitive Agreement remains subject to the approval of the Transaction by the Buyer's Selectmen and a two-thirds vote of the Milford representative town meeting pursuant to St. 1881, c. 77, § 9, as amended.

7. Costs. Whether or not the Transaction is consummated, each of the parties to this letter agreement shall bear its own costs related thereto, including the fees and expenses of its financial advisors, lawyers and accountants.

8. Miscellaneous Provisions.

- a. Part II of this Agreement and the NDA constitute the entire binding agreement between the parties, and supersede all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the parties on the subject matter hereof. Except as otherwise provided herein, the provisions of this Agreement may be amended or modified only by a writing executed by the parties.
- b. This Agreement will be governed by and construed under the laws of the Commonwealth of Massachusetts, without regard to conflicts of laws principles.
- c. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this letter may be brought against any of the parties in the courts of the Commonwealth of Massachusetts and each of the parties consents to the jurisdiction of

such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

- d. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this letter and all of which, when taken together, will be deemed to constitute one and the same agreement.
- e. If the closing of the Transaction does not occur on or before December 31, 2017, the obligations of the parties hereunder shall be null, void and of no further effect; provided however that the parties may mutually agree in writing to extend such date.
- f. Each party expressly represents and warrants that it is fully authorized to enter into this Agreement, and that the individuals executing this Agreement have the necessary and appropriate authority to do so. If any party executes this Agreement through an agent or representative, each such agent or representative hereby warrants and represents to the other parties to this Agreement that he or she is authorized to execute, acknowledge, and deliver this Agreement on behalf of such party and to thereby bind said party to the same.

*[Signature Page(s) Follow]*

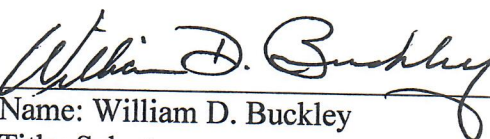


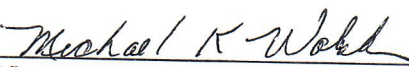
If you are in agreement with the terms of this letter, please sign in the space provided and return same to us, Part II of which will thereupon constitute a binding agreement with respect to its subject matter.

Yours sincerely,

TOWN OF MILFORD

By:   
Name: William E. Kingkade, Jr.  
Title: Selectman

By:   
Name: William D. Buckley  
Title: Selectman

By:   
Name: Michael K. Walsh  
Title: Selectman

Accepted and agreed as of:

May 12, 2017

MILFORD WATER COMPANY

By:

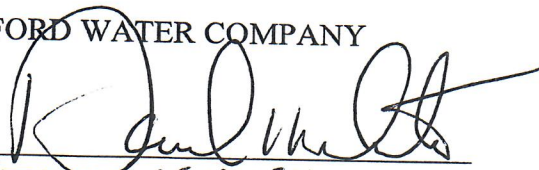
  
Name: David H. White  
Title: President

Exhibit A – Assets Staying with the Seller

1. Land and Structures – 16 W. Pine Street, Milford, Massachusetts
2. Such cash, cash equivalents, receivables, prepaid credits, reserves and such other assets that are not required to fulfill Seller's obligation regarding its working capital at closing, as the same shall be set forth in the Definitive Agreement