BILL NO. 99 -2014
AN ORDINANCE

REPEALING BILL NO. 62-2014 AND 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. Repealing Bill No. 62-2014 and 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or resolutions, or parts of ordinances or resolutions, insofar as they are inconsistent with this Ordinance are hereby repealed.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 it adoption, in accordance with Sections 219 & 221 of the City of Reading Home Rule Charter.

Enacted: Dec 8, 2014

President of Council

Attest:

City Clerk

(Council Staff)
Submitted to Mayor:
Date: 12/9/14
Received by the Mayor's Office:
Date: 12/9/14
Approved by Mayor:
Date: 12/9/14
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 8 day of Dec. A. D. 2014. Witness my hand and seal of the said City this 10 day of Dec. A. D. 2014

CITY CLERK

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 November, 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 Financing Fee component of the Lease payment for each calendar year, beginning January 1, 2015 shall be Nine Million Two Hundred Seventy-Five Thousand Dollars ($9,275,000.00), which amount reflects the fair rental value of the Water System. Beginning January 1, 2020, the amount of the Financing Fee component 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 Financing Fee Component of the Lease payment for the immediately preceding January 1 or 2.5% per annum, whichever amount is greater. The base amount of the Financing Fee component of the Lease payment was arrived at by taking into consideration the valuation report dated November 12, 2014 prepared by Herbert, Rowland and Grubic, Inc., a consulting firm 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. All other components of the Lease payment of the Original Amended Lease, including the Meter Surcharge component, shall remain unchanged.

(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

By: _____
Mayor

Reading Area Water Authority

By: _____
Chairperson

Attest: _____
City Clerk

Attest: _____
Asst. Secretary