

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE THIRD ADDENDUM TO THE LEASE AND OPERATING AGREEMENT BETWEEN THE CITY OF READING, PENNSYLVANIA AND THE READING AREA WATER AUTHORITY, IN THE FORM ATTACHED HERETO AS EXHIBIT "A", AND SUCH OTHER DOCUMENTS NECESSITATED THEREBY, INCLUDING, WITHOUT LIMITATION, (1) A DEED CONVEYING TO THE READING AREA WATER AUTHORITY AN APPROXIMATELY ONE HUNDRED TWENTY (120) ACRE PARCEL OF LAND LOCATED IN ONTELANUEE TOWNSHIP OWNED BY THE CITY AND (2) A DEED CONVEYING TO THE READING AREA WATER AUTHORITY AN APPROXIMATELY TWO AND THIRTY-NINE ONE HUNDREDTHS (2.39) ACRE PARCEL OF LAND OWNED BY THE CITY AND LOCATED AT 1801 MOSS STREET IN THE CITY OF READING.

WHEREAS, the City of Reading (the "City") is the titled owner of the premises adjacent to Lake Ontelaunee consisting of approximately one thousand twenty (1,020) acres in Ontelaunee Township, Berks County, Pennsylvania, also known as Parcel Identification Number 68540100609178;

WHEREAS, a portion of such premises is used in connection with the drinking water services provided by the Reading Area Water Authority (the "Authority") and the Authority desires to acquire a fee simple interest in such portion of the premises, consisting of approximately one hundred twenty (120) acres in total (the "Ontelaunee Property"), in order for the Authority to continue to provide drinking water services; and

WHEREAS, the City is the titled owner of the premises consisting of approximately two and thirty-nine one hundredths (2.39) acres located at 1801 Moss Street in the City of Reading, Berks County, Pennsylvania, also known as Parcel Identification Number 17531877004325 (the Store Yard Property");

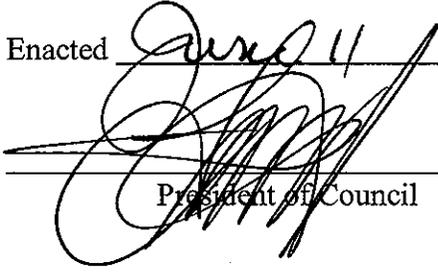
WHEREAS, the Authority plans to make certain improvements in the vicinity of and/or on the Store Yard Property; and

WHEREAS, in exchange for the aforesaid conveyances, and other good and valuable consideration, the Authority has agreed to pay the City such consideration set forth in Exhibit "A" as the financing fee under the Third Addendum to the Lease and Operating Agreement.

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

SECTION 1: The Mayor is authorized to execute the Third Addendum to the Lease and Operating Agreement between the City of Reading, Pennsylvania and the Reading Area Water Authority, in the form attached hereto as Exhibit "A", and other such documents necessitated thereby, including, without limitation a deed conveying to the Reading Area Water Authority the Ontelaunee Property and Store Yard Property.

SECTION 2: This Ordinance, advertised on Monday, March 19, 2012 in the Reading Eagle, shall be effective ten (10) days after City Council's passage and approval by the Mayor, or as otherwise provided by the City of Reading's Home Rule Charter.

Enacted June 11, 2012


President of Council

Attest:



City Clerk

(LAW DEPT.)

This Bill is considered approved on Friday, June 22, 2012 as it was not approved and returned to the Council Office within 10 days, as per Charter Section 221

Submitted to Mayor: 
Date: 6.12.11

Received by the Mayor's Office: _____
Date: _____

Approved by Mayor: _____

Date: _____

Vetoed by Mayor: _____

Date: _____

Exhibit "A"

Third Addendum to the Lease and Operating Agreement between the City of Reading,
Pennsylvania and the Reading Area Water Authority

**THIRD ADDENDUM TO THE TO LEASE AND OPERATING AGREEMENT
BETWEEN THE CITY OF READING, PENNSYLVANIA AND
THE READING AREA WATER AUTHORITY**

THIS THIRD ADDENDUM, dated this ___ day of _____, 2012 (“Addendum Date”) (the “Third Addendum”), is hereby agreed upon by the City of Reading, Berks County, Pennsylvania (“City”), and the Reading Area Water Authority (“Authority”), and hereby amends the Lease and Operating Agreement between the City and the Authority dated May 20, 1994, effective June 1, 1994, as supplemented in January 1995 and amended in October 1997 and December 2010.

