

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 11th day of August, A. D. 2014. Witness my hand and seal of the said City this 4th day of August, A. D. 2014.

BILL NO. 602-2014
AN ORDINANCE

[Signature]
CITY CLERK

DIRECTING THE MAYOR TO EXECUTE THE 4th ADDENDUM TO THE LEASE AGREEMENT WITH THE READING AREA WATER AUTHORITY (RAWA) AS ATTACHED IN EXHIBIT A.

Whereas the Council of the City of Reading hereby ordains as follows:

Section 1. Directing the mayor to execute the 4th Addendum to the Lease Agreement with the Reading Area Water Authority (RAWA) as attached in Exhibit A.

Section 2. All ordinances or resolutions, or parts of ordinances or resolutions, insofar as they are inconsistent with this Ordinance are hereby repealed.

Section 3. The provisions of this Ordinance shall be severable and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any other remaining provisions of the Ordinance shall not be affected thereby. It is hereby expressly declared as the intent of the City Council of the City of Reading that this Ordinance would have been adopted had such unconstitutional or illegal provision or provisions had not been included herein.

Section 4. This ordinance shall become effective ten (10) days after its adoption, in accordance with Sections 219 & 221 of the City of Reading Home Rule Charter.

Enacted: Aug 11 2014

[Signature]
President of Council

August 25, 2014

Attest: *[Signature]*
City Clerk

(Council Staff)
Submitted to Mayor: *[Signature]*
Date: 8/12/14
Received by the Mayor's Office: *[Signature]*
Date: 8/12/14
Approved by Mayor: *[Signature]*
Date: _____
Vetoed by Mayor: *[Signature]*
Date: 8/21/14

The override of the veto was approved by the following vote:

YEAS: Daubert, Goodman-Hinnershitz, Marmarou, Reed, Sterner, Waltman, Acosta, President - 7
NAYS: None

The Mayor refused to sign the attached agreement after the override of the veto.

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

THIS FOURTH ADDENDUM, (the “Fourth Addendum”) by and between the City of Reading, Berks County, Pennsylvania (“City”) and the Reading Area Water Authority (“Authority”), is hereby entered into this ____ day of _____, 2014 (“Addendum Date”), 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, December, 2010, and 2012.

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 Council of the City (“Council”) enacted Ordinance 46-2014 on or about May 27, 2014, 2014, purporting to terminate the Original Amended Lease, take back the water system pursuant to Section 5622 of the Act, 53 Pa. C.S.A. § 5622, and dissolve the Authority;

D. WHEREAS, the parties mutually desire to enter into this Fourth Addendum in order to, among other things, strengthen the City’s oversight of the Authority and the Water System and in order to protect the City’s investment in the Water System currently operated by the Authority; and

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 Fourth Addendum shall have the meanings ascribed to them in the Original Amended Lease (as hereinafter defined).

(a) All references in this Fourth 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 Fourth 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 Authority, dated May 20, 1994, effective June 1, 1994, as supplemented in January, 1995, and amended in October, 1997, December, 2010, June 2012, and ____, 2014, and as the same may hereinafter be amended, supplemented or modified from time to time.

(2) Authority Budget. Not later than November 1 of each year, beginning November 1, 2014, the Authority shall transmit its proposed Budget for the next Fiscal Year to City Council by delivery to the City Clerk. Council shall have thirty (30) days to review, and provide comments to the Authority on, such proposed budget. The Authority shall give due consideration to the comments of the Council and the Mayor's Office of the City prior to the adoption of the budget by the Authority.

(3) Authority Contracts.

(a) Prior to approval by the Authority, of any (a) proposed Authority contracts for professional services, (b) proposed Authority contracts related to the expansion of the Water System, and (c) proposed Authority contract under which the Authority is, or may be, obligated to pay more than of Two Million (\$2,000,000.00) Dollars in any rolling twelve (12) month period or having a cumulative term of more than one year, including any renewal periods, shall be submitted to the City Clerk for review by City Council and shall require approval by City Council, subject to the condition that if (i) the contract shall be subject to bid and for routine purchases of utilities, chemicals and supplies; (ii) the contract shall be necessary to respond to an emergency; or (iii) the contract shall be necessary to comply with the mandate of a regulatory body or court having jurisdiction and authority over the Authority, then in such event, the

Authority shall be free to approve or award such contract without Council's approval but with notice to Council.

