

CITY COUNCIL

The City of Orange Township, New Jersey

DATE September 5, 2023

NUMBER 339-2023

TITLE:

A RESOLUTION AUTHORIZING THE CITY OF ORANGE TOWNSHIP TO EXECUTE A TEMPORARY RIGHT OF ENTRY AGREEMENT BETWEEN THE CITY OF ORANGE TOWNSHIP AND TOWNSHIP OF MILLBURN, 375 MILLBURN AVENUE, MILLBURN, NEW JERSEY 07041

WHEREAS, the City of Orange Township is the owner of the Orange Reservoir, located in South Mountain Reservation; and

WHEREAS, the Township of Millburn ("Millburn") obtained the services of a surveying firm to collect bathymetric data of Reservoir to be utilized in a hydraulic study and engineering design related to mitigation of downstream flooding ;and

WHEREAS, the both municipalities agree to enter into a Right Of Entry Agreement, with terms and conditions for both townships.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Orange Township, authorizes the Business Administrator to approve and authorizes the execution of a exclusive temporary right of entry agreement between the City of Orange Township and Township of Millburn for the purpose of the studying the Orange Reservoir.

Adopted: September 5, 2023

Joyce L. Lanier
City Clerk

Tency A. Eason
Council President


TENCY A. EASON

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (hereinafter, this “Agreement”) is made this ___ day of _____, 2023, between the **TOWNSHIP OF MILLBURN**, (“Millburn”), a municipality organized under the laws of the State of New Jersey, with municipal offices at 375 Millburn Avenue, Millburn, New Jersey 07041, and the City of Orange Township (“Orange”), a municipality organized under the laws of the State of New Jersey, with municipal offices at 29 North Day Street, Orange, New Jersey, 07051 (Millburn and Orange are each individually referred to as a “Party” and collectively referred to as the “Parties”).

RECITALS

WHEREAS, Orange is the owner of the Orange Reservoir located within the South Mountain Reservation which is part of the Essex County Park System; and

WHEREAS, the Orange Reservoir, generally depicted on the map attached hereto as **Exhibit A** (hereinafter, the “Reservoir”), has been leased by Orange to the County of Essex; and

WHEREAS, Millburn has retained a qualified surveying firm (“Consultant” or “Contractor”) to collect bathymetric data of the Reservoir, including the depth and contours thereof, to be utilized in, *inter alia*, a hydraulic study and engineering design process related to the mitigation of downstream flooding, all as further described in the scope of work attached hereto as **Exhibit B** (the “Scope of Work”); and

WHEREAS, the performance of the Scope of Work requires the Contractor to gain temporary access to the Reservoir, including its shores, for the limited purposes of collecting the aforementioned bathymetric data and undertaking related activities thereto; and

NOW THEREFORE, this Agreement is made and entered into by and between Millburn, including its successors and assigns, and Orange, including its successors and assigns.

THE PARTIES agree to the following terms and conditions:

1. The “whereas” recital clauses stated above are incorporated herein by reference.
2. Orange hereby grants to Millburn and Millburn’s Contractor, including their respective agents, contractors/sub-contractors, employees and/or designees, as the case may be, on foot and with equipment and vehicles, including boating vehicles (manned and/or unmanned), a non-exclusive, non-transferable right to enter on and to access the Reservoir, including its shores, for the limited purpose of conducting necessary acts, measurements, testing, and such related activities thereto for the purposes set forth in this Agreement, and as described in the Scope of Work prepared by the Contractor attached hereto as **Exhibit B** and incorporated herein (the “Access” or “Right of Entry”).
3. Pursuant to this Agreement, Millburn and Millburn’s Contractor may enter on and,

temporarily occupy, portions of the Reservoir, including its shores, to perform the tasks necessary and to conduct the activities consistent with the Scope of Work.

4. Millburn and Millburn's Contractor shall obtain, maintain and comply with all applicable licenses, permits and approvals if any, required by the appropriate Federal, State, County and local authorities.

5. Millburn shall comply, at its sole cost and expense, and cause its agents, contractors/sub-contractors, employees and/or designees to comply with all duly promulgated and applicable Federal, State, County and local laws, ordinances, rules and orders affecting the Reservoir, or any part thereof, or the use thereof.

6. Millburn shall comply and cause its agents, contractors/sub-contractors, employees and/or designees to comply with any health and safety requirements applicable to the performance of the Scope of Work.

7. The Right of Entry created by this Agreement shall become effective as of the date that it is duly authorized and fully executed, following review and approval of certificates of insurance meeting the requirements set forth in **Exhibit C** ("Effective Date").

8. Millburn and/or its agents, contractors/sub-contractors, employees and/or designees shall notify Orange before each entry into or upon the Reservoir or its shores and such notification shall include a description of the intended work to be undertaken during such entry, the person(s) which will enter, and the date and expected duration of such entry. Millburn and/or its agents, contractors/sub-contractors, employees and/or designees shall provide any additional information as may be reasonably requested by Orange in advance of any entry.

9. The Right of Entry shall be in effect until such time as the Scope of Work has been completed and the necessary bathymetric data has been collected, but in any event, no later than six (6) months from the Effective Date (the "Term"). The Parties may agree to extend the Term in writing, subject to the adoption of any requisite authorization by the respective Governing Bodies of the Parties.

10. In the event of an unsafe condition or emergency, Orange shall have the right to terminate this Agreement immediately, without any advance notice. Orange shall also have the right to immediately terminate this Agreement if or when the insurance that Millburn is required to maintain hereunder expires or lapses.

