

November 22, 2021

FILED VIA PACFILE

Michael Krimmel, Esq.
Prothonotary
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
Harrisburg, PA 17106-2575

RE: Submission of Record in:
Alfred Brown v. Receiver for the City of Chester, No. 1139 CD 2021

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as: “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. 2021-1218:

1. The appeal filed by Alfred Brown (“Requester”) to the Office of Open Records (“OOR”), received June 21, 2021.
2. Official Notice of Appeal dated June 22, 2021, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Email chain dated June 22, 2021 through June 23, 2021, wherein the OOR establishes a new submission deadline in order to provide the Receiver for the City of Chester (“Receiver”) the extension they requested to make a submission.
4. Requester position statement dated July 23, 2021.
5. Receiver position statement and exhibits dated July 23, 2021.

6. Email chain dated July 27, 2021, wherein the OOR grants the Requester additional time to make an additional submission.
7. Requester reply position statement dated July 30, 2021.
8. Email chain dated August 12, 2021 through August 13, 2021 wherein the parties agree to the proposed *in camera* review.
9. OOR *in camera* Order dated August 16, 2021.
10. Email chain dated September 7, 2021 wherein the parties agree to provide the OOR with additional time to issue the final determination.
11. The Final Determination dated September 17, 2021, issued by the OOR.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in cursive script, reading "Kyle Applegate".

Kyle Applegate
Chief Counsel

Attachments

cc: See certificate of service

Commonwealth of Pennsylvania

Agency Docket Number: AP 2021-1218

Appellate Court Docket Number: 1139 CD 2021

I, Elizabeth Wagenseller, certify that the accompanying electronically transmitted materials are true and correct copies of all materials filed in the Office of Open Records and constitute the record for :

Alfred Brown,
Petitioner

v.

Receiver for the City of Chester
(Office of Open Records),
Respondent

/s/ Elizabeth Wagenseller

11/22/2021

Executive Director

Volumes:

Agency Record (2)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALFRED BROWN,
Petitioner,

v.

RECEIVER FOR THE CITY
OF CHESTER
Respondent.

:
:
: No. 1139 CD 2021
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:

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: Kyapplegat@pa.gov

November 22, 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALFRED BROWN,
Petitioner,

v.

RECEIVER FOR THE CITY
OF CHESTER
Respondent.

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: No. 1139 CD 2021
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via email only:

John P. McLaughlin, Esquire
Benjamin R. Patchen, Esquire
CAMPBELL DURRANT, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
jmclaughlin@cdblawn.com
bpatchen@cdblawn.com

Alfred Anthony Brown, Esq.
DAILEY, LLP
1650 Market Street, 36th Floor
Philadelphia, PA 19103
abrown@DaileyLLP.com



Faith Henry, Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: fahenry@pa.gov

Dated: November 22, 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALFRED BROWN,
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v.

RECEIVER FOR THE CITY
OF CHESTER
Respondent.

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: **No. 1139 CD 2021**
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Alfred Brown v. Receiver for the City of Chester, OOR Dkt. AP 2021-1218

1. The appeal filed by Alfred Brown (“Requester”) to the Office of Open Records (“OOR”), received June 21, 2021.
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OOB Exhibit 1

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Monday, June 21, 2021 10:03 PM
To: Alfred Anthony Brown
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Alfred Brown
Company:	Dailey LLP
Address 1:	1650 Market Street
Address 2:	Suite 3600
City:	Philadelphia
State:	Pennsylvania
Zip:	19103
Phone:	215-282-5180
Email:	abrown@daileyllp.com
Agency (typed):	Receiver for the City of Chester
Agency Address 1:	Commonwealth Keystone Building
Agency Address 2:	400 North Street, 4th Floor
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17120-0225
Agency Phone:	717-720-7304
Agency Email:	mdoweary@pa.gov

Records at Issue in this Appeal:	See attachment "2021-06-21 Records at Issue in this Appeal.pdf".
Request Submitted to Agency Via:	e-mail
Request Date:	04/23/2021
Response Date:	05/28/2021
Deemed Denied:	No
Agency Open Records Officer:	Benjamin R. Patchen, Esq. (bpatchen@cdblawn.com)
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • 2021-04-23 RTKL request.pdf • 2021-04-27 Response from Receiver's counsel.pdf • 2021-04-28-1 Emails to Receiver's counsel.pdf • 2021-04-28-2 Response from Receiver's counsel.pdf • 2021-05-28 Response from Receiver's counsel.pdf • 2021-06-08 Email to Receiver's counsel.pdf • 2021-06-16 Response from Receiver's counsel.pdf • 2021-06-18 Response from Receiver's counsel.pdf • 2021-06-21 Records at Issue in this Appeal.pdf • Produced documents re at-issue requests.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



Alfred Anthony Brown
Direct Dial: 215.282.5180
Email: abrown@DaileyLLP.com

June 21, 2021

RECORDS AT ISSUE IN THIS APPEAL
(corresponding to field of the same name on the OOR Online Appeal Form)

Unless otherwise specified, the time period for these requests is January 1, 2016 to the present.

We request that you provide copies of the following, as well as copies of records, documents, email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver

June 21, 2021

10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

I requested the listed records from the Agency named in this appeal. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Among other things, it also appears that that the Agency: (a) has not produced all items in its possession custody, or control that are responsive to my Request; and (b) has not made a good faith search for responsive records (including but not limited to making requisite inquiries of other agency personnel or relevant third parties).

Alfred Anthony Brown

From: Benjamin Patchen <bpatchen@cdblaw.com>
Sent: Friday, June 18, 2021 5:31 PM
To: Alfred Anthony Brown
Cc: John McLaughlin; Tiffany Allen
Subject: Amended Response to Dailey RTK Request
Attachments: Amended Response to RTK Request (00805900xA08AE).PDF; Privilege Log.pdf

Al,

On behalf of the Receiver for the City of Chester, I have attached a privilege/exemption log and an amended response to the Right to Know Request. I will provide an affidavit on Monday.

Ben Patchen



Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

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One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

Benjamin Patchen
Attorney at Law
Direct Dial: 610-227-2594
Email: bpatchen@cdblaw.com

June 18, 2021

Via email and regular mail

Alfred Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 190103
abrown@daileyllp.com

RE: Right to Know Request

Dear Mr Brown:

This firm is counsel to the Receiver for the City of Chester. I am writing in response to your request under the Pennsylvania Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* A copy of your request is attached. *See* Exhibit A. Your request was emailed to the Receiver, Michael Doweary, at 4:23 p.m. on Friday, April 23, 2021. On April 27, 2021, this firm sent you a letter invoking a further 30 days to respond to your request. On May 28, 2021 this firm provided a response to your request. Please allow this correspondence to amend the May 28, 2021 response.

Your requests are granted in part (as indicated below) and denied in part for the reasons set forth below. We believe that your requests should be denied for legal reasons set forth in the specific responses to your requests. In addition to the below specific denials, the Receiver denies that he is the Commonwealth or a Commonwealth Official under the applicable legal standards, and reserves his right to contest that legal conclusion in any pending or future proceeding.

Denial Reason 1 – Lack of Specificity, 65 P.S. § 67.703

In *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Cmwlth. 2015), the Commonwealth Court set forth a three-part

balancing test to evaluate whether a request was sufficiently specific, examining whether the request identified: (1) the subject matter of the request; (2) the scope of the documents sought; and (3) the timeframe for the records sought. *Id.* at 1125; *see also Carey v. Department of Corrections*, 61 A.3d 367, 372 (Pa. Cmwlth. 2013). Because many of your requests have not identified a transaction or activity, a discrete group of documents, or a finite period of time for which the records are sought, your requests are denied in part because you have not met the elements for the PA Office of Open Records three prong test for specificity.

Denial Reason 2 – Lack of Specificity, Requesting Answers or Information Not a Record, RTKL, 65 P.S. § 67.703

Your requests are denied in part for lack of specificity. RTKL, 65 P.S. 67.703. Your request is denied because you are requesting answers to questions or information and the RTKL does not apply to requests for answers, only requests for records. In accordance with the RTKL, written requests must “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” RTKL, 65 P.S. § 67.703.

Denial Reason 3 – Request for Information Not a Record

Your requests are denied in part because you are requesting information that is not a record. Under the RTKL, a request must seek records rather than answers to questions. *See Moll v. Wormleysburg Borough*, No. AP 2012-0308 (Pa. O.O.R.D. March 30, 2012; *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (the [RTKL] d[oes] not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”).

Denial Reason 4 – Records Do Not Exist, RTKL, 65 P.S. § 67.705

Your request is denied because the records you are seeking do not currently exist as you requested or because the agency does not currently compile, maintain, format or organize the record in the manner requested. RTKL, 65 P.S. § 67.705, Creation of Record states, “When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

Denial Reason 5 – Pre-Decisional Deliberations, RTKL, 65 P.S. 67.708(b)(10)(i)(A)

Your request is denied in part because the requested records include or reference pre-decisional deliberations of an agency. RTKL, 65 P.S. 67.708(b)(10)(i)(A).

Denial Reason 6 – Attorney Client Privilege and/or the Attorney Work Product Doctrine, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records requested are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine. RTKL, 65 P.S. § 67.102.

Denial Reason 7 – Attorney Client Communications, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records you requested contain descriptions revealing attorney-client communications which is protected by the Attorney Client Privilege. See *Levy v. Senate of Pa.*, 619 Pa. 586 (Pa. 2013); RTKL, 65 P.S. § 67.102.

Denial Reason 8 – Proposal – RTKL – 65 P.S. § 67.708(b)(26)

Your request is denied in part because Section 708(b)(26) expressly exempts “[a] proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of a contract or...the rejection of all bids....” Further, the proposals contain the “...financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability....” See 65 P.S. § 67.708(b)(26); see also *Global TelLink Corp. v. Wright*, 147 A.3d 978 (Pa. Commw. Ct. 2016) (financial information submitted to demonstrate a bidder's economic capability to perform the services is exempt from disclosure); *Kelman v. Pa. Dep't of Gen. Servs.*, OOR Dkt. AP 2011-0222, 2011 PA O.O.R.D. LEXIS 188; *Radwanski v. West Chester Univ. of Pa.*, OOR Dkt. AP 2010-0238, 2010 PA O.O.R.D. LEXIS 279.

SPECIFIC REQUESTS AND RESPONSES TO REQUESTS ARE AS FOLLOWS:

Request 1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

RESPONSE: Your request is denied in part due to lack of specificity and request for information not a record. Without waiving that objection, *See Application for Assistance to DCED Act 47 Program.*

Request 2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present.

RESPONSE: All responsive comments in the possession of the Receiver are maintained on Microsoft Excel files, which are included in the responsive documents.

Request 3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the “Presentation”) that is attached to the Status Update and is entitled “Receiver’s Assessment of the City of Chester’s Financial and Operational Condition” that the Chester Water Authority be “monetized” as part of a “grand bargain” (see, e.g., Presentation pages 2, 8 and 21-23).

RESPONSE: Your request is denied in part due to lack of specificity and because you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, *See PFM’s Water System Build Analysis.*

Request 4. The “independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management” conducted or being conducted by the Receiver’s team, as referenced on Page 22 of the Presentation.

RESPONSE: Your request is denied in part. Your request is denied in part as you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, *See PFM’s Water System Build Analysis.*

Request 5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.

RESPONSE: Your request is denied in part because the requested record falls under 65 P.S. § 67.708(b)(26). Without waiving that objection, see the previously produced Communications with Essential Utilities, Inc.

Request 6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.

RESPONSE: Your request is denied in part because the requested record falls under 65 P.S. § 67.708(b)(26). Without waiving that objection See the communications between the Receiver and Essential Utilities, Inc.

Request 7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work

Product Doctrine. Without waiving those objections, a copy of responsive Engagement Letter is included in the responsive documents.

Request 11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 12. Any documents where you have exercised your powers to compromise claims, whether against the City of Chester or asserted by the City of Chester.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

RIGHT TO APPEAL

YOU HAVE A RIGHT TO CHALLENGE A DENIAL OF YOUR REQUESTS. IN ORDER TO DO SO, YOU MUST FILE YOUR APPEAL WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. YOUR APPEAL MUST INCLUDE:

- A COPY OF THE RTK REQUEST
- A COPY OF THE AGENCY'S RESPONSE (OR WRITTEN STATEMENT THAT THE REQUEST WAS DEEMED DENIED MEANING THE AGENCY DIDN'T RESPOND AT ALL
- A STATEMENT INCLUDING THE GROUND(S) SUPPORTING YOUR ASSERTION THAT YOUR REQUEST(S) IS A REQUEST(S) FOR A PUBLIC RECORDS AND A STATEMENT ADDRESSING ANY GROUND(S) STATED BY THE AGENCY IN DENYING YOUR REQUEST(S)

APPEAL FORMS AND DETAILED INSTRUCTIONS FOR FILING THE APPEAL CAN BE FOUND ON THE PENNSYLVANIA OFFICE OF OPEN RECORDS WEBSITE; *See*

<http://www.openrecords.pa.gov/Appeals/HowtoFile.cfm> (last visited May 24, 2021).

YOUR APPEAL MUST BE SENT TO THE FOLLOWING OFFICE:

Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Via Facsimile: 717-425-5343
Via Email: openrecords@pa.gov

Thank you for your consideration and please feel free to contact me if you have any questions or concerns regarding this letter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'B. Patchen', with a horizontal line extending to the right.

Benjamin Patchen

RTLK Log for Exemptions, Redactions and Privileged Records

Records of the Receiver for the City of Chester

Record Type	Record Date	Number of Pages	Subject Matter	Authors	Recipients	Legal Basis for Exclusion
Joint Privilege Agreement	2021	5	Litigation	Campbell Durrant, P.C.		Attorney Client Privilege and/or Attorney Work Product Doctrine
Potential Conflict of Interest Waiver	August 12, 2020	2	Litigation	Campbell Durrant, P.C.		Attorney Client Privilege and/or Attorney Work Product Doctrine
Potential Conflict of Interest Waiver	February 12, 2021	2	Litigation	Campbell Durrant, P.C.		Attorney Client Privilege and/or Attorney Work Product Doctrine
Email Correspondence regarding Potential Conflict of Waiver	February 28, 2021	2	Litigation		Campbell Durrant, P.C.	Attorney Client Privilege and/or Work Product Doctrine
Asset Purchase Management Contract	July 23, 2020	57	Proposal	Aqua Pennsylvania, Inc.	Michael Doweary	65 P.S. § 67.708(26)

Alfred Anthony Brown

From: Benjamin Patchen <bpatchen@cdblaw.com>
Sent: Wednesday, June 16, 2021 1:51 PM
To: Alfred Anthony Brown
Subject: RE: Dailey LLP Right to Know Request - Receiver City of Chester

Al,

Sorry for the delay from my end. I am working on getting these to you. It does not look like I will be able to get it to you today, but will send to you by Friday.

Ben Patchen



Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

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From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Tuesday, June 8, 2021 4:35 PM
To: Benjamin Patchen <bpatchen@cdblaw.com>
Subject: RE: Dailey LLP Right to Know Request - Receiver City of Chester

Ben – Thank you for your letter and email of May 28th below. Having reviewed your written response and the materials provided, I note the following and ask that you provide the additional information referenced below on or before Wednesday, June 16th.

1. Page 8 of the "Communication with Essential" PDF you sent me (a July 21, 2020 email from Christopher H. Franklin of Essential, Inc. to Mr. Doweary) promises to provide Mr. Doweary "an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days." Any such Asset Purchase Agreement is properly subject to item no. 6 of my request and possibly others. Kindly provide the referenced agreement, along with any prior or subsequent versions and drafts.

