

BILL NO. 33 -2011

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT OF COOPERATION BETWEEN THE CITY OF READING AND THE READING SCHOOL DISTRICT FOR THE JOINT SUPPORT OF A RECREATIONAL AND EDUCATIONAL PROGRAM AND CREATION OF THE READING RECREATION COMMISSION.

WHEREAS, the City of Reading and the Reading School District believe that the citizens of the City of Reading will benefit from a jointly supported recreational and educational program; and

WHEREAS, the City of Reading desires to enter into an agreement with the Reading School District to provide a mechanism to maintain community recreation services and facilities as well as the formation of the Reading Recreation Commission; and

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

SECTION 1. The Mayor is authorized to execute the attached Agreement of Cooperation as well as any and all documents to facilitate and effectuate the Agreement of Cooperation between the City of Reading and the Reading School District including, but not limited to, the formation of the Reading Recreation Commission.

SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted

2011

President of Council

Attest:

City Clerk

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 25 day of July A. D. 2011. Witness my hand and seal of the said City this 28 day of July A. D. 2011.

CITY CLERK

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: AS _____

Date: 7-27-11

Approved by Mayor: [Signature] _____

Date: 7/27/11

Vetoed by Mayor: _____

Date: _____

AGREEMENT OF COOPERATION

THIS AGREEMENT, made this ____ day of _____, _____, by and between the CITY OF READING, PENNSYLVANIA, hereinafter called "City;" and the READING SCHOOL DISTRICT, PENNSYLVANIA, hereinafter called "School District;" WITNESSETH:

WHEREAS, the Intergovernmental Cooperation Act (53 Pa. C.S. Section 2301 et seq., herein called the "Act") permits municipalities (under the Act the term "municipality" includes school districts) to enter into agreements to cooperate in the exercise or performance of their respective functions, powers or responsibilities, including recreation and parks activities; and

WHEREAS, the City and the School District believe that the citizens of the City of Reading will benefit from a jointly supported recreational and educational program, which program shall comply with all applicable laws; and

WHEREAS, the purpose of the Agreement is to provide a mechanism to adequately and efficiently maintain community recreation services and facilities and to organize, manage and supervise recreational and educational programs, with a primary focus and emphasis on programs for youth, within the political boundaries of the City and the School District; and

WHEREAS, the City and the School District are legally authorized to enter into such an Agreement for the joint support of a recreational and educational program.

NOW, THEREFORE, the City and the School District, intending to be legally bound hereby, for and in consideration of the mutual covenants herein contained, for themselves and each of their successors and assigns, agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein as if fully set forth.
2. Definitions. As used herein, the following terms shall have the following meanings:
 - (a) "Commission" shall mean the Reading Recreation Commission, to be established as a not-for-profit corporation by Ordinance of the City and Resolution of the School District.
 - (b) "City" shall mean the City of Reading or any authority, commission, bureau, agency or subdivision thereof.
 - (c) "School District" shall mean the Reading School District or any authority, commission, bureau, agency or subdivision thereof.

- (d) "Property of the School District" or "Property of the City" shall mean the land, improvements, buildings, fixtures and equipment of the School District or the City.
3. Commission Authorization. The City and the School District hereby authorize the creation of the Reading Recreation Commission (herein called "Commission") as a not-for-profit corporation, which shall direct, manage and administer a recreational and educational program pursuant to this Agreement and all amendments thereto.
4. Commission Representation. The Commission shall consist of eleven (11) members, as follows:
- (a) The School Board shall appoint two (2) members of the Commission who shall be members of the School Board. Such persons shall serve as members of the Commission at the pleasure of the School Board for an indefinite term.
 - (b) The School Board, upon recommendation of the Superintendent of Schools, shall appoint two (2) members of the Commission, both of whom shall be residents of the City and none of whom shall be employees of the City, School District or Commission and none of whom shall be elected or appointed members of any other board, commission or agency, the members of which are elected or appointed by the City or School District. Each such member shall serve for a term of three (3) years, expiring on December 31, except that the initial terms of such members shall expire on December 31, 2012 and 2013. Such members may be reappointed as members of the Commission. Such members may be removed from office at any time for cause or at any time upon recommendation of the Superintendent of Schools approved by the School Board.
 - (c) The Superintendent of Schools shall appoint one (1) member of the Commission who shall be a School District administrative staff member. Such person shall serve as a member of the Commission at the pleasure of the Superintendent of Schools for an indefinite term.
 - (d) The City Council shall appoint two (2) members of the Commission who shall be members of the City Council. Such persons shall serve as members of the Commission at the pleasure of the City Council for an indefinite term.
 - (e) The City Council, upon recommendation of the Mayor, shall appoint two (2) members of the Commission, both of whom shall be residents of the City and none of whom shall be employees of the City, School District or Commission and none of whom shall be elected or appointed members of any other board, commission or agency, the members of

which are elected or appointed by the City or School District. Each such member shall serve for a term of three (3) years, expiring on December 31, except that the initial terms of such members shall expire on December 31, 2012 and 2013. Such members may be reappointed as members of the Commission. Such members may be removed from office at any time for cause or at any time upon recommendation of the Mayor approved by the City Council.