RECITALS

A. WHEREAS, the Authority has been incorporated pursuant to an ordinance of the Council of the City and is existing under the provisions of the Act of Assembly approved May 22, 1945, P.L. 382, as amended and supplemented, known as the “Municipality Authorities Act of 1945” (the “Act”);

B. WHEREAS, the City leases its Water System to the Authority pursuant to the terms of the Original Amended Lease (hereinafter defined);

C. WHEREAS, the parties mutually desire to enter into this Third Addendum to facilitate certain additional payments to the City by the Authority to assist in the Act 47 recovery program of the City.

NOW, THEREFORE, the Authority and the City, in consideration of the agreements, conditions and covenants herein contained, each intending to be legally bound, hereby, covenant and agree as follows:

(1) Definitions. Unless otherwise defined herein, all capitalized terms used in this Third Addendum shall have the meanings ascribed to them in the Original Amended Lease.

(a) All references in this Third Addendum or the Original Amended Lease to the “Lease” or “herein” or “hereunder” or other similar terms shall mean the Original Amended Lease, as amended by this Third Addendum.

(b) “Original Amended Lease” shall mean the collective agreement by and between the City and the Authority as evidenced by the Lease and Operating Agreement between the City and the Authority dated May 20, 1994, effective June 1, 1994, as supplemented in January 1995 and amended in October 1997 and December 2010.

(2) Lease Payments.

(a) 2012 Lease Payment. The Authority agrees that the Financing Fee component of the Original Amended Lease for calendar year 2012 shall be FIVE MILLION NINE HUNDRED TWENTY THOUSAND DOLLARS (\$5,920,000). The FIVE MILLION NINE HUNDRED TWENTY THOUSAND DOLLARS (\$5,920,000) Financing Fee shall be used when calculating any reconciliation of the 2012 Lease payments.

(b) 2013 Lease Payment. The Authority agrees that the Financing Fee component of the Original Amended Lease for calendar year 2013 shall be SIX MILLION FOUR HUNDRED SEVENTY THOUSAND DOLLARS (\$6,470,000). The SIX MILLION FOUR HUNDRED SEVENTY THOUSAND DOLLARS (\$6,470,000) Financing Fee shall be used when calculating any reconciliation of the 2013 Lease payments.

(c) 2014 Lease Payment. The Authority agrees that the Financing Fee component of the Original Amended Lease for calendar year 2014 shall be SIX MILLION SIX HUNDRED SEVENTY THOUSAND DOLLARS (\$6,670,000). The SIX MILLION SIX HUNDRED SEVENTY THOUSAND DOLLARS (\$6,670,000) Financing Fee shall be used when calculating any reconciliation of the 2014 Lease payments.

(d) Subsequent Lease Payments. All lease payments due after the 2014 calendar year shall be calculated and paid in accordance with the terms of the Original Amended Lease.

(e) Meter Surcharge Payments to Continue. The Authority shall continue to pay to the City ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000) annually, which shall be due and payable to the City each calendar year in equal monthly installments in accordance with Article VI of the Original Amended Lease.

(3) Conveyance of Ontelaunee Property.

(a) The City hereby agrees to convey to the Authority the approximately one hundred twenty (120) acre parcel of land located in Ontelaunee Township, Berks County, Pennsylvania owned by the City in which the Authority's raw water conveyance mains are located (the "Ontelaunee Property") as soon as practicable after the execution hereof.

(b) If subdivision planning is required to allow the Ontelaunee Property to be conveyed, the City hereby appoints the Authority as its agent to prosecute a subdivision plan with Ontelaunee Township. Notwithstanding the foregoing, the City shall not bear any responsibility for the Authority's actions while prosecuting such subdivision nor shall the City be responsible for contributing to any fees, costs or resources required for the prosecution of such subdivision.

