

BILL NO. 96 -2014
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE A GRANT OF RIGHT OF WAY AND EASEMENT BETWEEN THE CITY OF READING AND THE SCHUYLKILL RIVER GREENWAYS ASSOCIATION, THEREBY CONVEYING UNTO THE SCHUYLKILL RIVER GREENWAYS ASSOCIATION A NONEXCLUSIVE, PERPETUAL ACCESS EASEMENT UPON THAT PORTION OF PREMISES WITHIN PARCEL IDENTIFICATION NUMBER 530616947572 ("PROPERTY"), ALONG MORGANTOWN ROAD IN THE CITY OF READING, PENNSYLVANIA.

WHEREAS, the City of Reading filed a Notice of Taking to acquire the Property on March 26, 2012, in connection with the construction of its 42" force main from the Sixth and Canal Pump Station to the Fritz Island Wastewater Treatment Plant; and

WHEREAS, the Schuylkill River Greenways Association claimed rights to an aerial crossing for a trail across an existing bridge crossing a portion of the Property; and

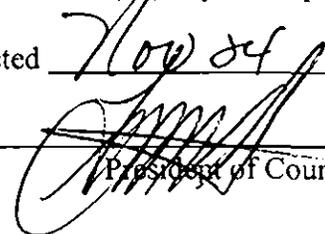
WHEREAS, in lieu of just compensation as may have been due for the condemnation of such property rights, the City of Reading agrees to memorialize an easement for the aerial crossing in favor of the Schuylkill River Greenways Association.

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

SECTION 1. The Mayor is authorized to execute a Grant of Right of Way and Easement (attached as Exhibit "A") to grant to the Schuylkill River Greenways Association a non-exclusive, perpetual access easement upon such portions of the premises known and designated within parcel identification number 530616947572, as shown on the plan of Barry Isett & Associates, Inc., dated August 25, 2014, and attached to the Grant of Right of Way and Easement.

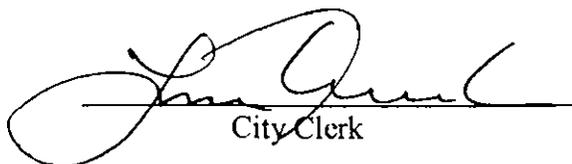
SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted Nov 24, 2014



Mayor of Council

Attest:



City Clerk

(LAW DEPT)

Submitted to Mayor: _____

Date: 11/25/14

Received by Mayor's Office: _____

Date: 11/25/14

Approved by Mayor: _____

Date: 11/25/14

Vetoed by Mayor: _____

Date: _____

[Handwritten signatures and initials, including "M.D. Spencer"]

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 24 day of November A. D. 2014. Witness my hand and seal of the said City this 24 day of November A. D. 2014.

[Handwritten signature]
CITY CLERK

Exhibit "A"

Prepared By:

Carl J. Engleman Jr., Esquire
The Law Offices of Carl Engleman Jr., LLC
3102 Kutztown Road
Reading, PA 19605

Record and Return to:
Schuylkill River Greenway Association
140 College Drive
Pottstown, PA 19464

Grantor's Property Address: Miscellaneous, City of Reading, PA
Property Identification No: 18530616947572 (Grantor)

GRANT OF RIGHT OF WAY AND EASEMENT

THIS GRANT OF RIGHT OF WAY AND EASEMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 20__, by and between THE CITY OF READING, Berks County, Pennsylvania, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a mailing address of 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter called "Grantor"), and SCHUYLKILL RIVER GREENWAY ASSOCIATION, a Pennsylvania non-profit corporation, with a mailing address 140 College Drive, Pottstown, Pennsylvania 19464 (hereinafter called "Grantee").

WITNESSETH:

A. WHEREAS, Grantor filed a Declaration of Taking in fee simple of parcels of land in Berks County, Pennsylvania, including, without limitation, that certain parcel identified as Berks County Parcel Identification Number 18530616947572 and located in the City of Reading, Pennsylvania ("Grantor's Property") on March 26, 2012 (the "Taking") for the purpose of accessing, installing and operating Grantor's sewage conveyance facilities;

B. WHEREAS, Grantor filed a Notice of Taking of Grantor's Property with the Berks County Recorder of Deeds on March 26, 2012; such Notice was recorded at Instrument No. 2012011591;

C. WHEREAS, Grantor filed an Affidavit of Service on April 12, 2012, attesting that service of the Notice of Taking was perfected on Grantee on April 2, 2012;

D. WHEREAS, no potential or known condemnee filed preliminary objections associated with the Taking within the time period allowed by 26 Pa. C.S.A. § 306(a)(1);

E. WHEREAS, Grantee claimed rights to an aerial crossing over a portion of Grantor's Property where Grantee's recreational trail (the "Trail") crosses over an existing bridge (supported by abutments and other appurtenances) located on and above such portion of Grantor's Property; and

F. WHEREAS, in lieu of just compensation as may have been due to Grantee associated with the Taking, Grantor and Grantee agree to memorialize Grantee's aerial crossing rights and maintenance rights in accordance with the terms and conditions as hereinafter set forth.