- (f) The Mayor shall appoint one (1) member of the Commission who shall be a City administrative staff member. Such person shall serve as a member of the Commission at the pleasure of the Mayor for an indefinite term.
- (g) The City Council, upon recommendation of the Mayor, and the School Board, upon recommendation of the Superintendent of Schools, shall appoint one (1) additional member of the Commission, who shall be a resident of the City and who shall not be an employee of the City, School District or Commission and who shall not be an elected or appointed member of any other board, commission or agency, the members of which are elected or appointed by the City or School District. The appointment of such member shall alternate between the City Council and the School District. The initial appointment of such member shall be by the City Council, upon recommendation of the Mayor. Such member shall serve for a term of three (3) years, expiring on December 31, except that the initial term of such member shall expire on December 31, 2014. When the initial term of office expires, the appointment of such member shall be by the School Board. Such member may be reappointed as a member of the Commission by either the City Council or School Board. Such member may be removed from office at any time for cause or at any time upon recommendation of the Mayor approved by the City Council or by recommendation of the Superintendent of Schools approved by the School Board.
- (h) Vacancy. Any vacancy on the Commission (whether by reason of death, disqualification, resignation or removal of a member thereof) shall be filled by the School Board, Superintendent of Schools, Mayor or City Council as shall be applicable. Any vacancy in a term of office of a resident appointed by City Council upon recommendation of the Mayor or School Board upon recommendation of the Superintendent of Schools shall be filled for the unexpired term of office. If a Commission member who is required to maintain his or her residence in the City ceases to be such a resident, his or her membership shall terminate automatically, and his or her position on the Commission shall be declared vacant. When a Commission member who is required to be an elected member of the City Council or School Board or an administrative staff member of the

City or School District is no longer serving as such an elected official or employee, his or her membership on the Commission shall terminate automatically.

- (i) Attendance. The Commission may request the removal of any member by the City and the School District for a repeated lack of attendance at meetings. Any member missing three (3) consecutive meetings, unexcused, or attending less than 50% of regularly scheduled meetings during one calendar year is subject to the Commission's recommending that the member be removed for cause. The City and the School District have the absolute and final authority to either remove or not remove the member from the Commission.

5. Duties of Commission – Powers.

- (a) Purpose. The Commission shall organize, supervise, administer, maintain and operate a recreational and educational program for the residents of the City of Reading with a primary focus and emphasis on offering affordable sports, recreation and learning opportunities for Reading youth. The program, functions and powers of the Commission shall be those as delegated to the Commission by the City Council and the School Board and as otherwise permitted by law.
- (b) Employment of Personnel. The Commission may, for the purposes of carrying out its purposes, employ and terminate such personnel as it shall deem proper. The compensation of such personnel shall be fixed by the Commission. All employees of the Commission shall be paid through the Commission. All existing City recreation division employees shall become Commission employees. The Commission shall employ an Executive Director ("Director"), who shall serve at the Commission's pleasure, subject to any contractual stipulations and who shall be responsible for the selection and hiring of all other personnel, including supervisors, instructors and leaders. All Commission employees shall be required to possess Act 151 and Act 34 clearances prior to their start of employment. The Director shall be required to attend and make reports at all regular and special meetings of the Commission and may participate in any discussion undertaken during such meetings, but shall have no voting rights with respect thereto and shall not be entitled to vote at any such meeting. Executive sessions of the Commission may be held without the attendance of the Director only to determine the performance evaluation, or compensation, of the Director, at the discretion of the Commission. The Director will be entitled to attend all other executive sessions of the Commission.