2. Your letter raises a number of general objections but: (a) does not state that any records are in fact being withheld pursuant to those objections; (b) does not identify which records are being withheld pursuant to those objections; and (c) does not associate any objections with any specific withheld documents. I therefore request an exemption log "referencing each record, and each item within each record, claimed to be an exempt record [and] citing the applicable exemptions." See OFFICE OF OPEN RECORDS PROCEDURAL GUIDELINES (Pennsylvania OOR, rev'd Sept. 9, 2015) § V(E). A sample log is available on the OOR website at: <https://www.openrecords.pa.gov/Documents/RTKL/Form-SampleExemptionLog.pdf>. Such a log is an ordinary part of the OOR's *in camera* review process on appeal, but an appeal involving an *in camera* review could be obviated or narrowed if you produce a complete log now.

3. There is no attestation attached to your response: (a) that all responsive items have been provided; (b) that the Receiver lacks possession, custody, or control of records responsive to particular requests; (c) that a thorough and good faith search was conducted for responsive items within the Receiver's possession, custody, or control; (d) what steps (if any) were taken by or on behalf of the Receiver to effectuate a thorough and good faith search; or (e) whether appropriate inquiries were made with other agency personnel or relevant third parties pursuant to 65 P.S. § 67.506(d)(1) for responsive items. Affidavits from those who were involved in this process may be applicable to the Receiver's burden of proof in an appeal before the OOR, but again, an appeal could be obviated or narrowed if such affidavits are produced now.

I look forward to hearing from you.

--Al

Alfred Anthony Brown

Attorney

Dailey

1650 Market Street, 36th Floor

Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Benjamin Patchen <bpatchen@cdblawn.com>

Sent: Friday, May 28, 2021 4:38 PM

To: Alfred Anthony Brown <abrown@daileyllp.com>

Cc: John McLaughlin <jmclaughlin@cdblawn.com>; Tiffany Allen <tallen@cdblawn.com>

Subject: Dailey LLP Right to Know Request - Receiver City of Chester

Alfred,

My firm represents the Receiver for the City of Chester. Please see the attached response of behalf of the Receiver to the Right to Know Request filed by you on Friday April 23, 2021. The responsive documents can be

accessed via the below Dropbox link. Please advise if you want me to send the responsive documents via a different method.

<https://www.dropbox.com/sh/3xx2fh9lvjzklzj/AADrPOxJYGhSqjSOM4FforeLa?dl=0>

Ben Patchen



Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
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bpatchen@cdblaw.com

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Alfred Anthony Brown

From: Alfred Anthony Brown
Sent: Tuesday, June 8, 2021 4:35 PM
To: Benjamin Patchen
Subject: RE: Dailey LLP Right to Know Request - Receiver City of Chester

Ben – Thank you for your letter and email of May 28th below. Having reviewed your written response and the materials provided, I note the following and ask that you provide the additional information referenced below on or before Wednesday, June 16th.

1. Page 8 of the “Communication with Essential” PDF you sent me (a July 21, 2020 email from Christopher H. Franklin of Essential, Inc. to Mr. Doweary) promises to provide Mr. Doweary “an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.” Any such Asset Purchase Agreement is properly subject to item no. 6 of my request and possibly others. Kindly provide the referenced agreement, along with any prior or subsequent versions and drafts.
2. Your letter raises a number of general objections but: (a) does not state that any records are in fact being withheld pursuant to those objections; (b) does not identify which records are being withheld pursuant to those objections; and (c) does not associate any objections with any specific withheld documents. I therefore request an exemption log “referencing each record, and each item within each record, claimed to be an exempt record [and] citing the applicable exemptions.” See OFFICE OF OPEN RECORDS PROCEDURAL GUIDELINES (Pennsylvania OOR, rev’d Sept. 9, 2015) § V(E). A sample log is available on the OOR website at: <https://www.openrecords.pa.gov/Documents/RTKL/Form-SampleExemptionLog.pdf>. Such a log is an ordinary part of the OOR’s *in camera* review process on appeal, but an appeal involving an *in camera* review could be obviated or narrowed if you produce a complete log now.
3. There is no attestation attached to your response: (a) that all responsive items have been provided; (b) that the Receiver lacks possession, custody, or control of records responsive to particular requests; (c) that a thorough and good faith search was conducted for responsive items within the Receiver’s possession, custody, or control; (d) what steps (if any) were taken by or on behalf of the Receiver to effectuate a thorough and good faith search; or (e) whether appropriate inquiries were made with other agency personnel or relevant third parties pursuant to 65 P.S. § 67.506(d)(1) for responsive items. Affidavits from those who were involved in this process may be applicable to the Receiver’s burden of proof in an appeal before the OOR, but again, an appeal could be obviated or narrowed if such affidavits are produced now.

I look forward to hearing from you.

--AI

Alfred Anthony Brown
Attorney

Dailey_{LLP}

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com
www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Benjamin Patchen <bpatchen@cdblaw.com>
Sent: Friday, May 28, 2021 4:38 PM
To: Alfred Anthony Brown <abrown@daileyllp.com>
Cc: John McLaughlin <jmclaughlin@cdblaw.com>; Tiffany Allen <tallen@cdblaw.com>
Subject: Dailey LLP Right to Know Request - Receiver City of Chester

Alfred,

My firm represents the Receiver for the City of Chester. Please see the attached response of behalf of the Receiver to the Right to Know Request filed by you on Friday April 23, 2021. The responsive documents can be accessed via the below Dropbox link. Please advise if you want me to send the responsive documents via a different method.

<https://www.dropbox.com/sh/3xx2fh9lvjzklzj/AADrPOxJYGhSqjSOM4FforeLa?dl=0>

Ben Patchen



Benjamin R. Patchen

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Alfred Anthony Brown

From: Benjamin Patchen <bpatchen@cdblaw.com>
Sent: Friday, May 28, 2021 4:38 PM
To: Alfred Anthony Brown
Cc: John McLaughlin; Tiffany Allen
Subject: Dailey LLP Right to Know Request - Receiver City of Chester
Attachments: Attachments.zip

Alfred,

My firm represents the Receiver for the City of Chester. Please see the attached response of behalf of the Receiver to the Right to Know Request filed by you on Friday April 23, 2021. The responsive documents can be accessed via the below Dropbox link. Please advise if you want me to send the responsive documents via a different method.

<https://www.dropbox.com/sh/3xx2fh9lvjzklzj/AADrPOxJYGhSqjSOM4FforeLa?dl=0>

Ben Patchen



Benjamin R. Patchen

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One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

Benjamin Patchen
Attorney at Law
Direct Dial: 610-227-2594
Email: bpatchen@cdblawn.com

May 28, 2021

Via email and regular mail

Alfred Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 190103
abrown@daileyllp.com

RE: Right to Know Request

Dear Mr Brown:

This firm is counsel to the Receiver for the City of Chester. I am writing in response to your request under the Pennsylvania Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* A copy of your request is attached. *See* Exhibit A. Your request was emailed to the Receiver, Michael Doweary, at 4:23 p.m. on Friday, April 23, 2021. On April 27, 2021, this firm sent you a letter invoking a further 30 days to respond to your request.

Your requests are granted in part (as indicated below) and denied in part for the reasons set forth below. We believe that your requests should be denied for legal reasons set forth in the specific responses to your requests. In addition to the below specific denials, the Receiver denies that he is the Commonwealth or a Commonwealth Official under the applicable legal standards, and reserves his right to contest that legal conclusion in any pending or future proceeding.

Denial Reason 1 – Lack of Specificity, 65 P.S. § 67.703

In *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Cmwlth. 2015), the Commonwealth Court set forth a three-part balancing test to evaluate whether a request was sufficiently specific, examining

whether the request identified: (1) the subject matter of the request; (2) the scope of the documents sought; and (3) the timeframe for the records sought. *Id.* at 1125; *see also Carey v. Department of Corrections*, 61 A.3d 367, 372 (Pa. Cmwlth. 2013). Because many of your requests have not identified a transaction or activity, a discrete group of documents, or a finite period of time for which the records are sought, your requests are denied in part because you have not met the elements for the PA Office of Open Records three prong test for specificity.

Denial Reason 2 – Lack of Specificity, Requesting Answers or Information Not a Record, RTKL, 65 P.S. § 67.703

Your requests are denied in part for lack of specificity. RTKL, 65 P.S. 67.703. Your request is denied because you are requesting answers to questions or information and the RTKL does not apply to requests for answers, only requests for records. In accordance with the RTKL, written requests must “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” RTKL, 65 P.S. § 67.703.

Denial Reason 3 – Request for Information Not a Record

Your requests are denied in part because you are requesting information that is not a record. Under the RTKL, a request must seek records rather than answers to questions. *See Moll v. Wormleysburg Borough*, No. AP 2012-0308 (Pa. O.O.R.D. March 30, 2012; *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (the [RTKL] d[oes] not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”).

Denial Reason 4 – Records Do Not Exist, RTKL, 65 P.S. § 67.705

Your request is denied because the records you are seeking do not currently exist as you requested or because the agency does not currently compile, maintain, format or organize the record in the manner requested. RTKL, 65 P.S. § 67.705, Creation of Record states, “When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

Denial Reason 5 – Pre-Decisional Deliberations, RTKL, 65 P.S. 67.708(b)(10)(i)(A)

Your request is denied in part because the requested records include or reference pre-decisional deliberations of an agency. RTKL, 65 P.S. 67.708(b)(10)(i)(A).

Denial Reason 6 – Attorney Client Privilege and/or the Attorney Work Product Doctrine, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records requested are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine. RTKL, 65 P.S. § 67.102.

Denial Reason 7 – Attorney Client Communications, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records you requested contain descriptions revealing attorney-client communications which is protected by the Attorney Client Privilege. See *Levy v. Senate of Pa.*, 619 Pa. 586 (Pa. 2013); RTKL, 65 P.S. § 67.102.

SPECIFIC REQUESTS AND RESPONSES TO REQUESTS ARE AS FOLLOWS:

Request 1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

RESPONSE: Your request is denied in part due to lack of specificity and request for information not a record. Without waiving that objection, See Application for Assistance to DCED Act 47 Program.

Request 2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present.

RESPONSE: All responsive comments in the possession of the Receiver are maintained on Microsoft Excel files, which are included in the responsive documents.

Request 3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8 and 21-23).

RESPONSE: Your request is denied in part due to lack of specificity and because you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, See PFM's Water System Build Analysis.

Request 4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on Page 22 of the Presentation.

RESPONSE: Your request is denied in part. Your request is denied in part as you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, See PFM's Water System Build Analysis.

Request 5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.

RESPONSE: See the communications between the Receiver and Essential Utilities, Inc.

Request 7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine. Without waiving those objections, a copy of responsive Engagement Letter is included in the responsive documents.

Request 11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 12. Any documents where you have exercised your powers to compromise claims, whether against the City of Chester or asserted by the City of Chester.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

RIGHT TO APPEAL

YOU HAVE A RIGHT TO CHALLENGE A DENIAL OF YOUR REQUESTS. IN ORDER TO DO SO, YOU MUST FILE YOUR APPEAL WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. YOUR APPEAL MUST INCLUDE:

- A COPY OF THE RTK REQUEST
- A COPY OF THE AGENCY'S RESPONSE (OR WRITTEN STATEMENT THAT THE REQUEST WAS DEEMED DENIED MEANING THE AGENCY DIDN'T RESPOND AT ALL
- A STATEMENT INCLUDING THE GROUND(S) SUPPORTING YOUR ASSERTION THAT YOUR REQUEST(S) IS A REQUEST(S) FOR A PUBLIC RECORDS AND A STATEMENT ADDRESSING ANY GROUND(S) STATED BY THE AGENCY IN DENYING YOUR REQUEST(S)

APPEAL FORMS AND DETAILED INSTRUCTIONS FOR FILING THE APPEAL CAN BE FOUND ON THE PENNSYLVANIA OFFICE OF OPEN RECORDS WEBSITE; *See*

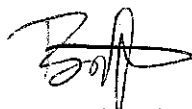
<http://www.openrecords.pa.gov/Appeals/HowtoFile.cfm> (last visited May 24, 2021).

YOUR APPEAL MUST BE SENT TO THE FOLLOWING OFFICE:

Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Via Facsimile: 717-425-5343
Via Email: openrecords@pa.gov

Thank you for your consideration and please feel free to contact me if you have any questions or concerns regarding this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Patchen', with a stylized flourish at the end.

Benjamin Patchen

EXHIBIT A



pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Receiver for the City of Chester (Attn: AORO)

Date of Request: 4/23/2021 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Alfred Brown Company (if applicable): Dailey LLP

Mailing Address: 1650 Market Street, Suite 3600

City: Philadelphia State: PA Zip: 19103 Email: abrown@daileyllp.com

Telephone: 215.282.5180 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

See attached.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)

☒ Yes, electronic copies preferred if available

☐ No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☒ \$100 (or) ☐ \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: *In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>*

Form updated Feb. 3, 2020

Pursuant to the Right-to-Know Law, 65 P.S. § 67.101, et seq., please provide copies of the following documents to:

Alfred Anthony Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 19103

We are happy to pay the costs associated with this request.

To the extent you do not have documents responsive to the requests, please state that in an affidavit.

To the extent documents exist in digital format, please provide us copies of those in digital format.

Unless otherwise specified, the time period for these requests is January 1, 2016 to the present.

We request that you provide copies of the following, as well as copies of records¹, documents², email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

¹ Record or records is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. See 65 P.S. §67.102.

² As used herein, the term "document" or "documents" is defined in the broadest sense including, but not limited to, the following items, whether printed or recorded or reproduced by any other digital process, mechanical process, or written or produced by hand: Electronic mail, calendars, notes, transcripts of any proceedings, meetings or conversations, diaries, statistics, letters, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications, telephone calls, meetings or other communications, bulletins, printed matter (including newspapers, magazines and other publications, and articles and clippings, therefrom), press releases, computer tapes and printouts, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), representations of any kind (including without limitation, photographs, charts, graphs, and videotape, or film recordings) and digital, electronic, mechanical or electrical records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, thumb drives or other media) or transcriptions thereof, work papers, preliminary drafts or notes, diagrams, agreements, communications, government hearings or reports, correspondence, telegrams, memoranda, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, videotape films, brochures, pamphlets, photographs, circulars, any marginal comments under any documents, charts, schedules, diaries, all recording tapes or wires, any form of magnetic data whether stored on disks, drum, core or in any other matter and all writings or recorded material by whatever means or method recorded or stored.

2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present;
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver
10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

Alfred Anthony Brown

From: Alfred Anthony Brown
Sent: Wednesday, April 28, 2021 2:12 PM
To: John McLaughlin
Cc: Martrice Hamilton; Tiffany Allen
Subject: RE: Open Records Request

Mr. McLaughlin – I acknowledge receipt of your email below and its attached letter. I also agree to the extension to May 30th referenced in that letter.

Your email indicates the Receiver did not receive the attachment to my request. The PDF I sent him comprises both a standard Right-to-Know Law request form (page 1) and two attached pages that include a list of requested items (pages 2 and 3). In case you are missing any of those pages, I will forward to you momentarily the complete email and PDF I previously sent to Mr. Doweary.

Very truly yours,

Alfred Anthony Brown

Attorney

Dailey_{LLP}

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Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: John McLaughlin <jmclaughlin@cdblawn.com>
Sent: Tuesday, April 27, 2021 5:49 PM
To: Alfred Anthony Brown <abrown@daileyllp.com>
Cc: Martrice Hamilton <mhamilton@cdblawn.com>; Tiffany Allen <tallen@cdblawn.com>
Subject: Open Records Request

Please find the attached in response to your open records request. Please also note that the Receiver did not receive the attachment to your request. If you have any questions, please let me know.

I also ask that you kindly confirm receipt. Thank you.



John P. McLaughlin

Attorney at Law

Campbell Durrant, P.C.