(c) In furtherance of the foregoing, the Authority hereby waives all restrictions associated with the Ontelaunee Property resulting from the Second Addendum to the Original Amended Lease and will execute a document evidencing such waiver to be recorded by the City with the Berks County Recorder of Deeds Office at the Authority's expense.

(d) In connection with the conveyance of the Ontelaunee Property to the Authority, the Authority agrees that it shall not sell, convey, transfer or mortgage any interest to the Ontelaunee Property to any third party or use the Ontelaunee Property as collateral to secure any debt or obligation. To the extent the preceding restriction is unenforceable, then any conveyance from the Authority to a third party shall be subject to (a) the prior written consent of the City (which may be withheld its sole and absolute discretion) executed by the City's Mayor and authorized by Ordinance approved by a majority plus one of the members of the City Council (or as otherwise required by applicable rules if a the requirement for approval by a majority plus one is unenforceable) and (b) a grant of a right of first refusal in favor of the City

to match the purchase price any such firm offer to purchase the Ontelaunee Property by a third party (within ninety (90) days from the City's receipt of notice of such firm offer) as a condition precedent for the effectiveness of any such conveyance. Such requirement for City's prior written consent and right of first refusal prior to the conveyance of the Ontelaunee Property to a third party shall be recorded against the Ontelaunee Property. In addition, prior to any transfer of interest of the Ontelaunee Property to a third party by the Authority, the Authority shall reserve and record easements in favor of the City associated with all above and underground improvements on the Ontelaunee Property associated with the extraction, treatment or conveyance of potable water. In furtherance of the foregoing, the Authority obtain authorization from the City Council by Ordinance approved by a majority plus one of the members of the City Council (or as otherwise required by applicable rules if a the requirement for approval by a majority plus one is unenforceable) prior to executing any form of agreement conveying an interest in the Ontelaunee Property (including, without limitation, a purchase sale agreement, leasehold interest, mortgage, easement or right-of-way).

(4) Conveyance of Store Yard Property. The City hereby agrees to convey to the Authority the City-owned land accessible from Kutztown Road in the City of Reading and commonly known as the "store yard" property as soon as practicable after the execution hereof, subject to all encumbrances on such "store yard" property.

(5) Vacation of Moss Street (unopened) between Exeter Street and Hiester's Lane. The City shall take such actions as are necessary to vacate the unopened portion of Moss Street located north of Bern Street and south of Rockland Street in the City of Reading, which will cause the land on which such unopened street is located to become vested in the adjacent property owners unless otherwise provided by applicable laws.

(6) Allocation of Revenues. The Authority shall equitably and ratably allocate and distribute payments received by the Authority on the behalf of joint customers. The Authority and City agree to cooperate in good faith to establish a formal administrative policy governing such allocation and distribution.

(7) Sewer Multiplier. In connection with its agreement to make the additional payments required hereby, the Authority anticipates instituting a water rate increase applicable beginning January 1, 2012 of approximately 10.50%. The City agrees that the water rate increase proposed by the Authority will not be applied in a manner as to compound sewer rates solely by application of the sewer rate multiplier. Notwithstanding the foregoing, the City reserves the right to increase or modify sewer rates as it deems necessary or convenient in its sole discretion.

(8) Indemnification. The Authority shall indemnify, defend and hold harmless (with counsel selected by the City is its sole discretion) the City and its officers, Council members, employees, agents, successors and assigns (the "Indemnified Parties"), from and against any and all injuries, losses, claims, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), liabilities, fines, penalties or settlement amounts, threatened, incurred, or imposed on or against the Indemnified Parties arising from or related to the conveyance or subdivision of any right, title or interest in the real property subject to this Third Addendum. This Section 8 shall survive the expiration or termination of the Lease.