- (c) **Conduct of Business.** The Commission shall establish its own form of organization as a not-for-profit corporation and appropriate rules and regulations for the conduct of its business, including adopting its own by-laws. Said by-laws shall incorporate any and all provisions set forth in this Agreement with regard to the conduct of Commission business and shall be reviewed and commented upon by the governing bodies of the City and the School District. The Commission shall receive administrative support from the City and the School District for all matters with respect to its duties.
- (d) **Officers.** The Commission shall elect a Chairperson, Vice Chairperson, Secretary and Treasurer from the membership of the Commission. The Chairperson shall act as chair at all duly called meetings and shall be empowered to execute, together with an attestation by the Secretary, all legally binding documents on behalf of the Commission. The Vice Chairperson shall serve in the absence of the Chairperson. The Secretary or his/her designee shall record the Commission's actions and be custodian of the Commission's records. The Treasurer or his/her designee shall receive and expend all Commission funds and shall keep an accounting of all of the Commission's finances including, but not limited to, employee payroll. The Treasurer shall also present monthly reports regarding the finances of the Commission to the Commission members. The Commission shall organize annually at the first meeting of each year, which shall be held in January. All officers shall be elected at the Commission's January organizational meeting and serve a one (1) year term of office, expiring December 31. If an officer ceases to be a member of the Commission, a successor shall be elected.
- (e) **Commission Meetings.** The Commission shall have regularly scheduled monthly meetings. The Chairperson of the Commission may, when he or she deems it necessary or desirable, and shall, upon the request of four members of the Commission and/or the Director, call a special meeting of the Commission for the purpose of transacting any business designated in the call of the meeting. The call for any regular and special meeting shall be in accordance with the Pennsylvania Sunshine Act.
- (f) **Quorum.** When a majority of Commission members [six (6) or more members] are present at a Commission meeting, a quorum will be met, and official actions may be taken.
- (g) **Voting.** Each member of the Commission shall have one (1) vote.
- (h) **Establishment of Advisory Committees.** The Commission may establish advisory committees as deemed necessary or desirable for the operation of the Commission. The

number of advisory committees and members assigned to the committees shall be established by the entire Commission.

- (i) Annual Report/Audit. The Commission shall submit an annual report and financial audit of its activities to the City and the School District on or before April 1 of each year.

6. Finances.

- (a) Fiscal Year – Budget. The Commission shall prepare an annual accounting to include all of its financial operations and activities on a calendar year basis beginning on January 1 of each year. On or before October 1 of each year, the Commission shall prepare a budget, which budget shall include in detail the costs and expenses expected to be incurred by the Commission in the performance of its duties for the succeeding calendar year. Such budget shall also include the amounts of income or funds which the Commission expects to receive from sources other than the City and the School District. Any remaining income or funds which the Commission budgets as necessary for the performance of its duties shall be budgeted as cash contributions to be received from the City and the School District in accordance with paragraph 8 hereof. Such budget shall not include any expenditure for any item agreed to be an in kind contribution pursuant to paragraph 7 hereof. The budget shall be available for review at any time by the City and the School District. Any excess funds remaining after the conclusion of a calendar year shall be applied to the fund balance of the Commission or used for such other purposes as the Commission may determine and approve at a regular or special meeting.
- (b) Approval of Contribution Amount. The contribution amount shall be submitted to the City administration and the City Council for approval and to the School District administration and the School Board for approval on or before October 1 of each year. Upon approval of the contribution amount by the City Council and the School Board, the City Council and the School Board shall cause the City and the School District to contribute to the Commission their respective cash contributions as shown in the budget and as computed in accordance with paragraph 8 hereof. No increase in the amount of the current cash contribution shall be effective if disapproved by the governing body of the City or School District prior to the end of October of each year. Such disapproval shall be immediately communicated orally or in writing to the other participant and to the Commission. Contributions by the City and the School District shall not exceed an increase of more than five (5%) percent of the previous year's contribution without unanimous approval of the City Council and the School Board. If the contribution amount has not been so approved by January 1 of the next calendar new fiscal year, the prior

year's contribution shall remain operative until such approval has been given to the Commission.

7. In Kind Contributions.

(a) Property. The City and the School District agree to make available without charge for use by the Commission the real property, herein called "Property," of the City and the School District when the use of the Property by the Commission will not interfere with or conflict with the usage thereof by the City or the School District or by third parties which have been granted permission to use the Property by the City or the School District, or be contrary to any legal restrictions or obligations relating to the use of the Property. The City and the School District shall have full control over whether or not to grant permission to the Commission for use of any Property.

(1) The in kind contribution shall include in accordance with the terms of this Agreement:

(A) The use of the Property of the City, including the office location for the Commission at the 3rd and Spruce Street Recreation Center;

(B) The use of the Property of the School District;

(C) The contribution of the costs and expenses related to or associated with the Property, including building and grounds maintenance, repair, insurance, air conditioning, police and fire protection, water, sewer, utilities and all other items of cost and expense.

(2) The in kind contribution shall not include the costs and expenses for janitorial services, clean-up or special property protection with respect to a specific event of the Commission which are incurred only because of the Commission's use of the Property. These costs and expenses of the City or the School District shall be included in the Commission's budget and reimbursed by the Commission.

