

BILL NO. 8/ -200 07

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE CONDEMNATION SETTLEMENT AGREEMENT FOR THE PARCEL OF LAND COMMONLY KNOWN AS THE "ANTIETAM LAKE PROPERTY".

WHEREAS, the City of Reading previously owned a certain parcel of land commonly referred to as "Antietam Lake Property" which consists of approximately 560 acres surrounding and including Antietam Lake and situated mostly in Lower Alsace Township, Berks County, PA, which was the subject of a condemnation proceeding initiated by the County of Berks on or about December 15, 2005;

WHEREAS, the City of Reading desires to settle said condemnation proceeding and ensure said premises will be available for the benefit of the citizens of the City of Reading and Berks County in the best and most comprehensive way;

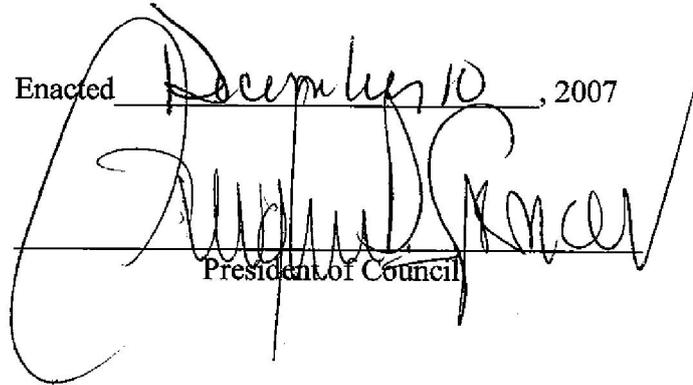
WHEREAS, the City of Reading intends that said settlement contain certain provisions and/or covenants determined to be in its best interests including, but not limited to, preservation and designation as Berks County Parks land as set forth in the November 21, 2005 Antietam Lake Property Offer from the County of Berks to the City of Reading (attached) and/or the Condemnation Settlement Agreement (attached);

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor of the City of Reading is hereby authorized to formally execute the Condemnation Settlement Agreement (attached as Exhibit).

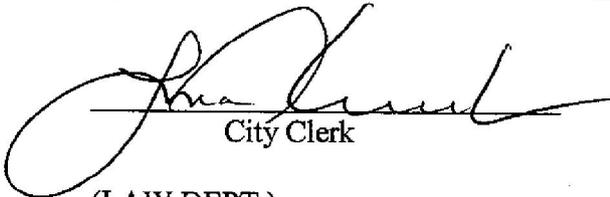
SECTION 2. This Ordinance shall be effective ten (10) days after adoption pursuant to City of Reading Home Rule Charter Article II Section 219.

Enacted December 10, 2007



President of Council

Attest:

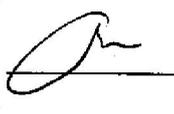


City Clerk

(LAW DEPT.)

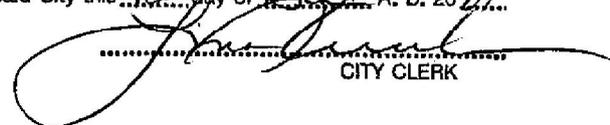
Submitted to Mayor: 
Date: 12-11-07

Received by the Mayor's Office: my
Date: 12-11-07

Approved by Mayor: 
Date: 12/11/07

Vetoed by Mayor: _____
Date: _____

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original ~~Ordinance~~ passed by the Council of the City of Reading, on the 10th day of Dec A. D. 2007. Witness my hand and seal of the said City this 12th day of Dec A. D. 2007.



CITY CLERK

COUNTY OF BERKS, PENNSYLVANIA

Office of the Solicitor



Services Center, 13th Floor
633 Court Street
Reading, PA 19601-3584

Phone: 610.478.6105
Phone: 610.478.6108
Fax: 610.478.6139

Judith L. Schwank, Commissioner Chair
Thomas W. Gajewski, Sr., Commissioner
Mark C. Scott, Commissioner

Alan S. Miller, Esquire
Direct Dial (610) 478-6107
Email: amiller@countyofberks.com

December 4, 2007

Charles Younger, Esquire
Solicitor - City of Reading
815 Washington Street
Reading, PA 19601

Michael Setley, Esquire
4 Park Plaza
Wyomissing, PA 19610

Charles F. Fitzpatrick, Esquire
Barley Snyder, LLC
501 Washington Street
P.O. Box 942
Reading, PA 19603

DEPARTMENT OF LAW

DEC 06 2007

RECEIVED

Re: **Antietam Lake
Amended Condemnation Settlement Agreement**

Gentlemen:

Enclosed for your review and comment is a revised draft *Condemnation Settlement Agreement* originally prepared by special counsel Jerry Richwine in this matter. There is only one change from the original draft, specifically the addition of a second paragraph #3 which is mandated by the Department of Conservation and Natural Resources concerning County funding for the acquisition.

Chuck, in the past you agreed to provide copies of this draft to the five "Optionees" named in the Agreement. Please do so again.

Please have the revised Agreement executed and returned to me. Thank you in advance for your cooperation.

