

RESOLUTION 2023 – 59

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF
MOUNT ARLINGTON, COUNTY OF MORRIS, STATE OF NEW JERSEY,
AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE LAKE
HOPATCONG COMMISSION FOR TRANSFER OF OWNERSHIP OF
CERTAIN AERATION SYSTEMS**

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Mount Arlington, County of Morris, State of New Jersey, that that the Mayor is hereby authorized to execute said agreement between the Lake Hopatcong Commission and the Borough of Mount Arlington to Transfer Ownership of Certain Aeration Systems.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Council of the Borough of Mount Arlington, and adopted on March 7, 2023.

A handwritten signature in black ink, appearing to read 'M. N. Bansch', written over a horizontal line.

Matthew N. Bansch, Borough Clerk

AGREEMENT TO TRANSFER OWNERSHIP OF CERTAIN AERATION SYSTEMS

between

THE LAKE HOPATCONG COMMISSION

P.O. Box 8519
260 Lake Boulevard
Landing, New Jersey 07850

and

BOROUGH OF MOUNT ARLINGTON

419 Windemere Avenue
Mount Arlington, New Jersey 07856

THIS AGREEMENT (this “Agreement”), effective March [1], 2023 (“Effective Date”), is made by and between the Lake Hopatcong Commission (the “Commission”), with its principal office located at 260 Lakeside Boulevard, Landing, New Jersey 07850 and the Borough of Mount Arlington (the “Borough”), with its principal office located at 419 Windemere Avenue, Mount Arlington, New Jersey 07856.

WHEREAS, over the course of the 2019 summer season, Lake Hopatcong (the “Lake”) suffered from large-scale and persistent Harmful Algae Blooms (“HABs”), creating a substantially negative impact on the ecological and recreational value and use of the Lake as well as the local economy; and

WHEREAS, in an effort to combat HABs in the future, the Commission, working with the Lake Hopatcong Foundation, the four municipalities which border the Lake (Jefferson Township, the Borough of Hopatcong, the Borough, and Roxbury Township) and the two counties in which the Lake sits (Morris and Sussex), as well as their environmental consultant, Princeton Hydro, developed both a long- and short-term strategy; and

WHEREAS, the long-term strategy involves updating and converting the existing Restoration Plan into a Watershed Implementation Plan, with funds provided through the New Jersey Highlands Council; and

WHEREAS, the short-term strategy included, but was not limited to, implementation and evaluation of a set of innovative management measures to prevent, mitigate and/or control HABs, particularly in local, nearshore areas where people have the highest degree of direct contact with the water (and by extension, HABs). These measures included new types of phosphorus removal filter media installed in existing stormwater basins, installation of aeration systems, application of a nutrient inactivating product (PhosLock), a treatment of a non-copper-based algaecide (GreenClean), the use of filter media (Biochar) that removes phosphorus and can subsequently be

used for mulch, refurbishing and installing Floating Wetland Islands, and the implementation of the Rutgers University rain garden program (together, the "HAB Mitigation Project"); and

WHEREAS, as the HAB Mitigation Project relates to the installation of aeration systems, such aeration systems were installed at three (3) locations on the Lake, namely, the Shore Hills Beach Club, the Lake Forrest Yacht Club and at the Mount Arlington Municipal Beach; and

WHEREAS, to fund the HAB Mitigation Project, the Commission applied for and received a grant from the New Jersey Department of Environmental Protection (Grant Identifier: WM20-34), the term of which was for two (2) years (the "Grant"); and