NOW THEREFORE, for and in consideration of these promises and the sum of One Dollar (\$1.00) paid by Grantee to Grantor in connection with the execution of this Agreement as provided below, and other good and valuable consideration paid to Grantor by Grantee, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual conditions, covenants, promises and terms hereinafter contained, the parties hereto, intending to be legally bound, agree as follows:

1. **Recitals.** The recitals as hereinbefore set forth are incorporated herein by reference as though, again, being set forth in full and complete detail.

2. **Grant of Easement and Access.** Grantor hereby grants and conveys to Grantee, its successors and assigns, an aerial easement for the use of the Trail and a surface easement for the accommodation of the bridge, piers, abutments, and other appurtenances and supporting structures (collectively, the "Bridge") all at such location identified in Exhibit "A", attached hereto and incorporated herein (the "Easement Area"), as a perpetual and non-exclusive right of way and easement (collectively, the "Easement") together with the reasonable right of ingress, egress and regress of persons, vehicles and equipment necessary to restore, maintain, or replace the Bridge (or portion thereof) and Trail from time to time in the sole discretion of the Grantee ("Maintenance Activities"). Grantor recognizes that Grantee intends to permit public use of the Trail for transient recreational activities including walking, hiking, horseback riding and biking.

3. **Restoration and Maintenance.** Grantee shall perform such Maintenance Activities in order to maintain the Trail and Bridge in good, working condition at all times hereunder. Grantee shall provide Grantor two (2) business days notice prior to performing any Maintenance Activities (except that notice shall be provided to Grantor as soon as reasonably possible in the event of an emergency). Grantee shall, upon the completion of each Maintenance Activity, promptly (a) restore the surfaces of the Grantor's Property to approximately the same grades as existed prior to the exercise of any of Maintenance Activities, (b) restore or repair the Grantor's Property with substantially similar surfacing as existed prior to any entry or Maintenance Activities, and (c) repair or replace (with substantially similar materials) any damage to real property or improvements caused by Grantee in the exercise hereof.

4. **Grantor's Use of the Surface Within the Easement Area.** Except as set forth below, Grantor shall have full use and enjoyment of Easement Area as it deems necessary or convenient. Except as may be necessary for Grantor's use, operation, repair, maintenance, replacement or expansion of its sewage conveyance facilities or related infrastructure, Grantor hereby agrees that Grantor shall abide by the following limitations associated with its use of the

Easement Area, which limitations shall run with the land unless this Agreement is terminated by Grantee:

- a. Grantor shall not use the Easement Area in any way which will compromise the structural integrity of the Trail or Bridge or endanger the health, safety and welfare of the users of the Trail.
- b. Grantor shall not store flammable, explosive, dangerous or hazardous materials on the Easement Area.
- c. Grantor shall not construct or erect any buildings or other facilities within the Easement Area without prior authorization of the Grantee, which shall only be withheld if a reputable professional engineer licensed in the Commonwealth of Pennsylvania determines that such proposed buildings or other facilities will compromise the structural integrity of the Trail or Bridge or not provide for sufficient vertical and horizontal clearance for the Trail and maintenance of the Bridge.

5. **Duration of the Easement.** The Easement hereby created shall be appurtenant to and shall run with the land and is for the benefit of Grantor, Grantee, and their respective agents, employees, representatives, licensees, visitors, contractors, successors in interest and assigns. The agreements, conditions, covenants and promises herein contained are intended to be covenants running with the land. The rights created herein shall not be terminated by reason of sale, transfer, mortgage or lease of Grantor's Property. Notwithstanding the foregoing, Grantee shall have the sole and exclusive right to terminate this Agreement at any time by written notice to Grantor; provided, however, that Grantee shall at its sole cost and expense promptly remove the Trail and Bridge from the Easement Area (unless otherwise approved by Grantor in writing,

which approval may be withheld in its sole discretion) in a manner consistent with all applicable laws, regulations and ordinances as a condition precedent to such termination of this Agreement. Should Grantee terminate this Agreement or abandon the Easement, and fail to remove the Trail and Bridge, Grantee shall be liable for all damages of Grantor, including, but not limited to, Grantor's expenses in removing the Trail and Bridge from the Easement and reasonable counsel fees.