(b) Maintenance of Property. The City and the School District agree to be responsible for and maintain all Property that they own and that are used by the Commission in a safe and reasonable condition.

(c) Capital Improvements. The City and the School District agree to be responsible for capital improvements to facilities and Property that they own and further agree that the Commission shall not be responsible for making any such capital improvements.

- (d) Existing Agreements. This Agreement and the duties of the Commission hereunder shall not interfere with any existing lease agreements or licenses among the City or the School District or by and between the City and the School District and any third party. Any such agreements or licenses shall remain in full force and effect, and the powers and duties of the Commission are subject to any such agreements or licenses.
- (e) Rules and Regulations. The School District and the City may adopt and enforce reasonable rules and regulations relating to the Commission's use of their respective Property; provided that such rules and regulations shall not require the Commission's expenditure of funds for services or items agreed to be contributed in kind.
- (f) Solicitor Services. The City and the School District agree to provide solicitor services to the Commission as an in kind contribution as needed.

8. Cash Contributions.

- (a) First Year Operating Budget. In addition to the in kind contributions as set forth in paragraph 7 hereof, the City and the School District agree to contribute to the Commission in accordance with its budget, the amounts of cash as are necessary to fund the first year operation of the Commission. Cash contributions to the Commission shall begin on January 1, 2012.
 - (1) The City shall contribute \$488,000.
 - (2) The School District shall contribute an amount determined by the following formula:
Annual Contribution = $\$7.50 \times \text{ADM}$. ADM is the average daily membership of pupils for the preceding fiscal year as reported by the School District to the Pennsylvania Department of Education.
 - (3) In each year thereafter, the City and the School District contribution amount shall be determined in accordance with paragraph 6 hereof.
- (b) Cash Contribution Payments. The City and the School District shall make payments to the Commission in four (4) equal installments at the beginning of each quarter (January, April, July and October).

9. Insurance.

- (a) Liability Insurance. The City and the School District shall obtain and maintain liability insurance which names the Commission, its directors, officers, employees and agents as

named insured with respect to the Commission's duties and activities with limits not less than \$1,000,000 per occurrence for injury or damage to persons or property.

- (b) Casualty Loss Insurance. The City and the School District shall each maintain with respect to their respective property, such casualty loss insurance as they shall deem appropriate. All such insurance shall contain waiver of subrogation rights against the City, School District or Commission as applicable.
- (c) Directors and Officers Insurance. The Commission shall obtain and maintain public officials "directors and officers" insurance coverage for its members.

10. Effective Date, Term – Termination.

- (a) Effective Date and Term. This Agreement shall be effective July 1, 2011 and shall be for a term of five (5) calendar years ending December 31, 2016. The City and the School District may not withdraw from this Agreement during the five (5)-year term of the Agreement. This Agreement shall continue in full force and effect and shall be automatically self-renewed year-to-year thereafter except as otherwise provided in this Agreement.
- (b) Withdrawal. After the initial five (5)-year term, the City and the School District may withdraw from the terms of this Agreement at the end of any calendar year by giving written notice of such withdrawal to the other participant and the Commission one (1) year before the proposed withdrawal date. Any funds contributed by a withdrawing participant shall be retained by the Commission. Withdrawal from this Agreement must be approved by a majority of the voting members of the governing body of the participant which desires to withdraw, voted at a public meeting in accordance with the requirements of the Pennsylvania Sunshine Act and any other applicable laws.
- (c) Expansion. Additional partners may become a participant in this Agreement at the beginning of any calendar year with a majority approval of the City and the School District and upon written agreement of the additional participant to be bound by the terms and conditions of the Agreement. The additional participant will be expected to contribute to the funding of the Commission in accordance with a formula to be determined by the City and the School District.
- (d) Dissolution. In case of dissolution of the Commission by mutual consent of the City and the School District hereto, the equipment, materials, supplies, and capital assets of the Commission that remain shall be distributed to the City and the School District in

proportion to the cumulative contributions of the City and the School District from the date of this Agreement to the time of dissolution.

11. Amendment. This Agreement shall not be amended or altered except in writing duly approved by and signed on behalf of the City and the School District.
12. Entire Agreement. This Agreement constitutes the entire contract by the City and the School District, and there are no other understandings, oral or written, relating to the subject matter hereof.
13. Governing Law. This Agreement shall be governed by the Laws of the Commonwealth of Pennsylvania. This Agreement is adopted pursuant to the Act, and the City and the School District shall take all necessary steps under the Act to comply with the same.
14. Further Action. The City and the School District agree to take all action necessary to carry forth the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CITY OF READING

By: _____

Attest: _____

(CITY SEAL)

READING SCHOOL DISTRICT

By: _____

Attest: _____

(SCHOOL DISTRICT SEAL)