(9) Take-Back Powers. The City shall retain all rights and powers by operation of law, including, but not limited to, the Municipalities Authorities Act, 53 Pa. C.S.A. 5622 , to require the Authority to convey the water system to the City upon assumption by the City of the obligations incurred by the Authority with respect to the water system (the "Take-Back Powers"). Except as provided below, the Authority shall not take any actions which will hinder, limit or interfere with the City's Take-Back Powers, including, but not limited to, entering into any agreement, contract, loss obligation, bond, trust indenture or pledge that contains terms that limit, directly or indirectly, or attempt to limit the City's Take-Back Powers. Notwithstanding the foregoing, the City acknowledges that in the exercise of its responsibilities to operate and maintain the Water System, of necessity the Authority will routinely enter into transactions, including the issuance of debt, the employment of personnel pursuant to collective bargaining agreements and other transactions that may have the affect of increasing the obligations of the Authority with respect to the Water System that the City will need to assume to exercise its Take Back Powers. There is no intent to restrict the Authority's ability to operate and maintain the Water System by entering into such transactions so long as such transactions are entered on commercially reasonable terms, are necessary for the efficient operation of the Water Systems, and were entered with no intent to hinder, limit or interfere with the City's exercise of its Take Back Powers. Without limiting the generality of the foregoing, the Authority shall not enter into any transactions or allow any encumbrance that would hinder, limit or interfere with the City's assumption of the Ontelaunee Property in the event the City exercises its Take-Back Powers except with the prior written consent of the City (which may be withheld its sole and absolute discretion) executed by the City's Mayor and authorized by Ordinance approved by a majority plus one of the members of the City Council (or as otherwise required by applicable rules if a the requirement for approval by a majority plus one is unenforceable). Any such transaction, agreement or encumbrance shall be deemed against public policy and be null, void and unenforceable by all courts of competent jurisdiction.

IN WITNESS WHEREOF, the City of Reading, Berks County, Pennsylvania has caused this Third Addendum to be executed in its name and on its behalf by its Mayor and its official seal to be affixed hereunder and attested by its City Clerk, and the Reading Area Water Authority has caused this Agreement to be executed in its name and on its behalf by its Chairperson or Vice Chairperson and its corporate seal to be affixed hereto and attested by its Secretary or Assistant Secretary, all as of the day and year first above written.

City of Reading

Reading Area Water Authority

By: _____
Mayor

By: _____
Chairperson

Attest: _____
City Clerk

Attest: _____
Secretary

MEMORANDUM OF UNDERSTANDING
BETWEEN READING AREA WATER AUTHORITY AND THE CITY OF READING
REGARDING RETAIL SEWER BILLING AND METER READING SERVICES

This Memorandum of Understanding is entered into as of the 1st day of June, 2012 between Reading Area Water Authority ("RAWA") and The City of Reading (the "City").

Background: For the past several years, the City has provided water billing services for RAWA and billing for its own sewer services. The City has been responsible for the current collections of the amounts billed and the distribution of amounts collected for water service to RAWA. RAWA has provided meter reading services, for which the City has budgeted \$175,000/year, as compensation for such service. RAWA has also administered the delinquent collection process for water and sewer service accounts. As a part of the Act 47 restructuring of City services, the City has requested that RAWA continue to provide meter reading services and delinquent account collection management and to undertake the billing and current collections process. RAWA will also be responsible for the distribution of amounts collected for sewer service to the City.

Meter Reading: RAWA shall continue to read water meters for the purpose of billing water service and sewer service in accordance with its current practices. The City will be responsible for approximately one-third of the cost of such service. In calendar year 2012, the total cost to RAWA for meter reading services is approximately \$540,000. The City share, based on 2012 pricing, will be \$180,000/year or \$15,000/month. The City will credit \$15,000/month against the RAWA Lease payment, beginning with June 2012.

Billing and Collection: RAWA has purchased substantial computer hardware and software to be used for water and sewer billing purposes. Also, RAWA has contracted with Dallas Data Systems for water and sewer billing services and with Fulton Bank for Lock Box Collection services. In addition, RAWA has hired Customer Service Representatives ("CSRs") dedicated solely to responding to customer concerns related to sewer and water service and billing. RAWA shall charge to the City one-half of the cost of the Dallas Data, Fulton Bank and CSRs cost.