One Belmont Avenue, Suite 300

Bala Cynwyd, PA 19004

610-227-2596 (Office)

610-909-6298 (Cell)

610-227-2599- FAX

jmclaughlin@cdblaw.com

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Alfred Anthony Brown

From: Alfred Anthony Brown
Sent: Wednesday, April 28, 2021 2:12 PM
To: John McLaughlin
Cc: Martrice Hamilton; Tiffany Allen
Subject: FW: Right-to-Know Law Request
Attachments: 1.pdf

Mr. McLaughlin – Per my last email, below and attached are what I sent to Mr. Doweary on Friday.

--Al

Alfred Anthony Brown
Attorney



1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com
www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Alfred Anthony Brown
Sent: Friday, April 23, 2021 4:23 PM
To: mdoweary@pa.gov
Subject: Right-to-Know Law Request

Dear Mr. Doweary: Please see the attached request pursuant to Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101 et seq. Kindly note that a response is due within five business days pursuant to 65 P.S. § 67.901.

Very truly yours,

Alfred Anthony Brown
Attorney



1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com
www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

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PERSON MAKING REQUEST:

Name: Alfred Brown Company (if applicable): Dailey LLP

Mailing Address: 1650 Market Street, Suite 3600

City: Philadelphia State: PA Zip: 19103 Email: abrown@daileyllp.com

Telephone: 215.282.5180 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

See attached.

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)

☒ Yes, electronic copies preferred if available

☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☒ No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☒ **\$100 (or)** ☐ \$ _____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ _____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

*NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>*

Form updated Feb. 3, 2020

Pursuant to the Right-to-Know Law, 65 P.S. § 67.101, et seq., please provide copies of the following documents to:

Alfred Anthony Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 19103

We are happy to pay the costs associated with this request.

To the extent you do not have documents responsive to the requests, please state that in an affidavit.

To the extent documents exist in digital format, please provide us copies of those in digital format.

Unless otherwise specified, the time period for these requests is January 1, 2016 to the present.

We request that you provide copies of the following, as well as copies of records¹, documents², email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

¹ Record or records is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. See 65 P.S. §67.102.

² As used herein, the term “document” or “documents” is defined in the broadest sense including, but not limited to, the following items, whether printed or recorded or reproduced by any other digital process, mechanical process, or written or produced by hand: Electronic mail, calendars, notes, transcripts of any proceedings, meetings or conversations, diaries, statistics, letters, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications, telephone calls, meetings or other communications, bulletins, printed matter (including newspapers, magazines and other publications, and articles and clippings, therefrom), press releases, computer tapes and printouts, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), representations of any kind (including without limitation, photographs, charts, graphs, and videotape, or film recordings) and digital, electronic, mechanical or electrical records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, thumb drives or other media) or transcriptions thereof, work papers, preliminary drafts or notes, diagrams, agreements, communications, government hearings or reports, correspondence, telegrams, memoranda, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, videotape films, brochures, pamphlets, photographs, circulars, any marginal comments under any documents, charts, schedules, diaries, all recording tapes or wires, any form of magnetic data whether stored on disks, drum, core or in any other matter and all writings or recorded material by whatever means or method recorded or stored.

2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present;
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver
10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

Alfred Anthony Brown

From: John McLaughlin <jmclaughlin@cdblaw.com>
Sent: Wednesday, April 28, 2021 2:13 PM
To: Alfred Anthony Brown
Cc: Martrice Hamilton; Tiffany Allen
Subject: RE: Open Records Request

Thank you.



John P. McLaughlin

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2596 (Office)
610-909-6298 (Cell)
610-227-2599- FAX
jmclaughlin@cdblaw.com

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Warning to clients: Despite this confidentiality notice, some employers have a policy demanding access to all your email and other communications. Do not use a computer, other device, any email account which you can access at your workplace or on the Internet, provided by your employer to communicate confidential information to your lawyer.

From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Wednesday, April 28, 2021 2:12 PM
To: John McLaughlin <jmclaughlin@cdblaw.com>
Cc: Martrice Hamilton <mhamilton@cdblaw.com>; Tiffany Allen <tallen@cdblaw.com>
Subject: RE: Open Records Request

Mr. McLaughlin – I acknowledge receipt of your email below and its attached letter. I also agree to the extension to May 30th referenced in that letter.

Your email indicates the Receiver did not receive the attachment to my request. The PDF I sent him comprises both a standard Right-to-Know Law request form (page 1) and two attached pages that include a list of requested items (pages 2 and 3). In case you are missing any of those pages, I will forward to you momentarily the complete email and PDF I previously sent to Mr. Doweary.

Very truly yours,

Alfred Anthony Brown

Attorney

Dailey

1650 Market Street, 36th Floor

Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: John McLaughlin <jmclaughlin@cdblaw.com>

Sent: Tuesday, April 27, 2021 5:49 PM

To: Alfred Anthony Brown <abrown@daileyllp.com>

Cc: Martrice Hamilton <mhamilton@cdblaw.com>; Tiffany Allen <tallen@cdblaw.com>

Subject: Open Records Request

Please find the attached in response to your open records request. Please also note that the Receiver did not receive the attachment to your request. If you have any questions, please let me know.

I also ask that you kindly confirm receipt. Thank you.



John P. McLaughlin

Attorney at Law

Campbell Durrant, P.C.

One Belmont Avenue, Suite 300

Bala Cynwyd, PA 19004

610-227-2596 (Office)

610-909-6298 (Cell)

610-227-2599- FAX

jmclaughlin@cdblaw.com

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Alfred Anthony Brown

From: John McLaughlin <jmclaughlin@cdblaw.com>
Sent: Tuesday, April 27, 2021 5:49 PM
To: Alfred Anthony Brown
Cc: Martrice Hamilton; Tiffany Allen
Subject: Open Records Request
Attachments: DOC042721.pdf

Please find the attached in response to your open records request. Please also note that the Receiver did not receive the attachment to your request. If you have any questions, please let me know.

I also ask that you kindly confirm receipt. Thank you.



John P. McLaughlin

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2596 (Office)
610-909-6298 (Cell)
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CAMPBELL DURRANT, P.C.

PUBLIC SECTOR, LABOR AND EMPLOYMENT LAW

One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

John P. McLaughlin
Attorney at Law
Direct Dial: 610-227-2596
Email: mclaughlin@cdblaw.com

April 27, 2021

Via email and regular mail

Alfred Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 190103
abrown@daileyllp.com

RE: Right to Know Request

Dear Mr Brown:

This firm is counsel to the Receiver for the City of Chester. I am writing about an open records request that your office forwarded to the Receiver, Michael Doweary, at 4:23 p.m. on Friday, April 23, 2021 pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* This letter is the Receiver's initial response to your request pursuant to the RTKL and is not intended to waive any claim, defense, or privilege.

As you know, the Receiver was not appointed by the Commonwealth Court until June 22, 2020. It is unclear if the Receiver is actually an appropriate recipient at least to the extent that it seeks public documents prior to that date, but we are forwarding this information to act in good faith under the law and to comply with any applicable obligation the Receiver may have under the RTKL. In doing so, the Receiver preserves of his rights in this matter. In addition, pursuant to Section 902(a) of the RTKL, an additional 30 days are required to respond because:

- ☒ A timely response cannot be accomplished due to bona fide staffing limitations.
- ☒ A legal review is needed to determine whether the record is subject to access.
- ☒ The extent or nature of the request precludes a response within the required time period.
- ☒ At this time, it is not clear if the request requires redaction in accordance with Section 706 of the RTKL.
- ☒ The request may require the retrieval of a record stored in a remote location.

The Receiver expects to respond to your request on or before May 30, 2021, which according to my calculations is 30 days after the April 23, 2021 receipt date plus the expiration of the original five (5) business days response time. If an issue arises that requires additional time to respond, we will contact you.

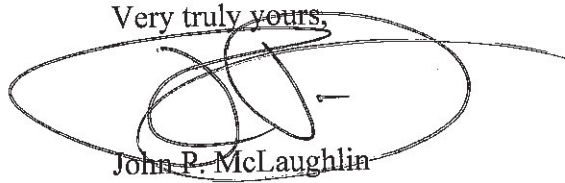
535 Smithfield Street, Suite 700
Pittsburgh, PA 15222
412-395-1280

One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2591

response, we will contact you. At this time, I have no information to provide a good faith estimate of the cost of reproducing the records, but we will do so as soon as such information becomes available.

Thank you for your consideration and please contact me at your earliest convenience to discuss this matter further.

Very truly yours,

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is written over the printed name "John P. McLaughlin".

John P. McLaughlin

Alfred Anthony Brown

From: Alfred Anthony Brown
Sent: Friday, April 23, 2021 4:23 PM
To: mdoweary@pa.gov
Subject: Right-to-Know Law Request
Attachments: 1.pdf

Dear Mr. Doweary: Please see the attached request pursuant to Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101 et seq. Kindly note that a response is due within five business days pursuant to 65 P.S. § 67.901.

Very truly yours,

Alfred Anthony Brown
Attorney

Dailey_{LLP}

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com
www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Receiver for the City of Chester (Attn: AORO)

Date of Request: 4/23/2021 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Alfred Brown Company (if applicable): Dailey LLP

Mailing Address: 1650 Market Street, Suite 3600

City: Philadelphia State: PA Zip: 19103 Email: abrown@daileyllp.com

Telephone: 215.282.5180 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

See attached.

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)

☒ Yes, electronic copies preferred if available

☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☒ No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☒ **\$100 (or)** ☐ \$ _____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ _____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

*NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>*

Form updated Feb. 3, 2020

Pursuant to the Right-to-Know Law, 65 P.S. § 67.101, et seq., please provide copies of the following documents to:

Alfred Anthony Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 19103

We are happy to pay the costs associated with this request.

To the extent you do not have documents responsive to the requests, please state that in an affidavit.

To the extent documents exist in digital format, please provide us copies of those in digital format.

Unless otherwise specified, the time period for these requests is January 1, 2016 to the present.

We request that you provide copies of the following, as well as copies of records¹, documents², email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

¹ Record or records is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. See 65 P.S. §67.102.

² As used herein, the term “document” or “documents” is defined in the broadest sense including, but not limited to, the following items, whether printed or recorded or reproduced by any other digital process, mechanical process, or written or produced by hand: Electronic mail, calendars, notes, transcripts of any proceedings, meetings or conversations, diaries, statistics, letters, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications, telephone calls, meetings or other communications, bulletins, printed matter (including newspapers, magazines and other publications, and articles and clippings, therefrom), press releases, computer tapes and printouts, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), representations of any kind (including without limitation, photographs, charts, graphs, and videotape, or film recordings) and digital, electronic, mechanical or electrical records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, thumb drives or other media) or transcriptions thereof, work papers, preliminary drafts or notes, diagrams, agreements, communications, government hearings or reports, correspondence, telegrams, memoranda, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, videotape films, brochures, pamphlets, photographs, circulars, any marginal comments under any documents, charts, schedules, diaries, all recording tapes or wires, any form of magnetic data whether stored on disks, drum, core or in any other matter and all writings or recorded material by whatever means or method recorded or stored.

2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present;
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver
10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

June 22, 2020

John P. McLaughlin
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
jmclaughlin@cdblaw.com

RE: Appointment Letter
Receiver for the City of Chester
Project: *Chester Receivership*, 336 M.D. 2020 (Pa. Commw.)

Dear Mr. McLaughlin:

I hereby appoint you and your firm, Campbell Durrant, P.C., (the “Firm”), to provide advice and counsel to and representation of the Receiver for the City of Chester (the “Chester Receiver”) with regard to labor relations and personnel matters in the above-captioned proceeding. This engagement will be governed by all terms and conditions in connection with your contract for legal services, which will be routed for execution.

This letter sets forth: (1) information regarding the engagement and specific scope of work to be performed; and (2) amended compensation to be paid for these services.

1. Information Regarding the Engagement and Scope of Work

The purpose of this specific appointment is for the Firm to provide advice and counsel to and representation of the Chester Receiver with regard to labor relations and personnel matters. On June 1, 2020, the Department of Community and Economic Development (“DCED”) filed a Petition for Appointment of Receiver for the City of Chester and Related Relief in the Commonwealth Court of Pennsylvania (the “Court”). By Order dated June 22, 2020, the Court appointed Michael Doweary as Receiver for the City of Chester; that Order also requires the Receiver to develop a recovery plan and submit said plan to the Court, DCED, the Chester City Council, and the Mayor of Chester.

Please review the above-described information carefully to ensure there are no conflicts of interest posed in the proposed representation of the Chester Receiver in connection with providing the requested legal services. Should you require additional information to evaluate any potential conflicts prior to your acceptance of this appointment, please contact me at mdoweary@pa.gov.

2. Compensation

It is agreed upon by the Firm and all parties to this agreement, consistent with its proposal for this engagement, that the Firm shall be paid at the following rates: Attorneys will be billed at \$275 per hour; Paralegals and Law Clerks will be billed at \$180 per hour.

Letter to John P. McLaughlin
RE: Legal Services Engagement (Chester Receiver)
June 22, 2020
Page 2

By accepting this appointment, you are acknowledging that the Firm has completed a conflict of interest analysis and identified nothing to be reported prior to the acceptance of work on behalf of the Chester Receiver. Should a conflict or potential conflict be identified at any time during the term of this engagement, the Firm is under a continuing obligation to disclose such matter, in writing, to me and the Department of Community and Economic Development.

Please acknowledge your receipt and acceptance of this letter by signing where indicated and returning the *original* correspondence to me at the Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

Due to the urgent need for legal services, approval has been granted for the Firm to begin work immediately. I look forward to working with you on this important matter for the Commonwealth of Pennsylvania.

Sincerely,



Michael T. Doweary
Receiver for the
City of Chester, Pennsylvania

Accepted on Behalf of the Firm:

By: _____
(Name) (Date)

cc: J. Michael Adams, Jr., Chief Counsel, Department of Community and Economic Development

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:42 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, November 10, 2020 4:14 PM
To: Doweary, Michael <mdoweary@pa.gov>
Subject: RE: [External] Follow up

Michael,

Thank you for your note a couple of weeks ago. I appreciate the sentiment and agree that all interactions should remain in prescribed channels.

The purpose of my note directly to you today is to acknowledge the legal argument put forth before Commonwealth Court today, which in our opinion, was compelling regarding the City's right to unilaterally repossess CWA's assets. I am hopeful that we will receive the court's decision by the end of the calendar year.

The second reason for my note is to request an update on the RFP process that the city initiated and in which Aqua participated. It is unusual that we would allow an offer of \$410 million including a \$12 million upfront payment to remain outstanding for an undefined period. Our last offer of \$410 million was made in June of this year so I'm sure you understand that the Essential board of directors is anxious for some feedback.

We appreciate the amount of diligence, legal and financial review that has been undertaken by the Office of the Receiver. Knowing the extent of work that had to be completed, we have waited patiently for a response from the city and Receiver. However, now that that Commonwealth Court argument has been completed, it is important that we receive some guidance on your timeline for a decision on the RFP.

Any direction you are willing to provide would be most appreciated.

Best Regards,
Chris



Christopher Franklin
Chairman & CEO
O: 610.645.1081
C: 610.324.1079

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Wednesday, July 22, 2020 9:54 AM

To: Franklin, Christopher H <CHFranklin@essential.co>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com;
greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: RE: [External] Follow up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Chris,

It was a pleasure to meet you and Joel as well. We look forward to continued discussions and resolving the myriad of open matters as soon as possible.

Thank you for taking the time to meet and for providing the additional information. Despite the added complication of coordination with the Receiver's office, Kevin will continue to run point. We'll need a little time to digest the information provided in addition to getting up to speed on the terms in the latest offer. In the meantime, we appreciate your continued patience and look forward to connecting soon.