6. **Laws.** The Grantee, at its own cost and expense, agrees to comply with all laws, ordinances, rules, regulations, decisions, or order of any federal, state, county, municipal, or other governmental authority or courts regulating Grantee's use of the Easement Area (including without limitation Maintenance Activities).

7. **Title and Quiet Possession.** The Grantor does hereby warrant and represent to Grantee that Grantor has good and marketable title to the Easement Area, and that upon full execution, this Agreement will be a valid, legally binding obligation of Grantor, enforceable against Grantor in accordance with its terms.

8. **Notices.** The parties hereto agree that all notices required to be given shall be given personally or by certified mail, return receipt requested addressed to the parties at the

addresses set forth in the first paragraph of this Agreement. Either party may change its aforesaid address by written notice to the other.

9. **Broker.** Each party represents and warrants that no brokerage commission or similar compensation is due to any party as a result of this Agreement. Grantor and Grantee each agree to indemnify and hold each other harmless from any and all claims for any commission or compensation to any real estate broker arising out of or in connection with this Agreement.

10. **Performance.** Either party to this Agreement shall have the right to waive any covenant, condition or requirement which, under the terms of this Agreement, is to be performed by the other party, but no covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been waived by any party unless such waiver be in writing and signed by the party electing to make such waiver. Consent of either party to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the party for whose benefit such waiver has been given from the obligation, wherever required hereunder, to obtain the further consent to any other act or matter.

11. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Grantor and Grantee named herein, and shall be further binding to the heirs, personal representatives, successors in interest and assigns of the Grantor and Grantee.

12. **Indemnity.** Grantee hereby agrees to indemnify, defend (with counsel selected by Grantor) and hold Grantor, its elected officials, employees, agents, successors and assigns, harmless from and against any and all actions, causes of action, damages, liabilities, claims, demands, and fines, including reasonable attorneys' fees and costs (collectively, "Claims"), caused by or arising out of or in any way related to (a) Grantee's use, enjoyment and operation of or within the Easement, (b) the entry upon Grantor's Property by Grantee, its agents or employees, and (c) the use of the Easement Area by recreational users and other third parties permitted on the Easement by Grantee; including (without limitation) such Claims related to personal injuries (including death) and property damage, except to the extent caused by Grantor's gross negligence or willful misconduct. This paragraph shall survive termination of this Agreement.

13. **Insurance.** Grantee shall maintain such liability insurance policies (naming Grantor as an additional insured on all policies except Workers' Compensation) with at least the coverage amounts as set forth below with companies holding an A.M. Best rating of "A-" or better or a financial rating of IX or better with the A.M. Best's Company Key Rating, Guide - Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania and present a Certificate of Insurance to Grantor evidencing the same upon request:

a. Workers' Compensation:

- | | |
|--------------------------|-------------------|
| i. State | Statutory Minimum |
| ii. Employer's Liability | \$500,000 |

b. General Liability:

- i. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- ii. General Aggregate \$2,000,000

c. Excess or Umbrella Liability

- i. Each Occurrence \$2,000,000
- ii. General Aggregate \$2,000,000

14. **Recording.** This Agreement or a Memorandum thereof shall be recorded in the Office of the Recorder of Deeds of Berks County, Pennsylvania.

15. **Modification.** No modification of this Agreement shall be effective unless it is in writing and signed by the parties hereto.

16. **Costs.** Grantee shall be responsible for all costs and expenses incurred in connection with the preparation and recording of this Agreement, including without limitation recording costs. Each party shall be responsible for its own legal costs.

17. **Miscellaneous.**

a. The captions preceding the text of each paragraph are included for the convenience of reference.

b. This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of law.

c. To the extent any party hereto consists of more than one person, such person shall be jointly and severally liable.

d. If any portion of this Agreement is determined to be illegal or unenforceable, such determination shall not affect the legality, validity or enforceability of the remainder of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

GRANTOR:

By: CITY OF READING

Name: Vaughn D. Spencer

Title: Mayor

GRANTEE:

By: SCHUYLKILL RIVER
GREENWAY ASSOCIATION

Name: _____

Title: _____

GRANTOR ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF _____:

On this, the _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared Vaughn D. Spencer, who acknowledged himself/herself to be the Mayor of the City of Reading, a Pennsylvania political subdivision, and that as such Mayor, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing his/her name thereon as such Mayor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

GRANTEE ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF _____:

On this, the _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a _____, and that as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his/her name thereon as such _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