(b) The Authority shall not enter into any Authority contract required to be submitted to City Council as provided above unless approved by City Council. The foregoing notwithstanding, the Authority may enter into Contracts submitted to City Council without City Council approval if Council shall fail to act on a proposed contract within thirty (30) days of the City Clerk's receipt of same.

(4) Authority Debt. All new debt incurred by the Authority after the date of this Addendum shall require approval by resolution of City Council. All such requests by the Authority for approval of new debt shall be accompanied by a written explanation as to the following:

(a) A description of the project or purpose for which the new debt will be incurred;

(b) A comprehensive description of the terms and conditions of the proposed financing;

(c) A five (5) year projection of the impact of the debt on Authority finances; and

(d) The impact of the new debt on the Authority's debt service coverage ratio, including details of the calculation of the debt service coverage ratio

(5) Authority Solicitor. The Authority shall appoint an Authority Solicitor annually. No individual attorney or law firm or affiliated organization shall serve as Authority Solicitor for more than six (6) out of any ten (10) consecutive years. Neither the current solicitor of the Authority nor any firm with whom he is then affiliated may serve as Authority Solicitor beyond the first Authority meeting in January 2019. In the final year of the current Authority Solicitor's term as solicitor, the Authority shall retain the services of a new solicitor for at least six (6) months prior to the conclusion of the current solicitor's term.

(6) Authority Board. The Authority agrees within twenty (20) days from the date of this Addendum to propose an amendment to its Articles of Incorporation in accordance with Section 5605 of the Act to increase the number of members of its Board from five (5) to seven (7) members and shall submit said proposed amendment to Council of the City for approval by resolution or ordinance.

(7) Authority Audit. The Authority shall provide the City Clerk and City Auditor with a correct and complete final draft copy of the Authority's audited financial statements no later than May 30 of each year and a copy of the Authority's final audited financial statement by June 15 of each year.

(8) Annual Water System Plan Review. No later than June 30 of each year, the Authority shall present an annual plan including a statement and current status of goals and objectives and a detailed management discussion and analysis of operations and finances, to the City Clerk for agreement or disagreement by City Council by September 1 of each year.

(9) Authority Financial Reports and Debt Closing Binders. The Authority shall provide the City Clerk and City Auditor with correct and complete copies of current quarterly financial reports of the Authority no later than 45 days after the end of each fiscal quarter of the Authority. The Authority shall provide the City Clerk and City Auditor with any other financial or operational information in its possession or readily obtainable that is requested by Council within ten (10) days of such request. The Authority shall provide the City Clerk and City Auditor correct and complete executed copies of all existing Authority debt closing transcripts, bibles and documents within forty-five (45) days from the date of this Addendum. Going forward, the Authority shall provide the City Clerk and City Auditor correct and complete executed copies of all Authority debt closing transcripts, bibles and documents within ten (10) days from the date of the closing of any debt incurred by the Authority.

(10) Lease Payments. The Authority and the City agree that the combined Financing Fee and Meter Surcharge components of the Lease payment for each calendar year, beginning January 1, 2015 shall be Eight Million (\$8,000,000.00) Dollars, which amount reflects the fair rental value of the Water System. Beginning January 1, 2020, the amount of the combined Financing Fee and Meter Surcharge components of the Lease payment for each

calendar year shall be increased on January 1 of each year by an amount equal to the positive change in the Consumer Price Index for the most recently completed twelve (12) month period for which such index is reported (expressed as a percentage) multiplied by the amount of the Lease Payment for the immediately preceding January 1 or 2.5% per annum, whichever amount is greater. The base amount of the Lease payment was arrived at by taking into consideration the valuation performed by an independent consultant selected by the Center for Local Government Excellence at Albright College and the valuation obtained by the City from Municipal & Financial Services, dated March 27, 2014. The cost of the valuation from the Center for Local Government Excellence shall be paid for the Authority. The parties agree that the aforesaid valuations shall be used solely for the purposes of determining "fair rental value" of the Water System.