Best regards,

Mike

Michael T. Doweary | Receiver
Office of The Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
www.visitPA.com



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Please Note: If this email contains a PDF, then the attached PDF file must be produced exactly as provided; no alterations may be made to format or content. If changes are required for any reason, a new file must be provided by the Department of Community and Economic Development. Any alterations to the pdf file made by the recipient without the Department of Community and Economic Development's consent will render the pdf file and its contents null and void.

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, July 21, 2020 6:11 PM
To: Doweary, Michael <mdoweary@pa.gov>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com;
greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: [External] Follow up

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Michael,

Thanks again for taking the time to meet with us last week. I felt it was a great discussion and we look forward to taking the next steps with the City of Chester regarding the Chester Water Authority. As a follow up, I want to provide you with answers and supporting data for three questions you asked in the meeting.

1. **Expected Capital Expenditures in the City of Chester:** In the event we are the winner bidder for the Chester Water Authority, we estimate capital spending of at least \$10M-\$13M over the next 5 years. This would largely consist of pipe replacement given CWA's water treatment plant is located outside the City, and this level of spending will likely increase once we conduct further due diligence. You will recall that due to the unusual circumstances, we do not have access to CWA records or internal capital plans. Through the acquisition of DELCORA, we expect to spend significantly more in the City - approximately \$150M over the next 10-15 years. This capital is needed to address the EPA's Long Term Control Plan related to the City's combined storm and sewer system.
2. **Diversity at Essential/Aqua:** As an organization we are committed to supporting racial and gender diversity within our organization at all levels, making meaningful progress since 2016. Additionally, over that same time period, we have made great progress in enhancing diversity within our vendor network. Although we acknowledge that our work to promote racial and gender diversity is far from finished, we are proud of the progress we have made and are well ahead of our peers in this effort.
3. **Overlap between Aqua (and DELCORA's) Operations and the CWA:** We already serve water to most of Delaware county and will also serve wastewater to much of the county once we acquire DELCORA. Because of this, there is significant geographic proximity and overlap with CWA's operations, and Aqua has four current interconnections. We are already a big part of the communities in and around the City of Chester, making Aqua the logical buyer of the asset. We are committed to SE Pennsylvania given we were founded here 130 years ago, and if we were to own CWA, we would be able to make a real difference in the City going forward.

Please reach out with any questions you have and I look forward to continuing our dialogue. In the meantime, we will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.

Best Regards,

Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:42 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up
Attachments: Receiver Inquiry Responses_7.21.pdf

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, July 21, 2020 6:11 PM
To: Doweary, Michael <mdoweary@pa.gov>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: [External] Follow up

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Michael,

Thanks again for taking the time to meet with us last week. I felt it was a great discussion and we look forward to taking the next steps with the City of Chester regarding the Chester Water Authority. As a follow up, I want to provide you with answers and supporting data for three questions you asked in the meeting.

- 1. Expected Capital Expenditures in the City of Chester:** In the event we are the winner bidder for the Chester Water Authority, we estimate capital spending of at least \$10M-\$13M over the next 5 years. This would largely consist of pipe replacement given CWA's water treatment plant is located outside the City, and this level of spending will likely increase once we conduct further due diligence. You will recall that due to the unusual circumstances, we do not have access to CWA records or internal capital plans. Through the acquisition of DELCORA, we expect to spend significantly more in the City - approximately \$150M over the next 10-15 years. This capital is needed to address the EPA's Long Term Control Plan related to the City's combined storm and sewer system.
- 2. Diversity at Essential/Aqua:** As an organization we are committed to supporting racial and gender diversity within our organization at all levels, making meaningful progress since 2016. Additionally, over that same time period, we have made great progress in enhancing diversity within our vendor network. Although we acknowledge that our work to promote racial and gender diversity is far from finished, we are proud of the progress we have made and are well ahead of our peers in this effort.
- 3. Overlap between Aqua (and DELCORA's) Operations and the CWA:** We already serve water to most of Delaware county and will also serve wastewater to much of the county once we acquire DELCORA. Because of this, there is significant geographic proximity and overlap with CWA's operations, and Aqua has four current interconnections. We are already a big part of the communities in and around the City of Chester, making Aqua the logical buyer of the asset. We are committed to SE Pennsylvania given we were founded here 130 years ago, and if we were to own CWA, we would be able to make a real difference in the City going forward.

Please reach out with any questions you have and I look forward to continuing our dialogue. In the meantime, we will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.

Best Regards,

Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:43 PM
To: Benjamin Patchen
Subject: FW: Thank you

From: Doweary, Michael
Sent: Monday, October 26, 2020 6:27 PM
To: Franklin, Christopher H <CHFranklin@essential.co>
Subject: Thank you

Good afternoon Chris,

Thank you for reaching out last week. I have been concerned with returning your call so I decided to put my response in writing.

With all that is going on, it would probably be best for us to limit our interactions outside of the prescribed channels. PFM and I are very appreciative of the responsiveness and information sharing to date. From a financial perspective, they will continue to be my intermediary. However, if needed, I can introduce our legal counsel as well but I would hate to involve lawyers on every communication.

I hope this is not offensive in any way. In the end, my intention is to protect both of us.

Kind regards,

Michael

Michael T. Doweary | Receiver
Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
www.visitPA.com



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Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:43 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up

From: Doweary, Michael
Sent: Wednesday, July 22, 2020 9:54 AM
To: Franklin, Christopher H <CHFranklin@essential.co>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: RE: [External] Follow up

Good morning Chris,

It was a pleasure to meet you and Joel as well. We look forward to continued discussions and resolving the myriad of open matters as soon as possible.

Thank you for taking the time to meet and for providing the additional information. Despite the added complication of coordination with the Receiver's office, Kevin will continue to run point. We'll need a little time to digest the information provided in addition to getting up to speed on the terms in the latest offer. In the meantime, we appreciate your continued patience and look forward to connecting soon.

Best regards,

Mike

Michael T. Doweary | Receiver
Office of The Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
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To: Doweary, Michael <mdoweary@pa.gov>
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Please reach out with any questions you have and I look forward to continuing our dialogue. In the meantime, we will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.

Best Regards,

Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services ("Contract"), entered into as of the **DATE** by and between **CAMPBELL DURRANT, PC** ("Law Firm") and the Commonwealth of Pennsylvania (the "Commonwealth"), acting by and through the **RECEIVER FOR THE CITY OF CHESTER** ("the Receiver").

The Receiver has a need for professional and specialized legal services to represent the Receiver in matters described in Appendix A.

Section 706(a)(11) of Act 47 of July 10, 1987 (P.L. 246), as amended, known as the Municipalities Financial Recovery Act (53 P.S. §11701.101 et. seq.), (the "Act") authorizes the Receiver to employ financial or legal experts deemed necessary to develop and implement the recovery plan.

The Receiver has engaged the Law Firm via an appointment letter after negotiating fair and reasonable compensation, and the Law Firm has agreed to perform such professional and specialized legal services.

NOW, THEREFORE, the Receiver and the Law Firm, with the intention of being legally bound, hereby agree as follows:

1. Definitions. The following definitions shall apply when used in this Contract:
 - a. "Effective Date" shall mean: a) the date the Contract has been fully executed by the Law Firm and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later or c) in cases where the Receiver has determined an emergent need for counsel as provided below, the date on the Notice to Proceed. The Contract shall not be a legally binding contract until after a copy of the fully-executed Contract and a Notice to Proceed have been sent to the Law Firm except as otherwise provided for urgent services noted below.
 - b. "Notice to Proceed" shall mean a written notice sent to the Law Firm stating that the contract has been fully executed and that the Law Firm may commence performance, or an appointment letter indicating an immediate need to begin work with the permission of the Receiver as provided below. The Receiver shall send a Notice to Proceed to the Law Firm either via U.S. Mail or via email, and the Receiver shall send a fully executed copy of the contract with the notice to proceed.
2. Services. The Law Firm shall perform the services described in Appendix A of this Contract.

3. Compensation. The Law Firm shall be compensated by the Receiver for the services contracted in accordance with the provisions established in Appendices B and C of this Contract.

4. Term of Contract.

a. The term of this Contract shall commence on the Effective Date and shall end on June 30, 2021, subject to the other provisions of this Contract.

b. Except as otherwise specifically provided for herein, the Commonwealth of Pennsylvania, including the Receiver, shall not be liable to pay the Law Firm for any services or work performed or expenses incurred before the Effective Date of the Contract.

c. The Receiver and the Law Firm may extend the term of this Contract at any time during the term of the Contract or any renewals or extensions thereof pursuant to Paragraph 9 of this Contract.

d. If the services to be provided by the Law Firm hereunder have been approved by the Receiver as an emergency procurement until full execution of this Contract, the Law Firm may provide these services based upon such emergency approval. The approval to begin working immediately due to such urgent need will be set forth in the appointment letter (Notice to Proceed) to the Law Firm. Upon full execution of this Contract, all services provided during the period between the date of emergency approval in the appointment letter and the Effective Date of the Contract shall be merged into and covered by the terms of this Contract.

5. Billing. The Law Firm shall submit monthly invoices to the Receiver for services performed during each billing period. Invoices shall be forwarded to the following contact and address:

Michael Doweary
Receiver for the City of Chester
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

a. Each invoice shall be under cover of a letter on law firm letterhead and itemized listing the services performed by attorney and legal assistant by date, by hours worked, and by rate and shall generally follow the format appearing in Appendix D of this Contract. The following information must be included on all invoices. Failure to include this information will result in return of the invoice and a request for a new invoice:

- (1) Funds Commitment Number;
- (2) Invoice Date;
- (3) Service Dates (i.e., start and end dates for services covered by invoice);
- (4) Invoice Number;
- (5) Gross/Total Amount.

b. The amount shown on each invoice for labor costs shall be in accordance with the rates set forth in Appendix B of this Contract.

c. The invoices shall also list non-labor costs such as those incurred for travel, food, and lodging, as described in Appendix C of this Contract.

d. The Receiver agrees to pay the Law Firm for travel, meal costs, and lodging costs for which supporting documentation is provided, in reasonable amounts incurred in connection with performance of services under the Contract, as described in Appendix C of this Contract.

e. The Receiver will use its best effort to make payments on invoices within 45 days of their receipt, in final form.

f. All invoices shall contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

g. All invoices or accompanying letters of transmittal shall be signed by the Law Firm and shall set out the Law Firm's federal employer identification number.

6. Consultation. The Law Firm shall consult with and keep the Receiver fully informed as to the progress of all matters covered by this Contract. The Law Firm shall consult and cooperate with, and shall be responsible directly to, the Receiver, and other officials as designated by the Receiver on all matters of strategy and tactics. The duty of the Law Firm shall be to advise, counsel, and recommend actions to the Receiver or the other officials designated by him, and to carry out to the best of its ability their directions. The Law Firm will not make any offer, settlement, or compromise without the written consent of the Receiver. The Law Firm shall offer the Receiver the opportunity to review court documents and briefs prior to filing. The Law Firm shall promptly furnish the Receiver with copies of all correspondence and all court documents and briefs prepared in connection with the services rendered under this Contract and such additional documents as may be requested.

7. Subcontracting, Key Personnel, and Experts. Subcontracting, assignment, or transfer of all or part of the interest of the Law Firm in this Contract or in the work covered by this Contract is prohibited without the prior written approval of the Receiver. In the event such consent is given, the terms and conditions of this Contract shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors and experts so engaged. The Law Firm, with respect to any replacement of key personnel assigned to this matter, shall consult with the Receiver. The Receiver's consent to the proposed assignment is required and may not be withheld unreasonably. Notwithstanding the foregoing, the Law Firm may, with the prior written approval of the Receiver, engage experts in various fields related to the subject matter of this Contract to assist the Law Firm in the performance of its services under this Contract. The hourly rates, fees, or other compensation to be paid to such experts shall also be subject to the approval of

the Receiver. Approved compensation of such experts, as incurred, shall be included in the Law Firm's invoices presented pursuant to the provisions of Paragraph 5 of this Contract, without addition, surcharge, or increase by the Law Firm of the actual fees billed to the Law Firm by such experts. The terms and conditions of this Contract including, but not limited to, the provisions of Appendices C and D, shall apply to and bind the subcontractors or experts engaged as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors or experts so engaged.

8. Ownership Rights. All documents, data, and records produced by the Law Firm and any experts in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of the Commonwealth.

a. The Commonwealth shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the Law Firm and any experts and the Law Firm and any experts shall have no right or interest therein.

b. Upon completion of the services hereunder or at the termination of this Contract, all such documents, data, and records shall, if requested by the Receiver, be appropriately arranged, indexed, and delivered to the Receiver by the Law Firm.

c. Any documents, data, and records given to or prepared by the Law Firm and any subcontractors or experts under this Contract shall not be made available to any individual or organization by the Law Firm or any subcontractors or experts without the prior approval of the Receiver. Any information secured by the Law Firm and any subcontractors or experts from the Commonwealth in connection with carrying out the services under this Contract shall be kept confidential unless disclosure of such information is approved in writing by the Receiver or is directed by a court or other tribunal of competent jurisdiction.

d. Notwithstanding the provisions of Paragraph 8 of this Contract, the Law Firm may retain copies of documents delivered to the Receiver.

9. Modification or Changes. The Receiver and the Law Firm may make modifications to this Contract at any time during the term of the Contract or any renewals or extensions thereof. Changes regarding funding of a Contract that refers to the total estimated amount of the Contract as set forth in paragraph 3 may be accomplished via a funding adjustment pursuant to Commonwealth procedures. Changes regarding funding of a Contract that states an amount not to exceed as set forth in paragraph 3, or a change in Contract length, may be accomplished by a letter of mutual consent signed by the Receiver and the Law Firm. All other changes to contract terms, including changes in the scope of work, must be incorporated into a formal written amendment to this Contract, signed by both parties, and executed in the same manner as this original Contract and in accordance with applicable law.

10. Conflict of Interest. The Law Firm represents and warrants that it has no conflicting representation that has not been fully disclosed to and waived by the Receiver and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by the Receiver. Any conflicting representation shall be promptly disclosed to the

Receiver. The Receiver shall determine whether such conflict is cause for termination of this Contract.

11. Inability to Perform. The Law Firm agrees that if, because of death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal or principals and, in particular, the principals assigned to this project, to render the services set forth in this Contract, neither the Law Firm nor the surviving principals shall be relieved of their obligations to complete performance hereunder. The Law Firm shall, with respect to any replacement principal proposed to be assigned to this matter, consult with the Receiver. The Receiver's consent to the proposed replacement is required and may not be withheld unreasonably.

12. License to Appear. The Law Firm represents and warrants that attorneys involved in this representation are duly licensed and in good standing to practice before the judicial forum, court, board, or tribunal before which they will appear or practice on behalf of the Commonwealth. The Law Firm, subject to approval by the Receiver, may obtain a subcontractor to act as co-counsel where appearance by the Receiver is required in a forum or jurisdiction where its attorneys are not licensed to practice, provided, however, that the firm's use of the subcontractor in that circumstance is subject to Paragraph 7 of this Contract.

13. Independent Contractor. In performing the services required by this Contract, the Law Firm will act as an independent contractor and not as an employee or agent of the Commonwealth.

14. Termination Provisions. The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Law Firm.

a. Termination for Convenience. The Commonwealth shall have the right to terminate this Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Law Firm shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Law Firm be entitled to recover loss of profits.

b. Non-Appropriation. The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate this Contract. The Law Firm shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. Termination for Cause. The Commonwealth shall have the right to terminate this Contract for Law Firm default upon written notice to the Law Firm. The Commonwealth shall also have the right, upon written notice to the Law Firm, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth

erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 14.a.

