

RESOLUTION NO. 9-2024

Harrisburg Redevelopment Authority

WHEREAS, the Redevelopment Authority of the City of Harrisburg (“Authority”) owns 22 Argyle Street, Harrisburg (the “Property”); and

WHEREAS, the Authority wishes to partner with Capital Region Water (“CRW”) for a project that is in furtherance of CRW’s Long-Term Control Plan (“LTCP”) for controlling combined sewer overflows (“CSOs”) entering certain waterways, including the Susquehanna River and the Paxton Creek; and

WHEREAS, the LTCP includes construction of Green Infrastructure (“GI”) designed to manage runoff to control CSOs; and

WHEREAS, certain facilities used in the construction of GI will be located on the Property; and

WHEREAS, the GI construction requires an Easement over the Authority Property.

NOW, THEREFORE, BE IT RESOLVED, the Redevelopment Authority of the City of Harrisburg approves an Easement Agreement for the Construction of Green Infrastructure by Capital Region Water, in substantially the same form and substance as Exhibit “A” attached hereto.

5/21/24
Date

Alexander H. [Signature]
Secretary

Tax Parcel I.D. No. 02044012

Tax Parcel I.D. No. _____

Tax Parcel I.D. No. _____

Tax Parcel I.D. No. _____

CITY OF HARRISBURG

**EASEMENT AGREEMENT FOR STORMWATER FACILITIES BETWEEN REDEVELOPMENT
AUTHORITY OF THE CITY OF HARRISBURG, a/k/a HARRISBURG REDEVELOPMENT
AUTHORITY AND CAPITAL REGION WATER
(22 Argyle Street)**

RECITALS

WHEREAS, Grantor is the fee owner of certain real property, including, but not limited to, utility rights allocated thereto, any appurtenances, easements, licenses and privileges belonging or appurtenant to said real property, any right title and interest of Grantor in and to any roads, streets and ways, public and private, serving the real property, including any rights to development thereof by governmental entities having jurisdiction thereover ("HRA Property"), more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference;

WHEREAS, Grantee has requested Grantor for the conveyance of an easement for a project that is in furtherance of Grantee's Long-Term Control Plan ("LTCP") for controlling combined sewer overflows ("CSOs") entering certain waterways, including the Susquehanna River and Paxton Creek;

WHEREAS, the LTCP includes construction of green infrastructure ("GI") designed to manage runoff to control costs;

WHEREAS, certain facilities used in the construction of GI will be located on HRA Property;

WHEREAS, in connection with the LTCP, Grantee desires to install the facilities over and across the HRA Property and requires an easement over the HRA Property;

WHEREAS, Grantee has entered into a Consent Decree with the United States Government, as required by the United States Environmental Protection Agency's national CSO Control Policy (incorporated into the Clean Water Act ("CWA") at Section 402(q), to implement the LTCP in order to bring CSOs into compliance with the technology-based and water-quality based requirements of the CWA; and

WHEREAS, Granter has found that the grant of such easement on the terms and conditions stated herein is not incompatible with the public interest.

NOW THEREFORE, in consideration of the public benefit to Granter, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Granter and Grantee hereby agree as follows:

1. Recitals.

The foregoing recitals are incorporated in and made a part of this Agreement to the same extent as if herein set forth in full.

2. Grant of Easement.

- a. Grantor hereby grants unto the Grantee and Grantee's successors and assigns, an easement in perpetuity, subject to the terms and conditions contained in this Agreement and further subject to the rights of any third party to which Grantor has previously conveyed any interest in the Property, solely for the operation, maintenance, repair and replacement of the facilities, ("Easement"), such Easement to extend across, over, through, under, the HRA Property ("Easement Area"). Grantor's grant of the Easement to Grantee is without any covenant or warranty of title. Notwithstanding anything to the contrary contained herein, if, at any time, Grantee ceases operation or use of the facilities across any portion of the Easement Area, the Easement associated with such Easement Area shall automatically terminate and Grantee shall promptly execute an easement release instrument and deliver the same to Granter for recordation (at Grantee's sole cost) among the land records of Dauphin County.
- b. The Easement Area shall include, but not be limited to, a means of access from public property to the HRA Property and any and all facilities located on the Easement.
- c. This grant of Easement shall include a right to enter the HRA Property for any purpose related to the performance of the Work described herein.
- d. Grantee shall, at no cost to Granter, be solely responsible for (i) procuring any necessary electricity, water or other utility service required for any Work (defined below) and (ii) Grantee's use and operation of the facilities.
- e. Grantee's use and operation of the facilities and Easement shall be in compliance with all now or hereafter existing applicable laws, rules, regulations, and permits of the United States Federal Government, the Commonwealth of Pennsylvania and the City of Harrisburg ("Laws"), as well as, any rules and regulations as may be prescribed by the Granter to assure that the grant of the Easement will not interfere with Grantor's activities on the HRA Property.
- f. If this Agreement terminates for any reason, Grantee shall restore the Easement Area to an equivalent or better condition than the condition such property existed on the Effective Date.