(11) Termination. Section 7.05 of the Original Amended Lease shall be amended in its entirety to read as follows:

Either the City or the Authority may terminate the Original Amended Lease by serving written notice on the other of its intent and desire to terminate the Original Amended Lease on the date specified in such notice, which shall be a date not earlier than one hundred eighty (180) days from and including the date of such notice, in which event the Original Amended Lease shall terminate as of the date specified in such notice.

IN WITNESS WHEREOF, the City of Reading, Berks County, Pennsylvania, has caused this Fourth 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: _____
Asst. Secretary



**Executive Office of the Mayor
Vaughn D. Spencer**

August 21, 2014

MEMORANDUM

TO: City Council

SUBJECT: Mayoral Veto of Bill #61-2014 (#62-2014 in the agenda packet)

I have decided to veto Bill #61-2014 (#62-2014 in the agenda packet), amending the lease agreement with the Reading Area Water Authority. After a considerable amount of consideration, I have decided to oppose this legislation for several reasons.

I cannot support an agreement that the administration was purposely excluded from. It is the role of the executive branch to negotiate with third parties, including our authorities, after which a proposal is presented to the legislative branch for further discussion and ratification. The recent attempts to disrespect and circumvent this separation are troubling and have got to end, including the questionable process used to produce this agreement.

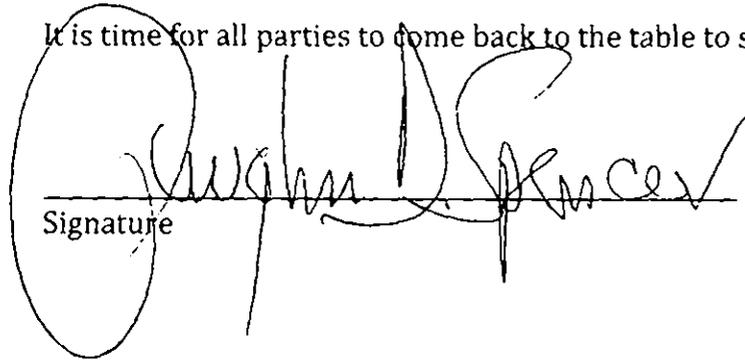
In addition, I cannot support several terms of this agreement, particularly number ten, "Lease Payments." While the increased amount is certainly higher than was expected under the terms of the recovery plan, the most recent projections through 2018 again have the deficit reaching the same widening gap we struggled with at the beginning of our Act 47 designation. This time, however, it is under new and increasingly complicated conditions that leave few places for us to turn for a way out. The proposed lease amount is simply not enough.

In less than six weeks, I am required to present a balanced budget to City Council and the public, but even with this new lease, we still face a \$6 million deficit. This agreement does not provide a solution, even for next year, let alone the next five years. Even worse, it is premature in timing, having not yet received the comprehensive valuation of the system to know what it is truly worth. The responsible thing to do is negotiate a market value lease payment that both meets our budgetary needs and is defensible in court against Act 73 challenges.

To be clear, I still applaud City Council for recognizing the mistake in attempting to take back the water system from the Reading Area Water Authority, and want to see that ordinance repealed as soon as possible. That action, however, should have been carried out on its own without additionally attempting to unilaterally and improperly negotiate a forth addendum to the water system lease.

I fully expect some members of Council to want to simply override this veto, but instead ask that we use this point as the time to come back to the table, ideally with the water authority, and attempt a fresh start to find the best solution. The title of Bill 61 begins with the words "directing the mayor to execute the 4th addendum to the lease," but I must remind you that I cannot be directed to execute anything. Even in the case of an override, any lease agreement will not be official until I decide to sign, and I will only sign once there is a deal that is best for the city.

It is time for all parties to come back to the table to solve this problem together.

A handwritten signature in black ink, appearing to read "Stephen J. Spence", is written over a horizontal line. The signature is stylized and cursive. To the left of the signature, the word "Signature" is printed in a simple, sans-serif font.

Signature