15. Integration Clause. This Contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in appendices hereto shall have the same meanings as are ascribed thereto in this Contract unless otherwise defined therein. No agent, representative, employee, or officer of either the Commonwealth or the Law Firm has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to, detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished pursuant to Paragraph 9 of this Contract.

16. Nondiscrimination/Sexual Harassment. The Law Firm shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix E and incorporated by reference.

17. Integrity Provisions. The Law Firm agrees to comply with the Integrity Provisions, which are attached hereto as Appendix F and incorporated by reference.

18. Responsibility Provisions. The Law Firm agrees to comply with the Responsibility Provisions, which are attached hereto as Appendix G and incorporated by reference.

19. The Americans With Disabilities Act. The Law Firm agrees to comply with The Americans With Disabilities Act Provisions, which are attached hereto as Appendix H and incorporated by reference.

20. Enhanced Minimum Wage Provisions. The Law Firm agrees to comply with the Enhanced Minimum Wage Provisions, which are attached hereto as Appendix I and incorporated by reference.

21. Audit Provisions. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for this Contract. The Law Firm agrees to maintain records that will support the fees charged and costs incurred for this Contract.

The Law Firm shall preserve books, documents, and records that relate to fees, costs, or pricing data for this Contract for a period of three years from the date of final payment hereunder. The Law Firm shall give full and free access to all records to the Commonwealth and/or its authorized representatives.

22. Offset Provision. The Law Firm agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Law Firm or its subsidiaries to the Commonwealth against any payments due the Law Firm under any contract with the Commonwealth.

23. Indemnity. The Law Firm shall indemnify and defend the Commonwealth from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys and other fees, asserted by third parties ("Claims"), which Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the Law Firm or any of its officers, agents, employees and/or representatives in relation to professional services provided to the Commonwealth by the Law Firm under this Contract. This indemnity provision shall not apply to Claims for which payment is available under the Law Firm's professional liability insurance policies.

24. Insurance. The Law Firm represents and warrants that it carries malpractice insurance in the amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants that it will maintain such coverage throughout its representation of the Commonwealth.

25. Notice. Any written notice to the Receiver under this Contract shall be deemed sufficient if delivered to the Receiver personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

Michael Doweary
Receiver for the City of Chester
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

With a copy to:

J. Michael Adams, Jr
Chief Counsel
Office of Chief Counsel
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

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John P. McLaughlin
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

26. Contract Controversies. In the event of a controversy or claim arising from this Contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with the Receiver for a determination. The Receiver shall send a written determination to the Law Firm. The decision of the Receiver shall be final and conclusive unless, within 15 days after receipt of such written determination, the Law Firm files a claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of the Receiver, and the Commonwealth shall compensate the Law Firm pursuant to the terms of this Contract.

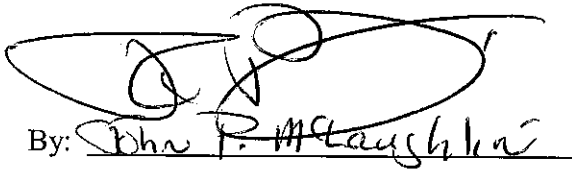
27. Applicable Law. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Law Firm consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Law Firm agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Commonwealth of Pennsylvania, acting by and through the **RECEIVER FOR THE CITY OF CHESTER**, and **CAMPBELL DURRANT, PC**, have caused this Contract to be executed on the date of the last signature below.

CAMPBELL DURRANT, PC

COMMONWEALTH OF PENNSYLVANIA,
acting by and through the
RECEIVER FOR THE CITY OF
CHESTER

By: 

By: _____
Michael Doweary

Title: Shareholder

Date: 8/12/2020

Date: _____

Vendor 187417

APPROVED AS TO FORM AND LEGALITY

Deputy Chief Counsel Date
Dept. of Community & Eco. Dev.

Deputy General Counsel Date

Deputy Attorney General Date

FISCAL APPROVAL BY COMPTROLLER OPERATIONS

This document is approved for fiscal responsibility, budgetary appropriateness, and the availability of funds under Appropriation Symbol 20048xx000 2430102000 6342100 FY 2020.

Comptroller Operations Date

APPENDIX A
DESCRIPTION OF SERVICES

1. The Law Firm is to serve as Receiver's counsel and to advise the Receiver with respect to labor relations and personnel matters with respect to the Receiver's efforts to achieve and implement a recovery plan for the City of Chester, Pennsylvania as contemplated under Section 703 of the Act.

2. The Law Firm shall consult with the Receiver on legal issues involved in the matters referred to in Paragraph 1 of this Appendix.

APPENDIX B
BILLING RATE INFORMATION

The Law Firm shall bill monthly at the following rates:

- Attorneys: \$275 per hour
- Paralegals and Law Clerks: \$180 per hour

The Contract for Legal Services will be capped at \$192,500 as set forth in Appendix C. In addition to the notice provisions set forth at Appendix C, section 5, *infra*, the Law Firm will provide notice to the Receiver when the amount of costs reaches \$150,000.

APPENDIX C COMPENSATION

The Receiver shall pay the Law Firm for the services under this Contract and reimbursement of the Law Firm's eligible costs. The Contract provides for compensation of the Law Firm's fees and costs up to the amount of One Hundred Ninety-Two Thousand Five Hundred Dollars (\$192,500.00). Payments of additional amounts may be made, and continued performance by the Law Firm will be required pursuant to Paragraph 9 of this Contract.

1. The Law Firm shall be reimbursed for all reasonable, actual, direct labor costs incurred in fulfilling the terms of this Contract in accordance with the rates established in Paragraphs 3 and 5 and Appendices B, C, and J of this Contract.

2. The Law Firm shall be reimbursed for all reasonable, actual, ordinary, and necessary direct non-labor costs incurred in fulfilling the terms of this Contract, subject to specific limitations such as those set forth in the Paragraph 5 of this Contract including, but not limited to, the following:

a. Reasonable, actual, ordinary, and necessary expenses for travel, meals, and lodging incurred by the Law Firm to fulfill the Law Firm's obligations under this Contract. The Law Firm shall retain all receipts thereof and shall provide copies to the Receiver if requested. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the Commonwealth for the use of personally owned motor vehicles. Expenses for lodging and meals shall be reimbursed at rates limited to the single-occupancy rate at the nearest Holiday Inn or other major moderately priced hotel or motel chain and the amount of reimbursement for meals shall be limited to the price of a moderately-priced meal at that hotel or motel. No reimbursement shall be allowed for any alcoholic beverages.

b. Reasonable, actual, ordinary, and necessary expenses for:

(1) Communications, including telephone, facsimile transmissions, telegraph, postage, parcel post, and freight and package express;

(2) Photocopies made by the Law Firm "in house," to be reimbursed at the maximum rate of \$.15 per page;

(3) Other reproduction costs (including, but not limited to, photographs, photocopies, prints, and offset work); and

(4) Document control and analysis contracted for with outside firms.

The Law Firm shall retain all receipts thereto and shall, upon request of the Receiver, provide any necessary documentation.

c. Reasonable, actual, ordinary, and necessary expenses for other specific materials required for and used solely in the fulfillment of this Contract. The Law Firm shall retain all

receipts thereto and shall, upon request of the Receiver, provide any necessary documentation.

3. Travel, meals, lodging, and other direct non-labor costs which the Law Firm expects to incur under this Contract outside of the Commonwealth of Pennsylvania, with the exception of telephone, mailing, and other similar communication expenses, shall require the prior approval of the Receiver, which approval shall not be unreasonably withheld. Prior approval by the Receiver of travel to be undertaken by the Law Firm outside of the Commonwealth of Pennsylvania as an incident of the Law Firm's performance of services under this Contract shall constitute approval for the Law Firm to incur reasonable, actual, ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs. The Law Firm shall retain all receipts and shall, upon request of the Receiver, provide any necessary documentation.

4. The Law Firm shall require approval by the Receiver before incurring any extraordinary or unusual expenses.

5. The Law Firm shall advise the Receiver when direct labor and other costs reach 50% of the amount initially encumbered for performance of this Contract and also 50% of any amount encumbered by any amendment.

APPENDIX D
INVOICE FORMAT (SUMMARY)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE: (DATE)
INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED
FROM (DATE) THROUGH (DATE)
\$(TOTAL FEES)

TOTAL EXPENSE ADVANCES MADE TO YOUR ACCOUNT
FROM (DATE) THROUGH (DATE)
\$(TOTAL EXPENSE ADVANCES)

BALANCE DUE: \$(GRAND TOTAL)

FEDERAL EMPLOYER I.D. NO. (FEDERAL I.D. NUMBER)

(RESPONSIBLE ATTORNEY AT LAW FIRM) on behalf of (LAW FIRM) hereby certifies
that the services supplied and expenses incurred as stated in the attached invoice have met all
of the required standards set forth in the Contract for Legal Services.

(SIGNATURE)

APPENDIX D
INVOICE FORMAT (TIME DETAIL)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE: (DATE)

INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

DATE	HOURS	DESCRIPTION OF SERVICES	ATTORNEY

APPENDIX D
INVOICE FORMAT (TIME SUMMARY)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE:(DATE)

INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

ATTORNEY	RATE	HOURS	TOTAL
		TOTAL:	

APPENDIX D
INVOICE FORMAT (COSTS)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE:(DATE)

INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

DATE	DESCRIPTION OF EXPENSE ADVANCES	AMOUNT
	TOTAL:	

APPENDIX E
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE
(dated August 2018)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and

policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

APPENDIX F
INTEGRITY PROVISIONS
(dated 1/14/15)

1. For purposes of these Integrity Provisions, the words "confidential information," "consent," "financial interest," "gratuity," and "Law Firm" shall have the following definitions.

a. "Confidential information" means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to the Law Firm from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by the Law Firm without the use of confidential information of the Commonwealth.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.

c. "Financial Interest" means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

d. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

e. "Law Firm" means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

2. The Law Firm shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to the Law Firm or that govern contracting with the Commonwealth.

3. The Law Firm shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. The Law Firm shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Law

Firm's employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all employees of the Law Firm.

5. The Law Firm, its affiliates, agents and employees and anyone in privity with the Law Firm shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

6. The Law Firm shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to the Law Firm's financial interest prior to Commonwealth execution of the contract. The Law Firm shall disclose the financial interest to the Commonwealth at the time of any proposal submission, or if no proposals are solicited, no later than the Law Firm's submission of the contract signed by the Law Firm.

7. The Law Firm, certifies to the best of its knowledge and belief that within the last five (5) years that it, its officers, and its affiliates have not:

- a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- c. had any business license or professional license suspended or revoked;
- d. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- e. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If the Law Firm cannot so certify to the above, then it must submit along with its contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Law Firm. The Law Firm's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Law Firm's certification or explanation to change. The Law Firm acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to

intervening factual circumstances or were false or should have been known to be false when entering into the contract.

8. The Law Firm shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa.C.S. § 13A01 et seq., and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of the Law Firm are not exempt and must be reported. The Law Firm also must comply with the requirements of Section 1641 of the *Pennsylvania Election Code* (25 P.S. §3260a).

9. When the Law Firm has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, the Law Firm shall immediately notify the Commonwealth in writing.

10. The Law Firm, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

11. The Law Firm shall cooperate with the Office of the Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Law Firm non-compliance with these provisions. The Law Firm agrees to make identified employees of the Law Firm available for interviews at reasonable times and places. The Law Firm, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to the Law Firm's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Law Firm's business or financial records, documents or files of any type or form that refer to or concern this contract. The Law Firm shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

12. For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Law Firm, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Law Firm to complete performance hereunder, and debar and suspend the Law Firm from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

APPENDIX G
RESPONSIBILITY PROVISIONS
(dated 4/5/13)

1. The Law Firm certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither the Law Firm, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Law Firm cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

2. The Law Firm also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other Commonwealth obligations.

3. The Law Firm's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to inform the Commonwealth if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Law Firm to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Contract with the Commonwealth.

5. The Law Firm agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of the Law Firm's compliance with the terms of this or any other Contract between the Law Firm and the Commonwealth, which results in the suspension or debarment of the Law Firm. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel, and lodging expenses; and expert witness and documentary fees. The Law Firm shall not be responsible for investigative costs for investigations that do not result in the Law Firm's suspension or debarment.

6. The Law Firm may obtain a current list of suspended and debarred Commonwealth contractors either by searching the Internet at www.dgs.state.pa.us, or by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

APPENDIX H
THE AMERICANS WITH DISABILITIES ACT PROVISIONS
(STD-271/278A, dated 07/99)

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the Law Firm understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Law Firm agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The Law Firm shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Law Firm's failure to comply with the provisions of Paragraph 1 of this Appendix.

APPENDIX I
ENHANCED MINIMUM WAGE PROVISIONS
(dated July 2018)

1. **Enhanced Minimum Wage.** Law Firm agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Law Firm shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Law Firm must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Law Firm shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

CONTRACTOR RESPONSIBILITY VERIFICATION

Document No: 4000023860

CAMPBELL DURRANT, PC

This Contract has been reviewed and the Law Firm has been determined to be responsible in accordance with the procedures outlined in Management Directive 215.9 Amended, dated October 25, 2010.

_____ Designated Senior Manager Department of Community and Economic Development	_____ Date
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Chester's Retiree Benefit Situation

MFRAC Committee Meeting

May 25, 2021



THE KAPOOR COMPANY
ADVISORS & CONSULTANTS

Overview

- The purpose of this presentation is to provide the basic facts surrounding the City of Chester's pension and retiree health care situation
- The City's pension and retiree health care funding situation are the worst of any city in the Commonwealth
- The police pension plan remains critically underfunded and close to running out of money to pay pension benefits.
- In 2021, the City will spend approximately \$14.6 million or 27.8% of its entire General Fund budget on pension and retiree health care costs
 - Every dollar spent on these legacy costs is a dollar that the City cannot spend on other City needs. By contrast, the budget allocates only \$500,000 for capital or economic and community development initiatives
- The key question that we face is:
 - How can the City contribute enough to its employee pension plans – especially the police plan which is nearly insolvent – without drawing so much money from the City's limited resources that it cripples City operations or pushes taxes and fees to a level that residents cannot afford?