Sincerely yours,

Alan S. Miller, Esquire
Berks County Solicitor

ASM:bal

Enc.

cc w/o enc. - Berks County Board of Commissioners
cc w/enc. - Jerry R. Richwine, Esquire

Dedicated to public service with integrity, virtue & excellence

www.co.berks.pa.us

JERRY R. RICHWINE, ESQUIRE
Attorney I.D. #09926
ROLAND & SCHLEGEL, P.C.
627 N. 4th Street, P.O. Box 902
Reading, PA 19603
(610)372-5588
Attorney for Condemnor

IN RE: CONDEMNATION BY THE	:	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKS, A THIRD CLASS	:	OF BERKS COUNTY, PENNSYLVANIA
COUNTY, OF LANDS AND ALL	:	CIVIL ACTION – LAW
IMPROVEMENTS THEREON FOR PUBLIC	:	
RECREATION PLACES AND PUBLIC	:	(EMINENT DOMAIN)
PARKS, SUTLATE IN THE TOWNSHIPS OF	:	
ALSACE AND LOWER ALSACE, BERKS	:	NO. 05-16489
COUNTY, PENNSYLVANIA	:	JURY TRIAL DEMANDED
	:	
	:	ASSIGNED TO: Jeffrey L. Schmehl, J.

CONDEMNATION SETTLEMENT AGREEMENT

THIS CONDEMNATION SETTLEMENT AGREEMENT, made and executed as of
this _____ day of December 2007, among and between:

COUNTY OF BERKS (hereinafter referred to as “the County”)

AND

CITY OF READING (hereinafter referred to individually and collectively as “the City”)

AND

READING AREA WATER AUTHORITY (hereinafter referred to as "the Authority")

AND

ERMETE RAFFAELLI and TOM NORDHOY and GEORGE MEISER, IX and DANIEL GALLAGHER and DAVID KERSLEY, (hereinafter individually and collectively referred to as "the Optionees")

AND

WACHOVIA BANK, N.A., TRUSTEE FOR CLINTON F. EARL TRUST, (hereinafter individually and collectively referred to as "Trustee").

WITNESSETH:

WHEREAS, prior to December 15, 2005, the City was the fee simple owner of the property known as the Antietam Lake Property, consisting of approximately 560 acres (hereinafter referred to as "the Property"); and

WHEREAS, on May 20, 1994, the City and the Authority entered into a Lease and Operating Agreement; and

WHEREAS, in January 1995, the City and the Authority entered into a Supplemental Lease and Operating Agreement; and

WHEREAS, the Lease and Operating Agreement and Supplemental Lease and Operating Agreement was applicable to the City's "Water System" as defined in Article I, Section 1.01 of the Lease and Operating Agreement; and

WHEREAS, on November 27, 2005, Thomas M. McMahon, Mayor of the City, entered into Exclusive Option to Acquire an Interest in the City Owned Land Known as the Antietam Lake Property with the Optionees; and

WHEREAS, Trustee manages certain parcels of land in the trust, a small parcel of which is within the Property; and

WHEREAS, on December 15, 2005, the County filed a Declaration of Taking to No. 05-16489 by which it condemned the Property; and

WHEREAS, the Declaration of Taking contained a Schedule of Property Condemned, which set forth that the City was the owner, the Authority was the lessee, Ermete Raffaelli and Tom Nordhoy and George Meiser, IX and Daniel Gallagher and David Kersley were Optionees, and the Trustee was owner of a small portion of the Property; and

WHEREAS, as of December 15, 2005, upon the filing of the Declaration of Taking, the County became the fee simple owner of the Property; and

WHEREAS, the County is entitled to possession of the Property upon the execution of this Condemnation Settlement Agreement and the payment by the County to the City of the consideration set forth hereafter in Paragraph 1 hereinafter; and

WHEREAS, the parties to this Condemnation Settlement Agreement desire to settle all differences and to resolve all claims pending between and among them with respect to the aforesaid condemnation.

NOW THEREFORE, and intending to be legally bound hereby, the parties hereby agree as follows:

1. The County agrees to pay to the City the sum of Four Million Dollars (\$4,000,000.00) on or before December 21, 2007.
2. The County agrees to make and perform all necessary repairs to Antietam Lake Dam as are recommended by engineers retained by the County to evaluate the condition of Antietam Lake Dam and as are approved by the Pennsylvania Department of Environmental Protection.

3. The County agrees that the Property will never be sold, leased nor utilized in any manner for commercial or residential development, will be preserved in perpetuity as open space and designated as County Parks land.

This property, or interest in property, was either acquired with or donated as a match for, funds provided by the Pennsylvania Department of Conservation and Natural Resources ("Department") under the Environmental Stewardship and Watershed Protection Act., the act of December 15, 1999, P.L. 949, No. 68, as amended (27 Pa.C.S.A. §§ 6101 et seq.) ("Act"). This property, or any portion of it, may not be converted to purposes other than those authorized under the Act for property acquired with Department funds. No change of use and no transfer of ownership, control, or interest in this property may occur without the written consent of the Department or its successor. This restriction has the effect of a covenant running in perpetuity with the land and is binding upon the owner(s) of the property and upon all subsequent owners, successors, and assigns. This restriction is enforceable by the Department and its successors.