As set forth below, the total of the costs summarized above totals **\$0.908** bill generated. Based on approximately 27,500 bills generated on a monthly basis, the total annual cost of billing and collection services will be approximately **\$299,640**. The City will credit the monthly billing and collection cost defined below against the RAWA Lease payment, beginning with July 2012. The costs of billing to be charged to the City shall be adjusted annually as actual costs to RAWA increase or decrease. These changes will be agreed by both RAWA and the City.

<u>RAWA Actual Cost</u>	<u>City Share of Cost</u>
Dallas Data Systems -- \$1.25/bill	50% of Actual Cost = \$0.625/bill
Fulton Bank -- \$0.238/bill	50% of Actual Cost = \$0.119/bill
Customer Service -- \$95,000.00/year	\$95,000 Flat = <u>\$0.164/bill</u>
	\$0.908/bill

Estimate:

27,500 Bills Per Month x 12 months = 330,000 Bills Per Year

330,000 Bills Per Year / **\$0.908** Bill = \$299,640/Year

\$299,640 Annual Cost = **\$24,970** Monthly Cost

Reports Provided: RAWA will provide the following sewer reports on a monthly basis by the fifth workday of the following month:

- 1) Sewer Revenue Generated - Details to include individual bill number, customer number, customer name, type of customer (residential, commercial, industrial – based on information provided by the City, if so provided), consumption, dollar rate per unit consumption, total revenue per consumption times dollar rate, penalty, interest, total revenue of prior three items. Total number of bills generated. Summary of all prior items. (Other details to be determined) This report is used to determine the sewer revenue generated for the month. Also, this report is used to calculate the billing and collection cost at a rate of \$0.908 times the number of bills generated; credited against the monthly RAWA lease payment.

- 2) Payments Received – Details to include individual bill number, customer number, customer name, type of customer, receipt per consumption, penalty, interest, total receipts of prior three items. Summary of all prior items. (Other details to be determined) This report must equal the month's transfer of sewer funds to the city, with a reconciliation required.
- 3) Accounts Receivable – Details to include individual bill number, customer number, customer name, type of customer, consumption, revenue per consumption, penalty, interest, total revenue of prior three items. (Subtotal by month) Summary of all prior items. Need to define aging of receivables. (Other details to be determined)

Allocation of Collected Funds: RAWA will allocate all payments actually received by it proportionately between RAWA and the City. For bills paid in full, RAWA will simply allocate the amount representing the charge for sewer service on the bill to the City. For bills paid in part, RAWA will allocate to the City an amount equal to the Product of (a) the amount actually received by RAWA, multiplied by (b) a fraction, (i) the numerator of which is the amount billed for sewer services and (ii) the denominator of which is the total amount of the bill.

All amounts received will be applied first to the oldest unpaid bill and shall be allocated using such bill and the formula set forth in the immediately preceding paragraph.

Distribution of Collected Funds: RAWA shall apply its good faith best efforts to transfer amounts due to the City, as provided herein, to the City, by wire transfer or other appropriate means, into the bank account designated from time-to-time by the City, by the end of the Business Day next following the Business Day in which RAWA received such amounts. RAWA shall be obligated to transfer amounts due to the City to the City, as provided above, by no later than the end of the fifth Business Day following the Business Day in which RAWA received such amounts.

Transition of Collections: Beginning June 1, 2012, all amounts received by, or on behalf of, the City for sewer or water services shall be turned over to RAWA together with documentation necessary properly apply such amounts to customer accounts, at the earliest time

possible. The City agrees to instruct its Treasurer's Office and any other office of the City that may receive payments for water or sewer services to cause any amounts so received be turned over to RAWA together with documentation necessary properly apply such amounts to customer accounts, at the earliest time possible.

Cooperation: RAWA and the City, being related public entities, and existing for the benefit of the customers and citizens which they serve, agree to cooperate with one another to provide the best possible service to its customers and citizens.

Term of this agreement: June 1, 2012 through December 31, 2015.

In Witness Whereof, RAWA and the City have caused this Memorandum of Understanding to be Executed as of this 1st day of June, 2012.

The City of Reading

Mayor

City Clerk

Reading Area Water Authority

Chairman

Asst. Secretary