Basic Facts on Chester's Pension Situation

- Chester has three employee pension plans:
 - Police Pension Plan (PPP) for police retirees
 - Fire Pension Plan (FPP) for fire retirees
 - Officers and Employees Pension Plan (O&E) for eligible City employees not in the PPP or FPP
- These three plans are “defined benefit” plans which means that the monthly benefit payments that retirees receive during retirement are set at a specific level, regardless of the plan’s funding status. The risk for a defined benefit plan is on the City and by extension taxpayers.
 - In “defined contribution” plans, which are common in the private sector, the benefit is determined by how much is available to fund the benefit and the risk is on the retiree.
- Every two years, an actuary conducts a **valuation** which compares the assets of a pension fund to the liabilities that it owes. The last valuations completed for the City’s funds were as of January 1, 2019.
- Every year, the actuary calculates how much the City legally needs to contribute to the plans which is called the **Minimum Municipal Obligation** or “**MMO**”



Basic Facts on Chester's Pension Situation (continued)

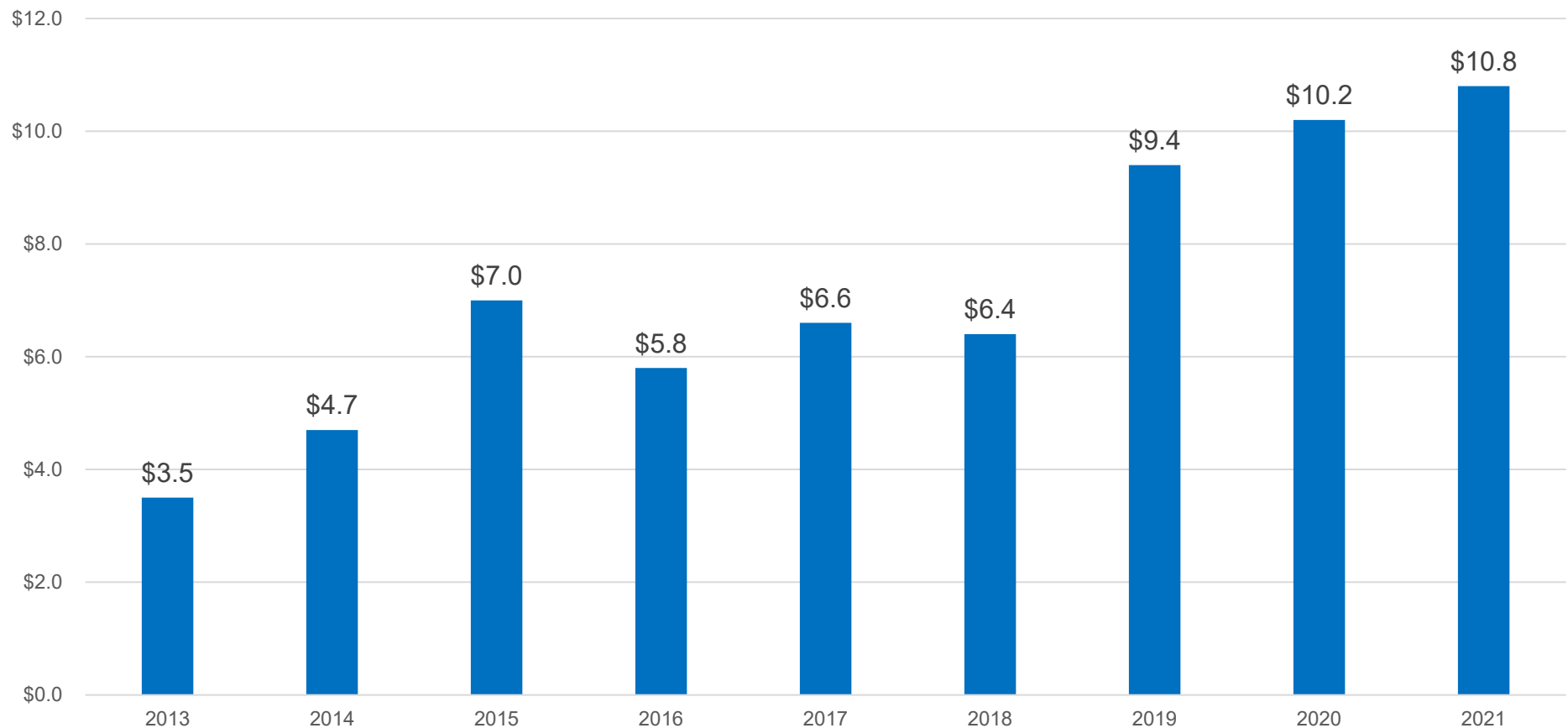
- Chester's MMOs have more than tripled since 2013 to \$10.8 million in 2021.
- Due to the number of retirees and its relative financial weakness, the police pension plan comprises approximately \$8.5 million or 85% of the City's 2021 MMO.
- The City has not been able to afford making its full MMO payment since 2013. As a result, the City is incurring penalties and interest costs on these missed payments and its police pension plan is dangerously close to running out of money to pay benefits.
- Chester's pension situation is the worst of any city in the Commonwealth and is even worse than reflected in the 1/1/2019 valuation because those valuations assume that there is much more money in the police pension plan than there actually is.
 - We discuss this in more detail on slide 7
- The next group of slides provides data to support the statements on this slide.



City MMO Growth

The City's combined Minimum Municipal Obligation for its three pension funds has more than tripled since 2013.

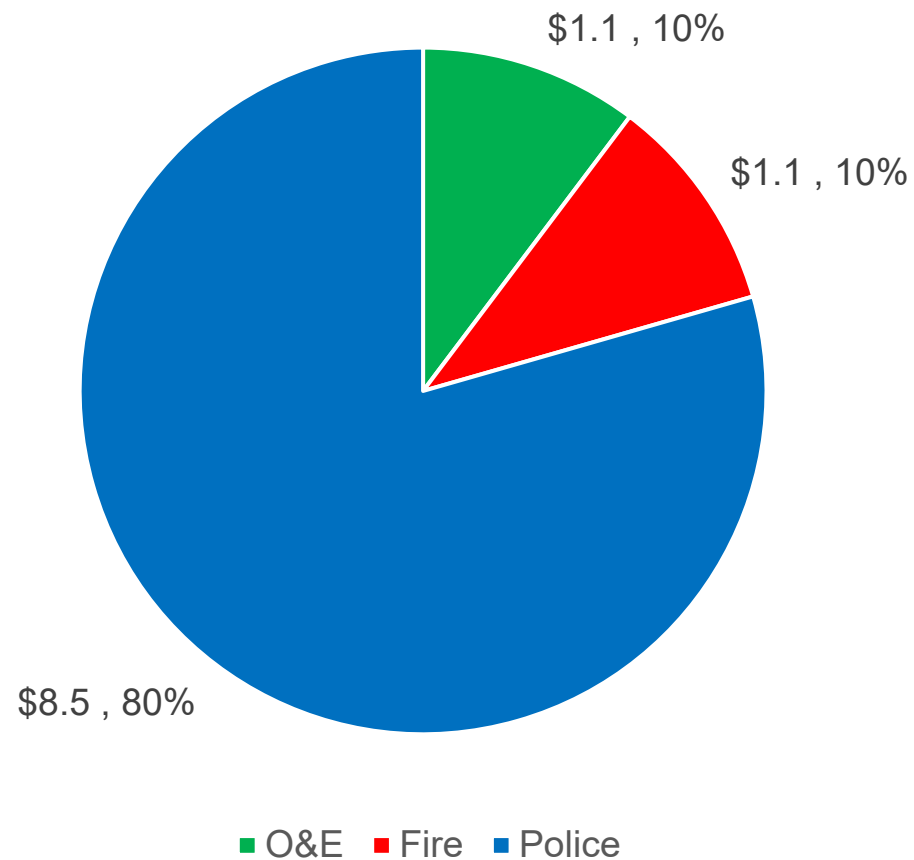
City Minimum Municipal Obligations (\$ Millions), 2013 - 2021



City MMO by Plan

Because of the number of retirees and its relative financial weakness, the police pension plan makes up approximately 80% of the City's total MMO.

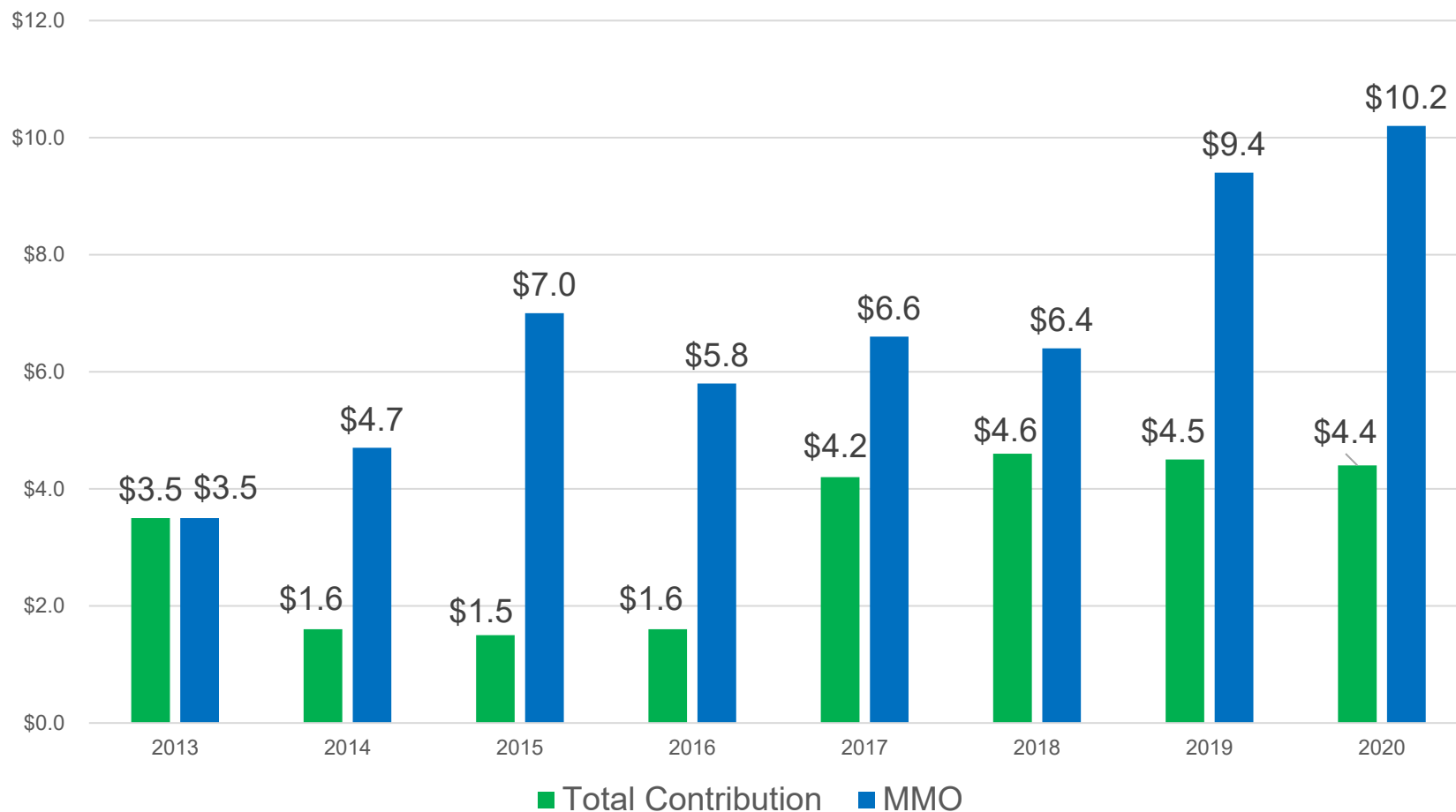
City MMO by Plan (Millions), 2021



City MMOs vs. City Contributions

The City has not been able to afford to make its full MMO payment since 2013. Last year, the City only contributed \$4.4 million towards a \$10.2 million MMO.

City Contributions Relative to MMOs (\$ Millions), 2013-2020



The True Status of Chester's Pension Funds

- Although many Pennsylvania cities have underfunded pensions, as of 1/1/2019, the Chester's situation is the worst among Pennsylvania cities. The following table reflects the funding percentages of the plans in the 1/1/19 valuation.

	PPP	FPP	O&E	Total
Liabilities	\$83,195,607	\$39,891,425	\$8,028,817	\$131,115,849
Assets	\$27,992,535	\$33,275,475	\$2,674,647	\$63,942,657
Unfunded Liability	-\$55,203,072	-\$6,615,950	-\$5,354,170	-\$67,173,192
Funded %	33.6%	83.4%	33.3%	49%

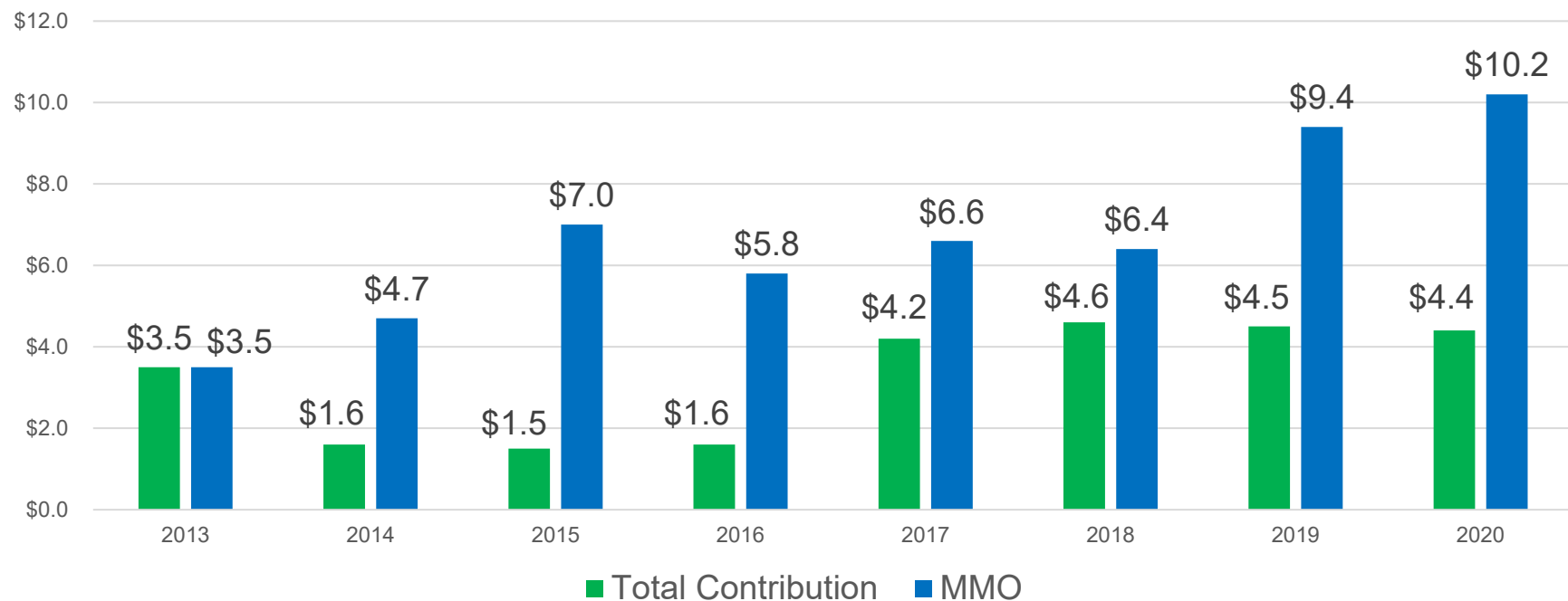
- **However, the problem is even worse than what appears in the 1/1/2019 valuations because those calculations treat the MMO contributions that the City did not make in prior years and still owes as if that money was already in the plan because they are “receivables” due to the plan.**
- In the above table, the police pension plan appears to have \$27,992,535 in assets as of 1/1/2019 with a funding percentage of 33.6%. However, almost all of those assets are “receivables.” Excluding the receivables, as of 12/31/2019, the police pension plan's funding percentage was closer to 3%.
- Excluding receivables, which is a more accurate reflection of reality, will also cause the MMO to increase. The actuary is in the process of determining this amount and we expect an answer soon.



How Did Things Get So Bad in the Pension Funds?

