

Township of West Milford
Passaic County, New Jersey

~ Ordinance 2017 - 009 ~

ORDINANCE OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY, APPROVING AN AGREEMENT OF SALE BETWEEN THE TOWNSHIP AND SUEZ WATER NEW JERSEY, INC. FOR THE SALE OF THE ASSETS OF THE TOWNSHIP OF WEST MILFORD MUNICIPAL UTILITIES AUTHORITY AND AUTHORIZING A PROPOSAL TO BE PRINTED ON THE BALLOT FOR CONSIDERATION BY THE VOTERS WITHIN THE TOWNSHIP AT THE GENERAL ELECTION ON NOVEMBER 7, 2017 PROVIDING FOR THE SALE OF THE ASSETS OF THE TOWNSHIP OF WEST MILFORD MUNICIPAL UTILITIES AUTHORITY

WHEREAS, the Mayor and Council of the Township of West Milford did authorize by Resolution #2017-174 on May 3, 2017 the issuance of a Request for Proposals ("RFP") for the sale of the assets of the Township of West Milford Municipal Utilities Authority ("Authority") due to severe deterioration of the Authority's infrastructure over time, resulting in the need for significant repairs, and the Authority's resulting inability to continue operations as currently structured; and

WHEREAS, the Township issued the RFP in accordance with N.J.S.A. 40A:11-4.4, which was advertised for six (6) consecutive weeks as required by N.J.S.A. 40:62-4, with the proposals being received no later than June 27, 2017; and

WHEREAS, the Mayor and Township Council did establish a subcommittee to evaluate and score proposals submitted in response to the RFP; and

WHEREAS, a proposal was received on the date set for receipt of same from Suez Water New Jersey, Inc. ("Suez"); and

WHEREAS, the Township Attorney did review the proposal submitted and found same to be in compliance with the Local Public Contracts Law, N.J.S.A. 40:62-4, the RFP as promulgated and the criteria established in the RFP; and

WHEREAS, the subcommittee convened, evaluated the proposal, and found that the proposal submitted by Suez met or exceeded the minimum requirements of the RFP, which include a minimum bid price of \$7,900,000;

WHEREAS, the subcommittee determined that the proposal submitted by Suez was the highest responsible bid; and

WHEREAS, the subcommittee made a recommendation to the Mayor and Council to award a contract for the sale of the Authority's assets, subject to the conditions set forth in the contract, approval of the sale by the New Jersey Department of Environmental Protection ("NJDEP"), the New Jersey Department of Community Affairs, and the New Jersey Board of Public Utilities, and the dissolution of the Authority pursuant to N.J.S.A. 40A:5A-20 to -21; and

WHEREAS, under the terms of the RFP, the sale would include all of the Authority's assets, and the purchaser of the assets would continue to provide wastewater treatment services to the customers in accordance with all applicable state and local standards, make all capital improvements necessary, and meet other requirements set forth in the RFP; and

WHEREAS, the proposed sale to Suez would extinguish all existing Authority debts and satisfy all NJDEP financial obligations of the Authority; and

WHEREAS, in accordance with N.J.S.A. 40:62-4 all remaining funds from the sale price shall be applied to outstanding municipal debt; and

WHEREAS, the Township has agreed to the terms of the sale of the Authority's assets to SUEZ pursuant to the terms of the draft Agreement of Sale included in the RFP as revised to reflect certain provision of the bid submitted by Suez; and

WHEREAS, the Public Utilities Law requires that in addition to the approval of the Township, the legal voters of the Township must also approve the sale of the System; and

WHEREAS, the Public Utilities Law, specifically N.J.S.A. 40:62-5, authorizes the Township to request that the Clerk of the County of Passaic place the question of the sale of the Authority's assets on the ballot used at the next general election in the Township, which is scheduled for November 7, 2017; and

WHEREAS, the Township desires to enter into the Agreement of Sale, subject to approval of the voters of the Township as set forth in N.J.S.A. 40:62-5 and all other regulatory approvals as set forth in the Public Utilities Law.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of West Milford, in the County of Passaic, and State of New Jersey, as follows:

SECTION I

The recitals are hereby incorporated as if set forth in full herein.

SECTION II

The Township hereby approves the sale of the System to Suez New Jersey Water, Inc. for a purchase price of \$12,500,000 in accordance with the proposal submitted and subject to the due diligence process contained in the RFP. Under no circumstance shall that purchase price be less than \$10,000,000.00 and, subject to the approval of the voters of the Township as set forth in N.J.S.A. 40:62-5.

SECTION III

The Agreement of Sale between the Township and Suez Water New Jersey, Inc. entitled "Agreement of Sale between Township of West Milford and Suez Water New Jersey, Inc." substantially in the form on file in the office of the Township Clerk, is hereby approved with such further changes, insertions and amendments as deemed necessary by the Mayor and Township Council, in consultation with the Township staff and professionals. The approval of this Agreement of Sale is subject to compliance with the provisions of N.J.S.A. 40:62-5 of the Public Utilities Law.

SECTION IV

The Mayor and Township Council, and all other appropriate officials of the Township, are hereby authorized and directed to execute the Agreement of Sale and any other documents deemed necessary to effectuate the terms of this Ordinance and to proceed with the regulatory process and approvals required under the provisions of the Agreement of Sale and the Public Utilities Law.

SECTION V

The Mayor and Township Council hereby requests and directs the Clerk of the County of Passaic to place the following question and explanation on the ballot of the next general election, such to be substantially in the form provided in N.J.S.A. 40:62-5 as follows:

MUNICIPAL QUESTION

TOWNSHIP OF WEST MILFORD PUBLIC QUESTIONS

Shall the assets of the Township of West Milford Municipal Utilities Authority ("the MUA") be sold to Suez Water New Jersey, Inc. ("SUEZ") for a sale price of a minimum of \$10,000,000.00.

"Yes."?

"No."?

INTERPRETIVE STATEMENT

The infrastructure of the MUA has developed severe deterioration resulting in the MUA's inability to continue operations as currently structured. A "yes" vote will result in SUEZ purchasing the assets of the MUA. This sale, if approved and completed, would transfer ownership of the MUA's water and sewer utility to a private company.

The MUA provides water services to approximately 1,700 homes and sewer services to approximately 1,500 homes within the Township of West Milford. A vote of "yes" will authorize the sale of the MUA's assets to SUEZ, a private entity. The purchase price of no less than \$10,000,000.00 will be sufficient to pay all of the MUA's outstanding obligations and as a result, the MUA will be dissolved. Any funds that remain from the sale of the MUA's assets shall be applied to outstanding municipal debt of the Township of West Milford. If the sale is approved by referendum, and thereafter completed, the future costs and operations of the system will be the responsibility of SUEZ.


SECTION VI

This Ordinance shall take effect as provided by law.

Introduced: July 12, 2017
Adopted: August 16, 2017
Effective Date: September 5, 2017

TOWNSHIP OF WEST MILFORD
COUNTY OF PASSAIC
STATE OF NEW JERSEY

ATTEST


Antonette Battaglia, Township Clerk

By: 
Bettina Bieri, Mayor

FILED
DEC 28 2017
KIM GUADAGNO
SECRETARY OF STATE