3. Work.

- a. Grantee agrees to perform or cause to be performed any construction work, installation, maintenance, alteration, modification, repairs, or improvements to the facilities or the Easement Area related to the construction of GI (each and collectively, "Work") in accordance with the approved PHASE 4 PENNVEST SW PRO-FI Plan (the "Plan"), a copy of which is incorporated herein by reference thereto. No Work shall commence unless and until Grantee or Grantee's Agent (hereafter

defined obtains all required licenses, certificates, permits, authorizations or approvals from all applicable government and/or regulatory entities ("Government Approvals"). Granter agrees to reasonably cooperate, at Grantee's sole expense, with Grantee to obtain Government Approvals.

- b. Grantee expressly agrees to complete the Work (i) solely at Grantee's cost and expense; (ii) subject to and in accordance with any Government Approvals; (iii) in accordance with all Laws; and (iv) in a workmanlike manner wholly satisfactory to Granter.
- c. In the event any Granter-owned facilities, roads or other improvements on any part of the HRA Property or the Easement Area must be relocated, removed, restored and/or replaced as a result of all, or any portion, of the Work, Grantee expressly agrees to promptly relocate, remove, replace or restore, or any combination of the foregoing, such Granter-owned facilities, structures, roads or other improvements, as any of the foregoing may be required by Granter, solely at Grantee's cost and expense, in a workmanlike manner satisfactory to and pre-approved by Granter, and subject to any required Government Approvals.
- d. Grantee shall, and shall cause all of Grantee's employees, agents, representatives, contractor(s), subcontractors, successors or assigns, and any other person(s) or organization(s) performing or furnishing any of the Work under an oral or written, direct or indirect contract with Grantee (each and collectively, "Grantee Agent"), to faithfully and punctually comply with the following:
 - (i) Grantor will have the right, but is not obligated, to inspect daily activities of the Work in the Easement Area to confirm the compliance with the requirements of this Agreement.
 - (ii) Grantee Agent will look solely to Grantee for any and all payments;
 - (iii) Grantee Agent shall have no claim or rights against Grantor, or any of Grantor's employees, agents, representatives, successors or assigns;
 - (iv) Grantee, during the term of this Agreement, shall obtain from each applicable Grantee Agent, and Grantee shall deliver to Grantor, prior to the commencement of any Work, executed copies of performance and payment bonds from one (1) or more commercial surety companies qualified and authorized to do business in the Commonwealth of Pennsylvania, assuring Grantee and Granter, are named as obligees therein, as their interests may appear, of (A) performance of all contractual obligations of Grantee Agent, and (B) payment for all related labor, materials and costs of each Grantee Agent;
 - (v) Grantee, during the term of this Agreement, shall procure and maintain insurance policies in amounts and on such forms as mutually agreed-to by the parties and shall name Grantor on all policies as an additional insured; and
 - (vi) Grantee, from time to time, shall provide written evidence of Grantee's and Grantee Agent's faithful and prompt compliance with Grantor's Insurance Requirements.

- e. Grantee shall cause Grantee Agent to confine construction equipment, the storage of materials and equipment and the operations of workers to the HRA Property, and shall not, in Grantor's sole but reasonable determination, unreasonably encumber any of the HRA Property with materials or equipment.
- f. Grantee and each Grantee Agent shall be jointly and severally liable to Grantor for any damage to the HRA Property or areas contiguous thereto resulting from the performance of any of the Work. During the progress of the Work, Grantee and Grantee Agent shall keep the HRA Property free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Grantee and Grantee Agent shall remove any and all waste materials, rubbish and debris from and about the HRA Property, as well as, all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the HRA Property in the condition the HRA Property existed on the Effective Date.
- g. Nothing in this Agreement or any document pertaining to the performance of the Work ("Work Contract") shall create any contractual relationship between Grantor and/or Grantee and Grantee Agent, nor shall any Work Contract create any obligation on the part of Grantor to pay Grantee or any Grantee Agent for any of the Work or any claim, action, loss or damage, whatsoever arising out of the Easement, the Work, or this Agreement.

