

RESOLUTION NO. 72 OF 2014

(AS AMENDED)

Moved by: Ms. Williams

A resolution authorizing the City of Harrisburg to enter into a Memorandum of

Understanding (the "MOU") COST SHARING AGREEMENT BETWEEN CAPITAL REGION WATER AND THE CITY OF HARRISBURG RE: MASTER SERVICES AGREEMENT BETWEEN THE CITY OF HARRISBURG AND GANNETT FLEMING, INC. (COST SHARING AGREEMENT) with Capital Region Water (CRW) to share equally

the cost of conducting a geologic investigation of areas in South Harrisburg affected by recent sinkhole activity.

**WHEREAS**, the City of Harrisburg has experienced the effects of a significant collapse of a portion of 14<sup>th</sup> Street; and

**WHEREAS**, it has been determined that a detailed investigation is required to determine the source and cause of that collapse; and

**WHEREAS**, the City and CRW each have a significant interest in the investigation for financial, planning and operational purposes; and

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the Memorandum of Understanding COST SHARING AGREEMENT with Capital Region Water for the sharing of costs of conducting a geologic investigation is approved.

**BE IT FURTHER RESOLVED**, that the City of Harrisburg does hereby designate Mayor Eric Papenfuse as the official to execute the **[MOU] COST SHARING AGREEMENT** between the City of Harrisburg and Capital Region Water. A copy of the [MOU] **AGREEMENT** attached hereto as "Exhibit A" and incorporated herein as if fully set forth.

I second this resolution Ms. Daniels

at the City Council meeting on July 8, 2014  
Wanda R. A. Williams  
President of City Council

Attest  
R. K. [Signature]  
City Clerk

YEAS		NAYS
<input checked="" type="checkbox"/>	MR. ALLATT	
<input checked="" type="checkbox"/>	MR. BALTIMORE	
<input checked="" type="checkbox"/>	MS. DANIELS	
<input checked="" type="checkbox"/>	MR. KOPLINSKI	
<input checked="" type="checkbox"/>	MS. REID	
<input checked="" type="checkbox"/>	MS. WILSON	
<input checked="" type="checkbox"/>	MS. WILLIAMS	
Years	<u>7</u>	
Nays	<u>0</u>	

**EXHIBIT A**

**COST SHARING AGREEMENT BETWEEN CAPITAL REGION WATER  
AND THE CITY OF HARRISBURG RE: MASTER SERVICES AGREEMENT BETWEEN THE CITY OF  
HARRISBURG AND GANNETT FLEMING, INC.**

This Cost Sharing Agreement Between Capital Region Water and the City of Harrisburg Re: Master Services Agreement Between the City of Harrisburg and Gannett Fleming, Inc. (the "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between Capital Region Water (CRW), a Pennsylvania Municipal Authority formed under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S.A. §5601 et seq. and the City of Harrisburg (the "City"), a political subdivision of the Commonwealth of Pennsylvania, and a third class city under the Third Class City Code, 53 P.S. §35151 et seq.

WHEREAS, the City and CRW recognize the problematic nature of sinkholes within the City;

WHEREAS, CRW is the successor to the City in the ownership and operation of the City sewer and stormwater systems and has an interest in the sinkhole issue as it pertains to water, sewer and stormwater issues and the citizens CRW serves through its water, sewer and stormwater services;

WHEREAS, the City has an overall interest in the infrastructure of the City, and the impact of sinkholes on the City's infrastructure and the welfare of its citizens;

WHEREAS, in order to investigate issues surrounding sinkholes, the City desires to engage the engineering firm of Gannett Fleming, Inc. ("Gannett Fleming") to perform emergency sinkhole investigations pursuant to a "Master Services Agreement with the City of Harrisburg for Emergency Sinkhole Investigations" (the "GF Agreement") which is attached hereto as Exhibit A;

WHEREAS, since it has an interest in the outcomes of the investigations to be performed by Gannett Fleming, CRW has agreed to pay half (50%) of Gannett Fleming's fees and costs, as outlined in the GF Agreement; and

WHEREAS, the City and CRW desire to set forth the terms under which CRW will participate in sharing the fees and costs associated with the GF Agreement;

NOW THEREFORE, in consideration of these mutual promises, and intending to be legally bound, the Parties agree as follows:

- 1. Costs and Fees.** Subject to the terms stated below, CRW shall reimburse the City for half of its costs and fees for services performed under the GF Agreement, and as stated in each approved Service Authorization, as described and called for in the GF Agreement (See Section 1.1, Ex. A hereto). CRW shall reimburse the City for its share of the costs and fees within ten (10) business days of the City providing CRW written proof that it has paid Gannett Fleming per the terms of the Service Authorization. As of the date of this agreement, CRW only has authorized reimbursement for Service Authorization Order 1, as described in Gannett Fleming's Final Proposal dated June 5, 2014, which are attached as Exhibits A and B, respectively, to the GF Agreement. CRW will reimburse the City \$19,100 (half of \$38,200) per the payment terms described herein. All further work under the GF Agreement, if any, will be paid in accordance with the terms herein.
- 2. CRW Review Prior to Payment.** (a) Prior to the arising of any obligation of CRW to reimburse the City, per Section 1 above, the City shall have provided to CRW all documents which Gannett Fleming has provided to the City as the basis for Gannett Fleming's fees and costs which may

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include Service Authorizations, invoices, notices of adjustments to the scope of services under the Service Authorization, notices of changes in the services or any document or notice which would effectuate a change in the costs and fees paid by the City to Gannett Fleming (collectively, "Pricing Documents"). CRW shall review the Pricing Documents and, within ten (10) calendar days of receipt, in writing, approve or reject the Pricing Documents. CRW shall have no obligation to reimburse any fees or costs to the City unless it has approved, in writing, the fee or cost, as stated in a Pricing Document; ~~in writing.~~

(b) CRW reserves the right to reject any Pricing Document and in the event CRW fails to approve a Pricing Document within the 10 days stated above in section 2(a), this shall be deemed a rejection of the Pricing Document. Where CRW rejects a Pricing Document, the City may either attempt to negotiate a financial arrangement acceptable to CRW with Gannett Fleming, or, at its option, proceed with the proposed work without CRW's contribution to the costs and fees.

3. **Late Fees.** CRW will not pay any interest, costs or fees associated with the City's late payment of any Gannett Fleming invoice, as stated in Section 2.6 of the GF Agreement, unless the actions of CRW cause the City to incur such interest or charge.

4. **City Obligations Under GF Agreement.** In recognition that the City is Gannett Fleming's Client under the GF Agreement, all affirmative obligations under the GF Agreement, including the "Obligations of Client" and "Access to Property" provisions of Sections 5 and 6 of the GF Agreement, are obligations of the City and not CRW. Furthermore, CRW shall have no obligation to pay any cost or fee associated with the City's non-compliance with its affirmative obligations under the GF Agreement.

5. **CRW Access to Work, Investigations, Reports and Documents.** CRW shall have full access to the work as it progresses as well as all information, reports and documents associated with any work performed by Gannett Fleming, including all documents referenced at Section 9 of the GF Agreement. In the event Gannett Fleming does not turn over documents due to the City's non-payment, as referenced in Section 9.2 of the GF Agreement, CRW may pay the City ~~for~~ the amount due and the City shall demand that Gannett Fleming provide documents which shall promptly be turned over to CRW by the City. CRW reserves the right to seek reimbursement of its costs from the City in this event.

6. **Termination/Suspension of GF Agreement.** The City shall notify CRW prior to any suspension or termination of the GF Agreement. CRW shall not be obligated to pay any portion of mobilization or de-mobilization costs incurred by the City for termination or suspension of the GF Agreement unless CRW has requested, in writing, that the City terminate or suspend the GF Agreement and the City elects to follow CRW's request to terminate or suspend the GF Agreement. In the event CRW requests termination or suspension of the GF Agreement and the City elects to proceed with further work under the GF Agreement, CRW shall not be obligated to make any further payments pursuant to Section 1 hereof for any work undertaken after CRW has requested the City to suspend or terminate work.

7. **Disputes Under GF Agreement.** The City shall, within five business days of giving notice or receiving notice of any dispute pursuant to Section 10 of the GF Agreement, notify CRW of the dispute. CRW shall not be obligated to make any payment to the City under section 1 hereof under any Service Agreement or Pricing Document which is the subject of a dispute. The City shall permit CRW to participate in the resolution of any dispute with Gannett Fleming however the option to participate in any dispute resolution lies solely with CRW.

8. **Notices.** Any notice provided to the City or issued by the City pursuant to Section 11 of the GF Agreement shall be provided to CRW within five (5) days or issuance or receipt.

9. **Indemnity.** To the fullest extent permitted under the law, the City agrees to defend, indemnify and hold CRW, its officers, employees and successors harmless from and against any and all claims, suits, actions and damages, including reasonable attorney's fees, associated with the GF Agreement or any work performed under the GF Agreement unless such claim, suit or action is directly caused by or relates to CRW's gross negligence or willful misconduct

**City of Harrisburg**

**Capital Region Water**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_