11. Each Party reserves the right to terminate this Agreement for any material default of the other Party's obligations under this Agreement upon written notice to such Party of not less than thirty (30) days ("Notice Period"), which notice shall include a statement specifying the alleged material default. The Party receiving the termination notice may within the Notice Period diligently prosecute the curing of any alleged material default to the satisfaction of the non-defaulting party, in which case this Agreement shall not terminate. If the Party receiving the termination notice objects in writing to any alleged material default within the Notice Period, the Parties agree to engage in good faith negotiations to resolve the dispute. If the Parties are unable through such good faith negotiations to resolve the dispute, then this Agreement shall terminate at

the end of the Notice Period. Upon termination of the Agreement for any reason, Millburn's Contractor shall remove within thirty (30) days, unless otherwise agreed upon by the Parties in writing, any and all items that may have been installed or placed within or about the Reservoir in order that the Scope of Work be undertaken.

12. Within thirty (30) days of Millburn's receipt of this Agreement duly executed by both Parties, Millburn shall pay Orange the sum of One Dollars (\$1.00), which Orange agrees is a full and adequate one-time payment for the term of this Agreement.

13. Millburn and its agents, contractors/sub-contractors, employees and/or designees, as the case may be, shall undertake and complete the Scope of Work Project in a good and workmanlike manner and in accordance with all applicable prevailing industry standards, as may be amended from time to time. Millburn and its agents, contractors/sub-contractors, employees and/or designees shall use reasonable efforts to undertake the Scope of Work in such a manner to assure no interference with the use and/or occupancy of the Reservoir by Orange or the County of Essex.

14. Millburn and its agents, contractors/sub-contractors, employees and/or designees, as the case may be, shall take no action that inhibits the proper and full operation of the Reservoir.

15. Millburn, for itself, and for its agents, contractors/sub-contractors, employees and/or designees, assumes all risks and liabilities arising out of or related to the activities undertaken by Millburn and/or Millburn's Contractor hereunder and hereby covenants to indemnify, protect and hold harmless Orange and hereby releases Orange and each and every one of its officers, officials, agents, consultants, successors and assigns from any and all liability, claims, damages, causes of action, suits, demands, judgments, expenses or costs of any kind which may in any manner arise out of, be occasioned by, or result from any entry upon or into the Reservoir or any activity or task completed or undertaken in connection with the Scope of Work (collectively, the "Claims" or each, a "Claim"). This indemnification is not limited by, but is in addition to, the insurance obligations contained in this Agreement. Millburn's obligations pursuant to this Paragraph shall survive the termination or expiration of this Agreement with regard to any Claim(s) arising or claimed to arise during the Term of this Agreement or following the termination of this Agreement.

16. Millburn and Millburn's Contractor shall, at its sole cost and expense, obtain and maintain at all times during the Term of this Agreement, insurance of the types and minimum coverages as outlined in **Exhibit C**, which is attached to and made part of this Agreement.

17. Neither Party to this Agreement is empowered to alter or amend any provisions of this Agreement unless such alteration or amendment is in writing and has been duly authorized and signed by the Parties hereto. This provision cannot be orally waived.

18. Anything to the contrary notwithstanding, the terms and conditions of this Agreement and the rights and obligations created as a result thereof, shall be binding upon and inure to the benefit of, the Parties hereto, their officers, agents, employees, successors, transferees, permitted assigns, designees, engineering consultants and contractors.

19. Millburn agrees that authorized representatives of Orange and/or the County of Essex shall be entitled to accompany/observe the undertaking of the Scope of Work or any such portion thereof by Millburn's Contractor. A copy of any final reporting prepared by Millburn's Contractor, including the collected bathymetric data and information relied upon to establish any final reporting shall be provided to Orange and/or the County of Essex upon request.

20. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, license or other interest in the Reservoir.

21. All notices to be provided to Orange pursuant to this Agreement shall be sent to:

City of Orange Township
29 North Day Street
Orange, New Jersey 07051
Attn: Christopher Hartwyk, Business Administrator
Email: chartwyk@orangenj.gov

All notices to be provided to Millburn pursuant to this Agreement shall be sent to:

Township of Millburn
375 Millburn Avenue
Millburn, New Jersey 07041
Attn: Alexander McDonald, Business Administrator
Email: amcdonald@millburntwp.org

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date hereinbefore first indicated.

Attest:

TOWNSHIP OF MILLBURN

By: _____

By: _____

Maggie Miggins, Mayor

Attest:

CITY OF ORANGE TOWNSHIP

By: _____

By: _____

Dwayne Warren, Mayor

COUNTY OF ESSEX

By: _____

EXHIBIT A
Map/Orange Reservoir

DRAFT

EXHIBIT B
Scope of Work

DRAFT

EXHIBIT C
INSURANCE REQUIREMENTS

1. Millburn shall, at its sole cost and expense, obtain and maintain at all times for the duration of this Agreement, and require all of its contractor(s) and subcontractor(s) (including but not limited to any person providing any service and/or conducting any activity as part of Millburn's use of the Reservoir) to secure and maintain in force at all times during any entry upon or into the Reservoir, including its shores, insurance of the types and in the amounts as hereinafter provided:

- (i) Comprehensive General Liability policy (including insurance with respect to owned or operated motor vehicles) as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability. Limits of liability shall be maintained at the level of Five Million (\$5,000,000.00) Dollars for each occurrence of bodily injury, death, and property damage liability;
- (ii) Worker's Compensation applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars occupational disease;
- (iii) Environmental Liability Insurance with limits of not less than One Million (\$1,000,000.00); and
- (iv) Such other insurance and in such amounts as may from time to time be reasonably required by Millburn.

B. All insurance coverage required to be maintained by Millburn in accordance with this Agreement shall be issued by an insurance company authorized and approved to do business in New Jersey and shall name the Authority, as an additional insured.