4. Indemnity and Hold Harmless.

To the extent allowed by Laws, and upon written request by the HRA, CRW shall indemnify, hold harmless, defend and otherwise be solely responsible for, and shall release HRA from, all losses, damages, liabilities, suits, claims, demands, expenses, (including, without limitation, attorney's fees and litigation costs), judgments, interest and costs that arise as a result of the CRW's use of or entry into the Easement Area. In addition, CRW shall cause its contractors to indemnify, hold harmless, defend and otherwise be solely responsible for, and shall release HRA from, all losses, damages, liabilities, suits, claims, demands, expenses, (including, without limitation, attorney's fees and litigation costs), judgments, interest and costs to the extent arising out of any error, negligence, or intentionally wrongful act or omission that arise from the performance of, or in connection with, any Work performed under any Work Contract or activity that occurs on the HRA Property or Easement Area.

5. Maintenance of facilities and Easement Area.

- a. Grantee shall, at no cost to Grantor, make all necessary repairs to the facilities and the Easement Area for the proper upkeep and maintenance of the facilities. Grantee shall keep the facilities and Easement Area in good order, repair and safe condition. Grantee shall, at no cost to Grantor, also maintain the facilities and Easement Area with respect to the use and operation of the facilities in order to cause the HRA Property, or any structures, facilities and improvements located thereon, to be kept in good condition and not damage or adversely affect the HRA Property, and any structures, facilities and improvements located thereon, or cause unreasonable interference with any use of, or access to, the HRA Property, and any structures, facilities and improvements located thereon. If Grantee is in violation of this Section, Grantor shall have the right, but not the obligation, to perform Grantee's

duties to the extent required to protect the HRA Property, and any structures, facilities and improvements located thereon. Grantor's undertaking all or any part of such performance shall in no way reduce or extinguish Grantee's or Grantee Agent's obligations hereunder or be deemed to be a financial responsibility or undertaking of Grantor.

- b. If Grantor makes any expenditures or incurs any obligation for the payment of money in connection with this Agreement, including this Section 5, any and all such sums paid, obligations incurred, and any costs associated therewith, together with interest thereon at the rate of fifteen percent (15%) per annum, shall be deemed to be additional consideration due hereunder and shall be paid by Grantee to Grantor within thirty (30) days of Grantor rendering a bill or statement therefor to Grantee. In addition to, not in lieu of, Grantee's obligations under Sections 4 and 5 of this Agreement, Grantee shall reimburse, compensate and pay Grantor all costs, damages, and losses of any kind to the HRA Property, and any structures, facilities and improvements located thereon, arising or resulting directly from any use, Work, enjoyment or occupation under this Agreement.

6. Access to HRA Property and Easement Area.

During the course of any Work permitted hereunder and during any periodic inspection and routine maintenance of the facilities or the Easement Area, Grantee and Grantee Agent shall, at the sole risk and expense of Grantee and Grantee Agent, be permitted to access the HRA Property for the limited purposes expressly permitted under this Agreement.

7. Interference with Use.

Grantor shall use and operate the HRA Property so that there is no unreasonable interference with Grantee's and Grantee Agent's use and operation of the facilities and the Easement Area. Grantee and Grantee Agent shall perform the Work and shall use and operate the facilities and the Easement Area so that there is no unreasonable interference with Grantor's use and operation of the HRA Property.

8. Miscellaneous.

- a. *Notices.* All notices, requests or demands to a Party hereunder shall be in writing and shall be effective (i) when received by overnight courier service with written tracking of delivery or (ii) by hand-delivery with written receipt therefor, as follows:

If to Grantor, to:

Harrisburg Redevelopment Authority
10 N 2nd Street, Suite 405,
P.O. Box 2157
Harrisburg, PA 17105 - 2157

If to Grantee, to:

Capital Region Water
3003 North Front Street
Harrisburg, PA 17110

- b. *Counterparts.* This Agreement may be executed in multiple counterparts each of which shall constitute an original and all of which together shall constitute one and the same instrument.
- c. *Choice of Law; jurisdiction.* This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without reference to choice of laws principles thereof. The Parties accept the jurisdiction of the Court of Common Pleas of Dauphin County as the court of competent jurisdiction and the proper venue to resolve matters under this Agreement.
- d. *Binding; Limitation on Grantee; Assignment or Transfer.* The Parties agree that the terms and conditions of this Agreement shall (i) be binding upon, and shall inure to the benefit of, their respective heirs, legal representatives, successors and assigns, and (ii) run with the land and be binding upon and inure to the benefit of all parties owning or having any interest in the HRA Property. Notwithstanding the foregoing, in no event shall Grantee assign, transfer, sell or otherwise attempt to convey or encumber this Agreement or all or any part of the Easement, without the prior written consent of Granter, such written consent not to be unreasonably withheld or delayed.
- e. *Writing Required.* No change or modification of this Agreement shall be valid unless the same is in writing, signed by the Parties hereto and recorded in the land records. No purported or alleged waiver of any of the provisions of this Agreement shall be valid or effective unless in writing signed by the Party against whom it is sought to be enforced.
- f. *Further Assurances.* The Parties shall at any time and from time to time after the execution of this Agreement, upon request of any Party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, conveyances and assurances as may reasonably be required in the mutual determination of the respective legal counsels for the Parties for the better performance of all obligations under this Agreement.
- g. *Severability.* In the event that one or more of the provisions of this Agreement shall be held to be illegal, invalid or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Agreement shall continue in full force and effect.
- h. *Limitation of Liability.* Except as otherwise expressly set forth to the contrary in this Agreement, no officer, director, employee, agent, affiliate or beneficiary, as the case may be, of either Party shall be personally liable for any Claims arising hereunder.
- i. *Authority.* By executing this Agreement, each of the Parties represents that: (i) it is authorized to enter into and deliver this Agreement; (ii) it is authorized to perform its obligations hereunder; (iii) this Agreement is effective and enforceable against such Party in accordance with the terms herein; (iv) the person signing this Agreement on behalf of such Party is duly authorized to execute this Agreement; and (v) no other signatures or approvals are necessary in order to make all of the representations of such Party or person, as applicable, contained in this subparagraph true and correct in all respects.
- j. *Entire Agreement.* This Agreement and all of the Exhibits attached hereto, constitute the entire agreement between the Parties, and, except as provided in this Agreement, there are no other agreements or representations between the Parties. This

Agreement supersedes all prior negotiations and agreements between Grantor and Grantee with respect to the subject matter hereof.

- k. *Specific Performance.* If either Party shall fail to comply with the terms and conditions contained herein, the non-defaulting Party may seek specific performance of such terms and conditions and any direct damages resulting from breach thereof, in addition to any other rights or remedies available, at law or in equity, to the non-defaulting Party, but in no event may either Granter or Grantee seek punitive or consequential damages that may arise as a result of a failure to comply with the terms and conditions of this Agreement.
- l. *Minor Adjustments to Boundary.* The Parties agree that in the event there are any changes or adjustments to the boundary of the HRA Property, such changes or adjustments to the boundary of the HRA Property shall not negate the grant of Easement in perpetuity as described on Exhibits A and B and in Section 2a of this Agreement.
- m. *Recordation.* As soon as practicable following the execution of this Agreement, the Parties shall cause this Agreement to be duly recorded in the Office of the Recorder of Deeds in and for Dauphin County, Pennsylvania. The agreements contained herein shall be effective from the date of execution of this Agreement without regard for the date of recordation. The obligation to record this Agreement shall in no way impede, delay, or otherwise alter the rights and obligations of either Party as set forth in this agreement.
- n. *Attorney's Fees.* Grantee shall reimburse Granter for its reasonable attorney's fees related to the preparation of this Agreement in an amount not to exceed Five Hundred Twenty-Five Dollars (\$525.00).

IN WITNESS WHEREOF, Granter and Grantee, have caused this Easement Agreement for Stormwater Facilities to be executed the day and year written first above.

GRANTOR:

**REDEVELOPMENT AUTHORITY OF THE CITY
OF HARRISBURG a/k/a HARRISBURG
REDEVELOPMENT AUTHORITY**

By: _____ By: _____
_____, Chair

COMMONWEALTH OF PENNSYLVANIA :

:

COUNTY OF DAUPHIN :

On this _____ day of _____, 2023, before me, a Notary Public, the undersigned officer, personally appeared _____, Chair of the Redevelopment Authority of the City of Harrisburg a/k/a Harrisburg Redevelopment Authority, known to me (or satisfactorily proven) to be the Authorized Representative, described in the foregoing Easement Agreement For Stormwater Facilities dated of _____, who acknowledged that (he/she) _____ executed the same in the capacity therein stated, and for the purposes therein contained.

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

Notary Public

ATTEST

GRANTEE:

CAPITAL REGION WATER

BY: _____

Secretary

BY: _____

_____, Chairperson

COMMONWEALTH OF PENNSYLVANIA

:

:

COUNTY OF DAUPHIN

:

On this _____ day of _____, 2023, before me, a Notary Public, the undersigned officer, personally appeared _____, Chair of the Redevelopment Authority of the City of Harrisburg a/k/a Harrisburg Redevelopment Authority, known to me (or satisfactorily proven) to be the Authorized Representative, described in the foregoing Easement Agreement For Stormwater Facilities dated of _____, who acknowledged that (he/she) _____ executed the same in the capacity therein stated, and for the purposes therein contained.

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

Notary Public