- The City fell behind on its MMO payments in 2014 and has never been able to catch up
 - Note: Part of the reason why the police pension fund is so poorly funded relative to the fire plan is that in previous years, the City made contributions to the fire pension fund but not the police pension fund. In recent years, the City only contributed to the police pension fund

City Contributions Relative to MMOs (\$ Millions), 2013-2020



How Did Things Get So Bad in the Pension Funds? (Continued)

- The benefits offered to police employees are far richer than what Chester can afford and far rich than the standards established in Pennsylvania's Third Class City code
 - Police officers hired before 2/1/17 can retire with 20 years of service regardless of age and can accelerate their retirement date by purchasing pre-employment military time resulting in officers retiring in their 40s
 - Police officers hired before 2/1/17 receive a benefit starting at 50% of final pay and increasing to 70% with 25 years of service, plus any service increment. Those hired after receive a benefit of 50% of the higher of final monthly salary or highest annual average during any five preceding years
 - The pension benefit calculation for police officers hired before 2/1/17 included overtime which enables officers to work large amounts of overtime before retirement resulting an elevated pension benefit. Overtime is not counted in the pension benefit for officers hired after that date
 - In 2020, three police officers ages 44, 45, and 42 entered the DROP program with pensionable salaries of \$210,874, \$207,414 and \$143,311 respectively. Under the current benefit provisions, their pensions will be \$108,073, \$103,707 and \$71,652. The median household income for Chester in 2019 was \$32,403
 - The City had an unusually high number of disability pensions and until recently, disability pensions were paid at a higher rate (100% of last 12 months salary) than non-disability pensions, creating an incentive to retire on disability



Basic Facts on Chester's Retiree Health Care Situation

- In addition to pension benefits, the City also provides many of its employees and retirees with retiree health care which the City must pay for (these benefits are referred to as “other post-employment benefits” or OPEB)
 - As of February 2021, there were 178 retired employees on the City's retiree health care plans
- While the City has put aside some money for pension liabilities (albeit not nearly enough), it has not put aside any for retiree health care liabilities and pays claims from the City's general fund as they are received.
- As of the 12/31/2018 retiree health care valuation, the City has an unfunded retiree health care liability of \$232.9 million which is close to 3.5 times greater than the City's unfunded liability for employee pensions at the same point
 - The following table has the OPEB liabilities by employee group as of 12/31/2018

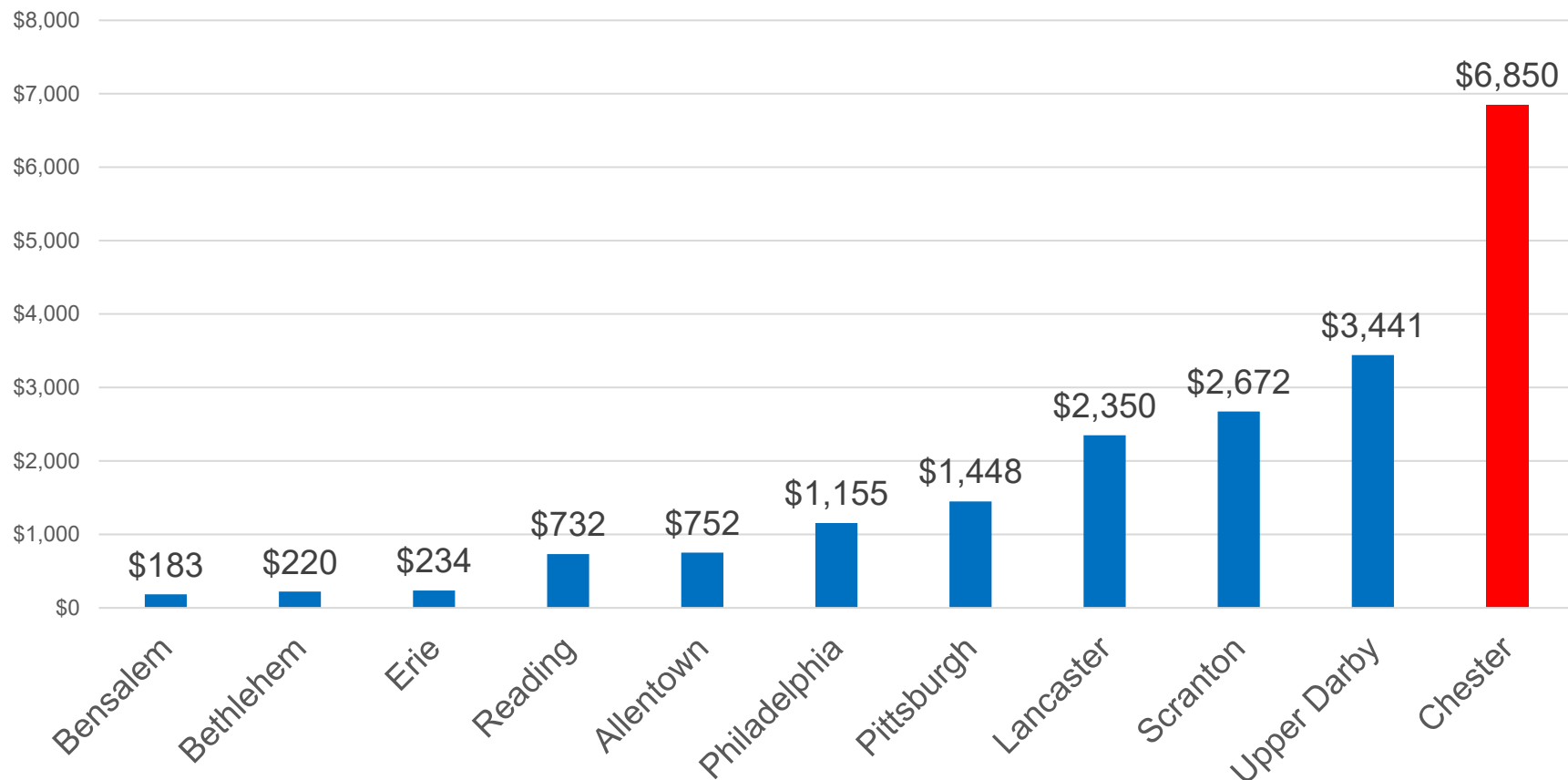
Group	OPEB Liabilities in Millions
Police	\$135.7
Fire	\$66.7
O&E	\$30.5
TOTAL	\$232.9



Putting Chester's Retiree Health Care Liabilities in Context

Chester's per capita OPEB liability (liability divided by population) is significantly higher than the OPEB liability of the 10 largest Pennsylvania municipalities.

Per Capita OPEB Liability of 10 Largest PA Municipalities + Chester



What Has Been Done?

■ What Has Been Done to Address the Situation?

- In 2017, the City and the FOP agreed to fix many of the pension benefits; however, most of the changes only apply to officers hired after February 1, 2017 and most of the cost is from already-retired police officers
- Police officers hired after 2/1/2017 and FFs hired after 1/1/2017 are not eligible for retiree health care
- In order to comply with the law, the City raised the distressed pension earned income tax on residents beginning in 2021. That money will go into the pension funds.
- Receiver has issued a directive that DROP payments from police pension fund be temporarily suspended to ensure enough money remains in the fund to pay benefits

■ What Is Being Done to Address the Situation?

- Receiver and City are working to control spending costs so that City will make \$10.8 million MMO payment this year. Also in the process of determining MMO excluding receivables
- City and Receiver team in process of moving retirees to lower cost Medicare Supplemental plan
- City and Receiver working to collect tax information for police disability pensioners to determine whether the pensioners owe offsets to the pension fund
- City and Receiver in process of conducting eligibility audit to ensure that only eligible retirees (and active employees) and their dependents are receiving retiree health care



Conclusion

How Do We Really Fix These Problems?

- There is no way to truly fix Chester's retiree benefit situation – or Chester's long-term financial health - without **both** reducing the unaffordable costs of the pension and retiree health care benefits **and** a substantial cash infusion into the plans
 - While a large one-time contribution to the pension funds will have to be part of the solution, such a payment alone will not solve the problem. The unaffordable benefits must also be addressed or else the problem will continue to grow and be handed to future generations who will have fewer options to solve it
 - Some Pennsylvania communities have sold assets to put money into pension funds without addressing benefit costs and are now facing the same financial problems that existed before the asset sale – though now, they do not have an asset to sell
- All options are on the table to deal with this crisis, including potential asset monetization
 - The Receiver has retained bankruptcy counsel





Cover Memorandum to City of Chester Water System Bid Analysis December 1, 2020

The Receiver for the City of Chester asked PFM Financial Advisors (“PFM”) to evaluate and compare bids previously received by the City to purchase the Chester Water Authority System assets (“CWA”). PFM conducted its own independent analysis and due diligence of the proposals received without influence from any other party. PFM was not involved in the bidding process.

The attached presentation provides an overview of PFM’s analysis, a summary comparison of the proposals, purchase price analysis, rate/average bill projections analysis, a discussion of a public-private partnership concept, and recommended next steps.

Conclusions

PFM came to the following conclusions as part of its analysis:

1. Based on commonly utilized valuation methodologies, PFM would expect CWA’s up-front fair market value to be in the range of \$385 million to \$400 million.
 - This is based on limited information and does not factor in a buyer’s additional strategic value multiplier.
 - Two of the three proposals (Aqua and Pennsylvania American) were above that range.
2. Although the CWA bid did not fall within the above range, documents appear to show that the City of Chester (“City”) and CWA contemplated a public-private partnership concept that would have potentially provided an additional \$314,900,000 in revenues to the City (in addition to the \$60.2m up-front payment) over 40 years. The Receiver asked PFM to include a description of this concept in PFM’s report.



- The approach appears to monetize the apparent difference between the annual revenues received and the operating cost for City of Chester ratepayers.
3. The future non-binding rate projections provided by Pennsylvania American and Aqua appear to be meaningfully lower than the current Zone 1 rates charged by each respective company. The Zone 1 rates are the rates that are charged to the majority of each company's current Pennsylvania water customers.
- CWA only provided one future year of rates in their proposal.

Next Steps

PFM recommends the following next steps:

1. Continue to pursue information requested from CWA in order to properly compare the value of the various bids.
2. Explore the concept of a public-private partnership as previously contemplated by the City and CWA. Determine whether such a concept is feasible and what potential value it may bring to the City and its residents.
3. Once feasibility analysis is complete, compare it to the bids and make decision on path forward.



City of Chester

Water System Bid Analysis

December 1, 2020

Prepared by:

**PFM Financial Advisors LLC
for the Receiver for the City of Chester**

PFM Financial Advisors
LLC

213 Market Street
Harrisburg, PA 17101

717.232.2723
pfm.com



Analysis Outline

- Overview of Analysis
- Summary Comparison of Proposals
- Purchase Price Analysis
- Rate/Avg. Bill Projections Analysis
- Public-Private Partnership Concept
- Recommended Next Steps



Overview of Analysis



Introduction to Analysis

1. The Receiver for the City of Chester asked PFM Financial Advisors (“PFM”) to evaluate and compare bids previously received by the City to purchase the Chester Water Authority System assets (“CWA”). PFM was not involved in the bidding process.
2. PFM conducted its own independent analysis and due diligence of the proposals received without influence from any other party.
 - A. PFM contacted each proposer to clarify their existing proposals either directly or through an open records request filed by the Receiver. PFM did not engage in negotiations with any of the bidders.
 - B. PFM used information that was publicly available for its analysis. This information has not been verified by the City, CWA, or anyone else.
3. The outcomes of PFM’s analysis shown in this presentation are meant to help inform decision makers. PFM continues to try to obtain information relevant to its analysis from the CWA in order to properly evaluate the CWA’s bid. Additionally, PFM became aware of a public-private partnership concept discussed by the City and CWA prior to the RFP process which it believes merits consideration. Consequently, PFM cannot recommend the selection of a specific proposal to the Receiver at this time.




Goals of Analysis

1. For the purchase proposals submitted, PFM compared and analyzed the following:
 - A. Purchase Price – Do the purchase prices appropriately capture the value of the system?
 - B. Future Rate/Bill Projections (apples to apples basis).
 - C. Non-financial related information contained in the proposals.
2. PFM is **not** opining on the capabilities of the proposers, but simply analyzing the bid each submitted.
3. PFM is also **not** opining on whether the City of Chester should sell the water system.



PFM Experience in Similar Valuations

- Since 2014, PFM has assisted over 35 Pennsylvania clients in valuing and exploring the potential monetization of their utility (water & sewer) systems.

PFM ADVISED UTILITY VALUATION/MONETIZATION TRANSACTIONS 2014 - PRESENT		
 pfm	<u>Transaction Type</u>	<u># Transactions</u>
	Closed	9
	On-Going	17
	Client Terminated	<u>9</u>
	Total	35



Methodology

1. In order to accurately evaluate the various bids, PFM requested additional information from the bidders and relied upon publicly available information.
2. The Receiver also filed a Right-to-Know request with the CWA for the following information which the CWA denied except for the collective bargaining agreement:
 - Future Capital Improvement Plans including a) Any formal capital plans that have been approved in the last 10 years and b) If no formal capital plan has been approved, the projected capital spend (broken out between debt and pay-go) for the next 15-year period.
 - Rate Projections including any rate study or internal analysis that projects future water rates.
 - Number of total system EDUs broken out by customer class in 2019 (Residential, Commercial, Industrial, Fire Protection, Other Utilities).
 - Total annual billed flow in gallons for each customer class in 2019 (Residential, Commercial, Industrial, Fire Protection, Other Utilities).
 - Loan amortizations and agreements for any non-public debt (bank loans).
 - Most recent copies of collective bargaining agreements with unions. Any tentative agreement with unions for a successor collective bargaining agreement.



Conclusions

1. Based on commonly utilized valuation methodologies, PFM would expect CWA's up-front fair market value to be in the range of \$385 million to \$400 million.
 - This is based on limited information and does not factor in a buyer's additional strategic value multiplier.
 - Two of the three proposals (Aqua and Pennsylvania American) were above that range.
2. Although the CWA bid did not fall within the above range, documents appear to show that the City of Chester ("City") and CWA contemplated a public-private partnership concept that would have potentially provided an additional \$314,900,000 in revenues to the City (in addition to the \$60.2m up-front payment) over 40 years. The Receiver asked PFM to include a description of this concept in PFM's report.
 - The approach appears to monetize the apparent difference between the annual revenues received and the operating cost for City of Chester ratepayers.
3. The future non-binding rate projections provided by Pennsylvania American and Aqua appear to be meaningfully lower than the current Zone 1 rates charged by each respective company. The Zone 1 rates are the rates that are charged to the majority of each company's current Pennsylvania water customers.
 - CWA only provided one future year of rates in their proposal.



Summary Comparison of Proposals



Summary Comparison of Most Recent Proposals

	AQUA	PA AMERICAN WATER	CHESTER WATER AUTHORITY
Most Recent Purchase Price Offered	\$410,000,000	\$425,000,000	\$60,285,000 (no debt payoff needed)
Up-Front Deposit	-\$11.8mm At APA signing -\$6.1mm 1 year later (discretion) <i>No litigation risk</i>	-\$2mm escrow to fund legal fees -If larger deposit, need security	Notes that they can close faster
Rates	<i>See rate analysis</i>	<i>See rate analysis</i>	<i>See rate analysis</i>
Employees	Offers to all employees & honor CBA	Offers to all employees & honor CBA	Employees remain in place
Operations Location	In City of Chester	In City of Chester	In City of Chester

*The information above is a summary of key points, but full proposals should be read by decision makers. OOR Exhibit 1, Page 108



Summary Comparison of Proposals (Continued)

	AQUA	PA AMERICAN WATER	CHESTER WATER AUTHORITY
Contingencies	<ul style="list-style-type: none"> -All litigation must conclude -Purchase Price subject to final APA & approval Board of Directors 	<ul style="list-style-type: none"> -All litigation must conclude -System due diligence 	<ul style="list-style-type: none"> -Must agree not to sell for 40 years -Must sign settlement agreement
Authority Advisory Board	Yes	Will consider	Remain in place
5 Year Capital Spend	\$33,975,000	\$39,000,000	Unknown
Misc.	<ul style="list-style-type: none"> -Would pay for Comm. Devel. Employee (5 yrs) 	<ul style="list-style-type: none"> -City can retain cell tower revenue -Grant easement for rec land 	

*The information above is a summary of key points, but full proposals should be read by decision makers. OOR Exhibit 1 Page 109



Purchase Price Analysis



Purchase Price Analysis Overview

1. There are three common approaches to valuing utility systems like the CWA:

- Cost Approach: utilizes the book value or depreciated original cost of assets being considered for sale and applies a multiple to that value.
- Market Approach: looks at how other systems compare to the system being considered for sale, usually via customer count.
- Income Approach: calculates the present value of the future estimated net operating cash flow to today's dollars, typically over a 20-year period.