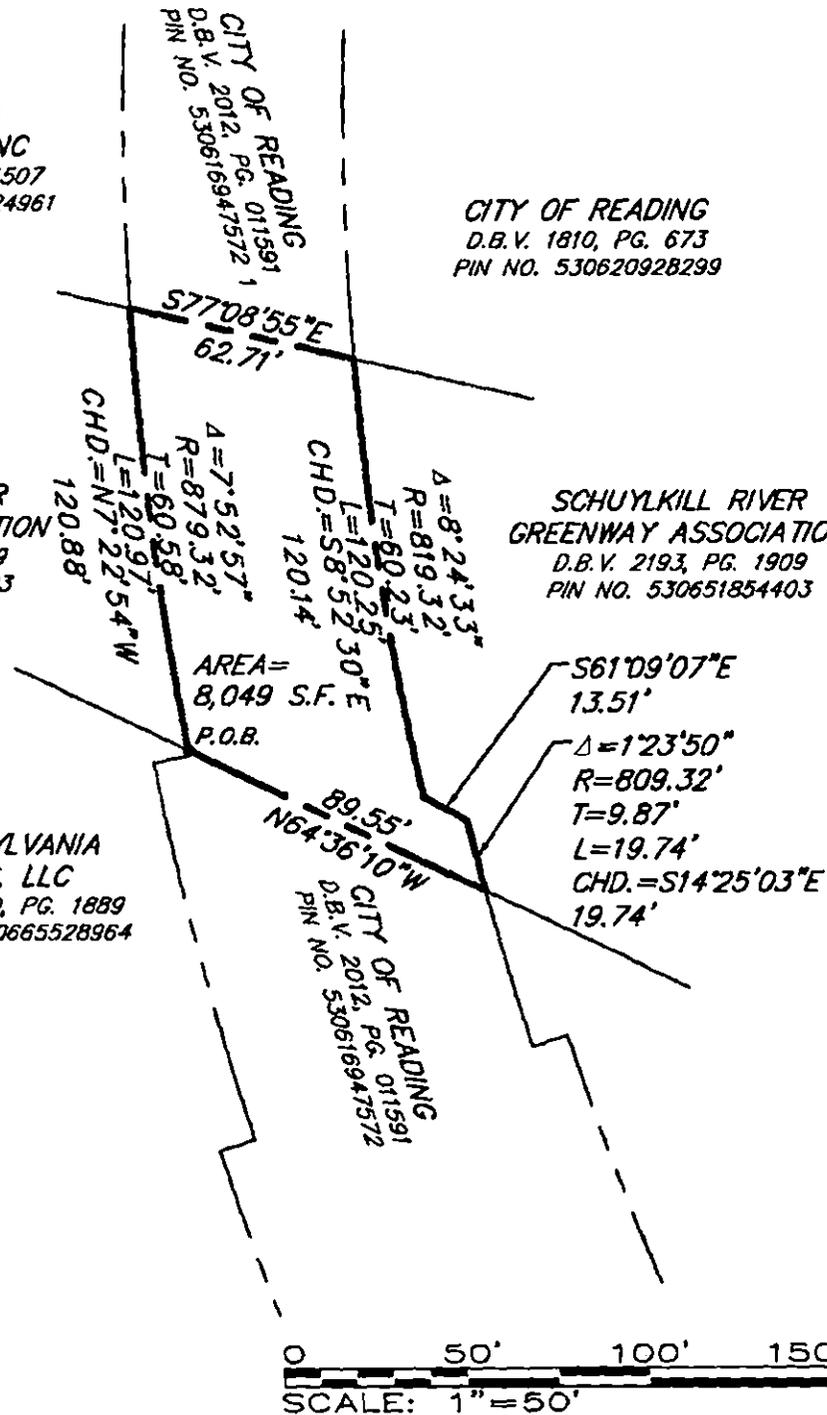
BRENTWOOD INDUSTRIES, INC
 D.B.V. 3498, PG. 1507
 PIN NO. 5306209224961

CITY OF READING
 D.B.V. 1810, PG. 673
 PIN NO. 530620928299

SCHUYLKILL RIVER GREENWAY ASSOCIATION
 D.B.V. 2193, PG. 1909
 PIN NO. 530651854403

SCHUYLKILL RIVER GREENWAY ASSOCIATION
 D.B.V. 2193, PG. 1909
 PIN NO. 530651854403

PENNSYLVANIA LINES, LLC
 D.B.V. 3129, PG. 1889
 PIN NO. 530665528964



BARRY ISETT & ASSOCIATES, INC.
 Multidiscipline Engineers & Consultants
 Allentown, PA 610 261 2888
 Philadelphia, PA 610 292 2125
 Pottsville, PA 610 261 8229
 Harrisburg, PA 717 644 2888
 Pottersville, PA 610 434 2000
 www.barryisett.com