WHEREAS, the Grant has expired, and the Commission now desires to transfer ownership of the aeration system installed at Mount Arlington Municipal Beach over to the Borough, effective March [1], 2023 pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of one dollar (\$1.00) and the mutual covenants, terms, conditions, promises and obligations contained herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Transfer of Aeration System.** Subject to the provisions of Section 3 of this Agreement, the Commission does hereby sell, grant, convey, transfer, assign, and deliver to the Borough, all of its right, title and interest in and to that certain Nanobubble Oxygen System presently installed at the Mount Arlington Municipal Beach, consisting of two (2) Homeport MaxDo Ultra Fine Bubble Generators (LB2000) as more particularly described in Exhibit "A" hereto (the "Aeration System"). The Commission shall also turn over to the Borough any and all operation manuals in the Commission's possession relating to the Aeration System, and further agrees to execute any and all documents necessary to effectuate and evidence the transfer of the Aeration System to the Borough as contemplated hereby. The Borough shall be responsible for all maintenance and operating costs associated with the Aeration System which are incurred following the Effective Date of such transfer. However, the Commission shall continue to be responsible for any liability or claim, including but not limited to maintenance and operating costs, which accrued with respect to the Aeration System prior to the Effective Date hereof, and shall save, defend, indemnify and hold harmless the Borough with respect to any such liability or claim. Notwithstanding the foregoing and in consideration of the rights granted to the Commission in Section 3 of this Agreement, the Borough shall make no mechanical or structural modifications to the Aeration System without the express written consent of the Commission, which shall not be unreasonably conditioned, delayed or withheld if such modifications are consistent with the long- and/or -short term HAB mitigation strategies. Subject to Section 3 of this Agreement, the Commission delegates to the Borough all of the Commission's duties and responsibilities regarding the Aeration System on or after the Effective Date.

2. **Condition of the Aeration System.** The Commission hereby grants, bargains, sells, assigns, transfers and conveys the Aeration System to the Borough as the Effective Date in normal operational and mechanical condition for its intended purposes, subject only to ordinary wear and tear.

3. **Right of First Refusal Granted to the Commission.** The Parties hereto expressly acknowledge and agree that the installation of the Aeration System serves the purpose of mitigating HABs in and around the Lake, and that its continued use is beneficial to the Lake community as a whole. As such, it is further expressly acknowledged and agreed that if and in the event that the Borough determines that it will no longer utilize the Aeration System for its intended purposes at its present location, the Borough shall provide the Commission with written notice of its intention to discontinue the use of the Aeration System. The Commission will thereafter have forty five (45) days to locate, and advise the Borough of, an alternative location on the Lake to relocate the Aeration System. The Borough agrees to execute and deliver an agreement in form and substance similar to this Agreement (and also for nominal consideration), to convey title to the Aeration System to the Commission or its designated entity.

4. **Miscellaneous.**

a. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. The Parties hereto represent to each other that they fully understand the terms and conditions of this Agreement, and agree to be bound by the same pursuant to the rules, regulations and the laws of the State of New Jersey.

b. Subject to any provisions hereof restricting assignment, if any, the Agreement shall be binding upon the parties hereto and shall inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, legal representatives, successors and assigns.

c. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto. In the absence of any express, unequivocal writing to the contrary, neither the waiver by either of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

d. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

e. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of New Jersey (but not including any choice of law rule thereof that would cause the laws of another jurisdiction to apply), and any such claims or disputes shall be brought in the state and/or federal courts of the State of New Jersey with jurisdiction.

f. This Agreement constitutes the entire agreement between the parties regarding the subject matter set forth herein, and supersedes any prior understandings, agreements,

or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter hereof.

g. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. This Agreement shall become effective upon the execution and delivery of a counterpart hereof by each of the parties hereto. Delivery by telecopier or by electronic or digital transmission in PDF format of an executed counterpart of a signature page to this Agreement, or any notice, communication, agreement, certificate, document or other instrument in connection herewith, shall be effective as delivery of an executed original counterpart thereof.

IN WITNESS THEREOF, the parties hereto have hereunto set their hands and seals or caused these presents to be signed by their proper officers.

WITNESS:

LAKE HOPATCONG COMMISSION

By: _____
H. Ronald Smith, Chairman

BOROUGH OF MOUNT ARLINGTON

By: _____
Michael Stanzilis, Mayor