4. The County agrees that it will not sell nor lease any water, nor water rights from Antietam Lake.

5. The County agrees that the City shall retain in perpetuity the right to utilize water from Antietam Lake for emergency purposes. The cost of physically drawing the water shall be at the expense of the City but the City shall have no obligation to pay the County any consideration for the amount of water utilized.

6. In the event that the County and/or its agents, servants, employees, designees or contractors, harvest timber from the Property, the County agrees that any proceeds that it

receives from such harvesting will be set aside and designated for maintenance and upkeep of the Property.

7. The County agrees to establish a long-range planning committee known as the Antietam Lake Commission, which shall be advisory to the Berks County Park System for the purpose of recommending the best long-term use and maintenance of the property. Such committee shall be comprised of a representative from the County, the City, Lower Alsace Township, Exeter Township, Mount Penn Borough, and Antietam School District.

8. The Property is excluded from the definition of Water System, as defined in Article I, Section 1.01 of the aforesaid Lease and Operating Agreement, as of the date of this Condemnation Settlement Agreement.

9. For and in consideration of the exclusion of the Property from the definition of Water System under Article I, Section 1.01 of the aforesaid Lease and Operating Agreement, the Authority, on behalf of itself, its successors and assigns, hereby waives any claims for damages under the Eminent Domain Code, 26 P.S. Section 1-101 et seq., as a result of the condemnation that occurred on December 15, 2005 and hereby assigns any such claim for damages, to which it might have been entitled, to the City. Further, the Authority on behalf of itself, its successors and assigns, does hereby remise, release and forever discharge the County of and from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, compensation and consequential damage on account of or in any way growing out of the aforesaid condemnation.

10. For and in consideration of the release of their obligations under the Exclusive Option to Acquire an Interest in the City Owned Land Known as the Antietam Lake Property, the Optionees on behalf of themselves, their heirs, administrators, executors and assigns, hereby waive any claim for damages under the Eminent Domain Code, 26 P.S. Section 1-101 et seq. as a

result of the condemnation that occurred on December 15, 2005 and hereby assigns any such claim for damages, to which it might have been entitled, to the City. Further, the Optionees on behalf of themselves, their heirs, administrators, executors and assigns, do hereby remise, release and forever discharge the County of and from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, compensation and consequential damage on account of or in any way growing out of the aforesaid condemnation.

11. The Trustee, for and in consideration of the release of its obligation to manage the parcel of land within the property which is of little or no value, on behalf of itself, its successors and assigns, hereby waives any claims for damages under the Eminent Domain Code, 26 P.S. Section 1-101 et seq. as a result of the condemnation that occurred on December 15, 2005 and hereby assigns any such claim for damages, to which it might have been entitled, to the City. Further, the Trustee on behalf of itself, its successors and assigns, does hereby remise, release and forever discharge the County of and from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, compensation and consequential damage on account of or in any way growing out of the aforesaid condemnation.

12. For and in consideration of the payment of the aforesaid sum of Four Million Dollars (\$4,000,000.00), the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the City on behalf of itself, its successors and assigns, does hereby remise, release and forever discharge the County of and from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation and consequential damage on account of or in any way growing out of the aforesaid condemnation.

13. This Condemnation Settlement Agreement contains the entire agreement between the parties hereto and the terms of this agreement are contractual and not a mere recital. It is the intention of the parties that the releases provided hereby be complete and shall cover all of the

aforesaid claims and damages under the Eminent Domain Code, 26 P.S. Section 1-101 et seq., that this release shall not be subject to any claim of mistake of fact, that it expresses a full and complete settlement of all available damages under the aforesaid Eminent Domain Code and that regardless of the adequacy of the amounts paid, is intended to avoid litigation and to be final and complete.

14. This Condemnation Settlement Agreement shall be construed and interpreted under the laws of the Commonwealth of Pennsylvania.

15. This document may be executed in multiple counterparts by the parties and such counterparts shall have the same legal enforceability and legal effect as though they were signed by all parties in original form.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year next to their signatures.

COUNTY OF BERKS

Date: _____
Attest:

Terry Styer, Chief Clerk

By: _____ (SEAL)
Judith L. Schwank, Commissioner Chair

By: _____ (SEAL)
Thomas W. Gajewski, Sr., Commissioner

By: _____ (SEAL)
Mark C. Scott, Commissioner

CITY OF READING

Date: _____

Witness:

By: _____ (SEAL)
Thomas M. McMahon, Mayor

READING AREA WATER AUTHORITY

Date: _____

Witness:

By: _____ **(SEAL)**
Dean Miller, Chairman

Date: _____

Witness:

_____ **ERMETE RAFFAELLI**

Date: _____

Witness:

TOM NORDHOY

Date: _____

Witness:

GEORGE MEISER, IX

Date: _____

Witness:

DANIEL GALLAGHER

Date: _____

Witness:

DAVID KERSLEY

WACHOVIA BANK, N.A., TRUSTEE FOR
CLINTON F. EARL TRUST

Date: _____

Witness:

By: _____ (SEAL)