EXHIBIT A
 SCHUYLKILL RIVER GREENWAY ASSOCIATION
 AERIAL EASEMENT
 CITY OF READING
 BERKS COUNTY, PA

JOB NUMBER:	1037808-005
DATE:	08/26/14
SCALE:	1"=50'
DRAWN BY:	DES
SHEET:	EX-A

BARRY ISETT & ASSOCIATES, INC.
Consulting Engineers & Surveyors www.barryisett.com

85 S. Route 100
Allentown, PA 18106

610 • 398 • 0904
(FAX: 610 • 481 • 9098)

August 25, 2014
BIA #1037808.003

LAND DESCRIPTION

Schuylkill River Greenway Association Aerial Easement

ALL THAT CERTAIN tract of land situate in the City of Reading, County of Berks, Commonwealth of Pennsylvania, being that portion of the former Schuylkill and Lehigh Railroad, now lands of the City of Reading, from approximately Station 26+40 to approximately Station 27+61 as shown on the Right of Way and Track Map Schuylkill and Lehigh Railroad Valuation Section V26P/2 and also shown and described in accordance the drawing attached hereto and incorporated herein titled Exhibit A Schuylkill River Greenway Association Aerial Easement, prepared by Barry Isett and Associates, Inc., dated August 25, 2014, as follows:

COMMENCING on the westerly top of bank of the Schuylkill River at the intersection of the southerly line of lands of Pennsylvania Lines LLC, formerly the Reading Belt Railroad, and easterly line of lands of the City of Reading; thence along said westerly top of bank of the Schuylkill River and along said lands of Pennsylvania Lines, LLC, the following two (2) courses and distances:

- 1) North 21 degrees 20 minutes 38 seconds East, 34.14 feet;
 - 2) North 21 degrees 40 minutes 33 seconds East, 97.11 feet;
- thence along the aforesaid lands of Pennsylvania Lines, LLC, as shown on said drawing titled Exhibit A Schuylkill River Greenway Association Aerial Easement, the following five (5) courses and distances:
- 1) North 45 degrees 58 minutes 10 seconds West, 373.50 feet;
 - 2) along a non-tangent curve to the right, having a radius of 899.32 and a central angle of 05 degrees 10 minutes 07 seconds, the arc length of 81.13 feet (chord bearing North 20 degrees 50 minutes 06 seconds West for a distance of 81.10 feet);
 - 3) North 71 degrees 44 minutes 58 seconds East, 10.00 feet;
 - 4) along a non-tangent curve to the right, having a radius of 889.32 feet and a central angle of 06 degrees 50 minutes 00 seconds, the arc length of 106.06 feet (chord bearing North 14 degrees 50 minutes 02 seconds West for a distance of 106.00 feet);
 - 5) North 78 degrees 34 minutes 58 seconds East, 10.00 feet;
 - 6) along a non-tangent curve to the right, having a radius of 879.32 feet and a central angle of 00 degrees 05 minutes 40 seconds, the arc length of 1.45 feet (chord bearing North 11 degrees 22 minutes 12 seconds West for a distance of 1.45 feet) to the TRUE POINT OF BEGINNING of the herein described; thence along the lands of Schuylkill River Greenway Association, along a non-tangent curve to the right, having a radius of 879.32 feet and a central angle of 07 degrees 52 minutes 57 seconds, the arc length of 120.97 (chord bearing

North 07 degrees 22 minutes 54 seconds West for a distance of 120.88 feet); thence through lands of the City of Reading, grantors herein, South 77 degrees 08 minutes 55 seconds East, 62.71 feet; along other lands of the Schuylkill River Greenway Association, the following three (3) courses and distances;

1) along a non-tangent curve to the left having a radius of 819.32 feet and a central angle of 08 degrees 24 minutes 33 seconds, the arc length of 120.25 feet (chord bearing South 08 degrees 52 minutes 30 seconds East for a distance of 120.14 feet);

2) South 61 degrees 09 minutes 07 seconds East, 13.51 feet;

3) along a non-tangent curve to the left, having a radius of 809.32 feet and a central angle of 01 degree 23 minutes 50 seconds, the arc length of 19.74 feet (chord bearing South 14 degrees 25 minutes 03 second East for a distance of 19.74 feet); thence through said lands of the City of Reading, North 64 degrees 36 minutes 10 seconds West, 89.55 feet to the POINT OF BEGINNING.

CONTAINING 8,049 square feet.

A portion of Berks County PIN 530616947572.