Analyzing Purchase Price – Cost Approach

- The Cost Approach typically uses the book value or depreciated original cost of the assets being considered for sale.
- A typical book value multiple may be from 1.25 to 1.75 times; however, each situation differs as no two systems are exactly alike and PFM has seen transactions above and below that range.

COST APPROACH		
<u>Audit Date</u>	<u>Book Value</u>	
12/31/2019	\$282,114,520	
12/31/2018	\$277,881,505	
12/31/2017	\$271,133,389	
		Multiple of 2019
<u>Proposer</u>	<u>Purchase Price</u>	<u>Book Value</u>
PA American	\$425,000,000	1.51
Aqua	\$410,000,000	1.45
Chester Water Authority	\$60,285,000	0.21

*The information shown above was derived either through public sources or has been provided directly by the client. PFM cannot independently verify the accuracy of this information.

OOR Exhibit 1 Page 112



Analyzing Purchase Price – Market Approach

- The market approach typically looks at how other systems compare to the system being considered for sale, usually via customer count.
- A typical price per customer may range from \$4,000 - \$10,000 ; however, each situation differs as no two systems are exactly alike and PFM has seen transaction above and below that range.

MARKET APPROACH		
# of Customers		43,765
<u>Proposer</u>	<u>Purchase Price</u>	<u>Price Per Customer</u>
Aqua	\$410,000,000	\$9,368
PA American	\$425,000,000	\$9,711
Chester Water Authority	\$60,285,000	\$1,377

*The information shown above was derived either through public sources or has been provided directly by the client. PFM cannot independently verify the accuracy of this information.

OOR Exhibit 1 Page 113



Analyzing Purchase Price – Income Approach

- The income approach calculates a present value for future estimated net operating cash flows back to today's dollars to produce a value (typically 20 years). (PFM used the 2019 audit as the base year)

INCOME APPROACH	
Total 2019 Revenues	\$45,763,176
Total 2019 Expenses (Less Depreciation)	\$31,604,292
Operating Cash Flow	\$14,158,884
 20 Year Income Model Present Value	 \$373,154,136

*The information shown above was derived either through public sources or has been provided directly by the client. PFM cannot independently verify the accuracy of this information.

OOR Exhibit 1 Page 114



Purchase Price – Litigation Considerations

1. The City is currently involved in litigation over the question of whether the City can sell the CWA assets. The matter was argued in Commonwealth Court on November 10, 2020. The City cannot sell the assets until the litigation is resolved.
2. Even if the City wins at the Commonwealth Court level, the matter could potentially be heard by the Pennsylvania Supreme Court. There is also additional underlying litigation that must also be resolved. This means that even if the City is successful in all litigation, the full value from any sale would likely not be realized soon.
3. A monetization agreement with the CWA itself may result in the City receiving the value of any agreement sooner and would not depend on the outcome of this litigation.



Purchase Price – Use of Proceeds

1. Section 707(a) of Act 47 provides as follows:
 - The proceeds from any sale, lease, conveyance, assignment or other use or disposition of assets of the distressed municipality or authority shall be applied to the payment of outstanding debt obligations owed by the distressed municipality or authority, subject to any lien, charge, covenant, restriction, contract, law, rule or regulation, that encumbers or is otherwise applicable to the assets. Proceeds remaining after payment of outstanding debt obligations owed by the distressed municipality or authority may be used by the receiver to restructure or provide escrow for the payment of future debt obligations or to meet operating and capital needs of the distressed municipality or authority.



Rate/Avg. Bill Projections Analysis



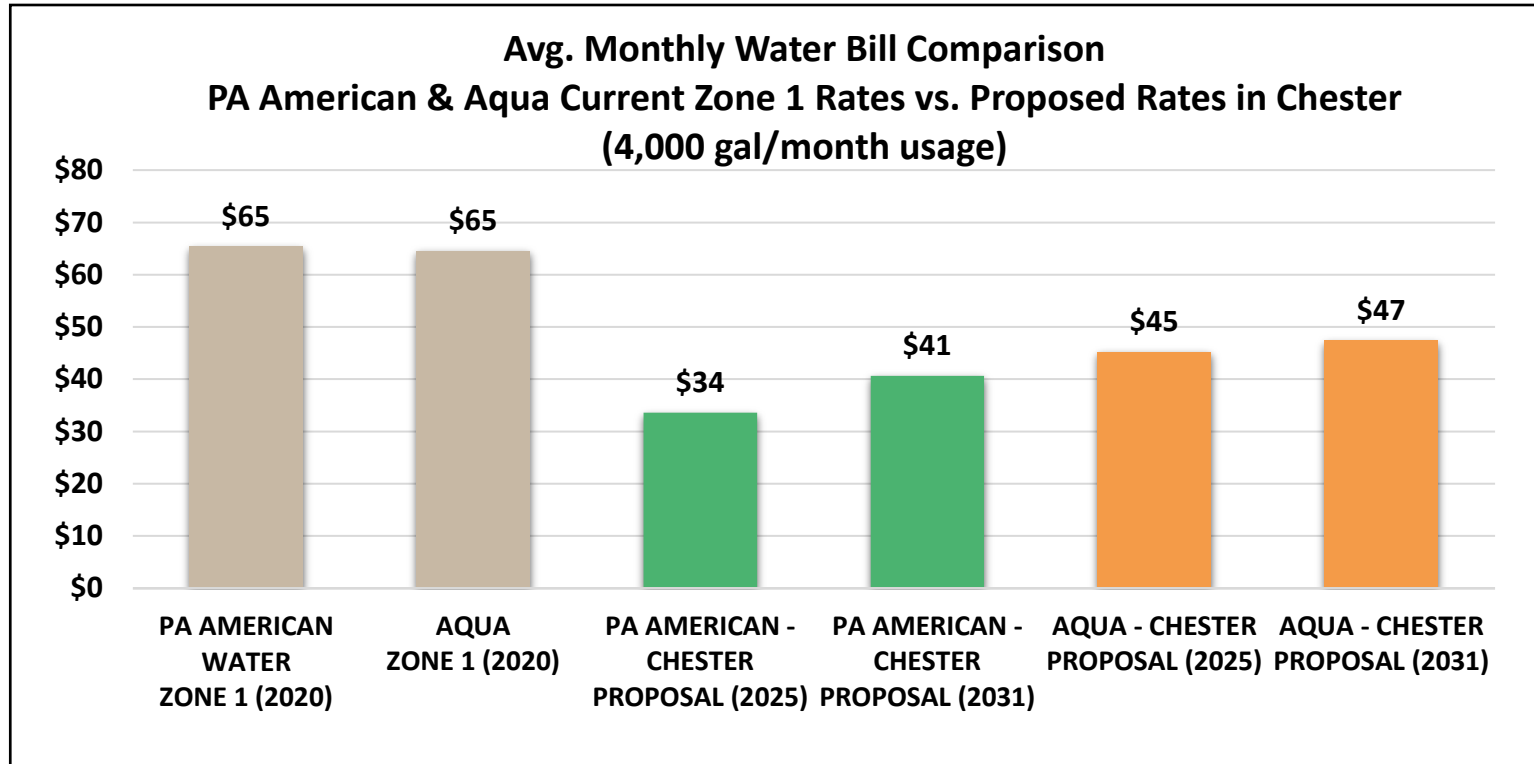
Rate/Bill Projections Provided by Bidders

1. As a part of its analysis, PFM reviewed water rate/bill projections that had been previously provided by bidders.
 - a. There were multiple proposals from each bidder that had differing assumptions.
2. In order to compare estimated future water bills on an apples-to-apples basis, PFM subsequently asked bidders to revise their projections and assume the following:
 - a. 4,000 gallons per month of usage for a typical residential customer.
 - b. No “Trust Fund” or “Rate Stabilization Fund” for initial comparison.
 - The City may wish to establish one or both funds with proceeds, but in order to compare bidders’ indicative rates, their inclusion is not needed at this stage.
3. When asked to provide the revised rates, CWA provided no response, Aqua provided similar rates as before except for removing the Trust Fund component, and PA American provided substantially different rates from earlier proposals (comparisons shown later in this presentation).



Rate/Bill Projections – Summary (Continued)

- The chart below shows a comparison between the current Zone 1 rates being charged by Aqua and Pennsylvania American to other statewide water customers vs. each company's proposed projected rates in Chester.



Note - For the analysis shown above, PFM accepted data provided by the prospective proposers and does not opine on the accuracy of these projections. Chester proposal rates assume the Eastern Division. Zone 1 rates obtained by the Pennsylvania Public Utility Commission website.



PA American Water - Avg. Projected Bills Provided [1]

PA American Comparison of Proposals - Eastern Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$410 Million	3,500	\$0	\$28	\$33	\$38	\$44	\$51	\$60	\$69	\$80	\$93	\$108	14%
6/1/2020	\$410 Million	4,000	\$50 Million	\$31	\$31	\$31	\$31	\$31	\$31	\$64	\$74	\$86	\$99	13%
10/14/2020	\$425 Million	4,000	\$0	\$31	\$34	\$34	\$34	\$37	\$37	\$37	\$41	\$41	\$41	3%

PA American Comparison of Proposals - Western Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$410 Million	3,500	\$0	\$33	\$37	\$43	\$49	\$56	\$64	\$73	\$83	\$95	\$108	13%
6/1/2020	\$410 Million	4,000	\$50 Million	\$36	\$36	\$36	\$36	\$36	\$36	\$64	\$75	\$86	\$100	11%
10/14/2020	\$425 Million	4,000	\$0	\$36	\$39	\$39	\$39	\$43	\$43	\$43	\$48	\$48	\$48	3%

PA American original increased their purchase price to \$425 million in a July 1, 2020 letter to the City.

Note - For the analysis shown above, PFM accepted data provided by the prospective proposers as-is and cannot opine on the accuracy of these projections.

[1] Per PAWC - PAWC's indicative rates incorporate gradualism to future rate adjustments whereby PAWC would propose rate adjustments no greater than 10% per filing over the first ten years following closing, with an assumption of triennial rate cases. PAWC's indicative rates incorporate the effect of allocating a portion of the cost of service to PAWC's entire customer base and is consistent with rate plans proposed to the Pa-PUC. Residential customer with a 5/8-inch meter using 4,000 gallons per month. Base rate comparisons only.





Aqua - Avg. Projected Bills Provided [1]

Aqua Comparison of Proposals - Eastern Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$330 Million	4,000	\$55 Million	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$43	3%
3/9/2020	\$380 Million	4,000	\$55 Million	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$45	\$45	\$46	4%
10/9/2020	\$410 Million	4,000	\$0	\$31	\$31	\$31	\$45	\$45	\$45	\$47	\$47	\$47	\$47	4%

Aqua Comparison of Proposals - Western Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$330 Million	4,000	\$55 Million	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$43	2%
3/9/2020	\$380 Million	4,000	\$55 Million	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$45	\$45	\$46	3%
10/9/2020	\$410 Million	4,000	\$0	\$36	\$36	\$36	\$45	\$45	\$45	\$47	\$47	\$47	\$47	3%

Note - For the analysis shown above, PFM accepted data provided by the prospective proposers as-is and cannot opine on the accuracy of these projections.

[1] Per Aqua - Assumed that Eastern and Western Division are consolidated into a single tariff. Rate estimates do not include DSIC. Bills shown assume PUC-approved subsidization from all Aqua PA water customers.





Average Projected Bill Comparison – Most Recent Proposals

Eastern Division Avg. Bill Projections Comparison													
<u>Proposer</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
PA American	\$425 Million ^[1]	4,000	\$31	\$34	\$34	\$34	\$37	\$37	\$37	\$41	\$41	\$41	3%
Aqua	\$410 Million ^[2]	4,000	\$31	\$31	\$31	\$45	\$45	\$45	\$47	\$47	\$47	\$47	4%
CWA	\$60.285 Million + Debt	4,000	\$34	Not Provided									N/A

Western Division Avg. Bill Projections Comparison													
<u>Proposer</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
PA American	\$425 Million ^[1]	4,000	\$36	\$39	\$39	\$39	\$43	\$43	\$43	\$48	\$48	\$48	3%
Aqua	\$410 Million ^[2]	4,000	\$36	\$36	\$36	\$45	\$45	\$45	\$47	\$47	\$47	\$47	3%
CWA	\$60.285 Million + Debt	4,000	\$39	Not Provided									N/A

Note - For the analysis shown above, PFM accepted data provided by the prospective proposers as-is and cannot opine on the accuracy of these projections.

[1] Per PAWC - PAWC’s indicative rates incorporate gradualism to future rate adjustments whereby PAWC would propose rate adjustments no greater than 10% per filing over the first ten years following closing, with an assumption of triennial rate cases. PAWC’s indicative rates incorporate the effect of allocating a portion of the cost of service to PAWC’s entire customer base and is consistent with rate plans proposed to the Pa-PUC. Residential customer with a 5/8-inch meter using 4,000 gallons per month. Base rate comparisons only.

[2] Per Aqua - Assumed that Eastern and Western Division are consolidated into a single tariff. Rate estimates do not include DSIC. Bills shown assume PUC-approved subsidization from all Aqua PA water customers.



Public-Private Partnership Concept



Public-Private Partnership Concept

1. During PFM's analysis, PFM became aware of a public-private partnership concept that the CWA and the City pursued prior to the RFP process. The Receiver requested that PFM describe that concept in this analysis.
2. The concept begins by restructuring CWA operations into two divisions – a City division and a Western division. There would be no changes to the existing CWA board governance, water rights or asset ownership.
3. The concept appears to monetize the difference between the estimated revenue from City ratepayers and the estimated CWA operating cost for those same ratepayers. The analysis estimates revenues from City ratepayers to be \$10,000,250 in 2019 compared to estimated CWA operating expenses of \$3,554,558 – a difference of \$6,445,692.



Public-Private Partnership Concept (continued)

4. The CWA would hire a third-party to manage capital projects and improve revenues and profitability of the City division.
5. In exchange for not pursuing the ownership litigation for up to 30 years, the City would receive an up-front lump sum payment of \$60.2m from CWA funded by the third-party from the management services fee. Additionally, the City would receive annual litigation settlement payments from CWA which would be calculated by subtracting the annual operating expenses, management services fee and any bond indenture payment from the annual revenues of the City division.



Public-Private Partnership Concept (continued)

6. The third-party estimated that the City could receive \$314,900,000 from the litigation settlement payments over 40 years in addition to the \$60.2m up-front lump sum as follows:

Years 1-10:	\$11,100,000
Years 11-20:	\$33,200,000
Years 21-30:	\$65,500,000
<u>Years 31-40:</u>	<u>\$205,100,000</u>
Total	\$314,900,000



Recommended Next Steps



Recommended Next Steps

1. Continue to pursue information requested from CWA in order to properly compare the value of the various bids.
2. Explore the concept of a public-private partnership as previously contemplated by the City and CWA. Determine whether such a concept is feasible and what potential value it may bring to the City and its residents.
3. Once feasibility analysis is complete, compare it to the bids and make decision on path forward.



Disclosure

The information and any analyses contained in this presentation are taken from, or based upon, information obtained from the recipient or from publicly available sources, the completeness and accuracy of which has not been independently verified, and cannot be assured by PFM. The information and any analyses in these materials reflect prevailing conditions and PFM's views as of this date, all of which are subject to change. To the extent projections and financial analyses are set forth herein, they may be based on estimated financial performance prepared by or in consultation with the recipient and are intended only to suggest reasonable ranges of results. Opinions, results, and data presented are not indicative of future performance. The printed presentation is incomplete without reference to the oral presentation or other written materials that supplement it. To the extent permitted by applicable law, no employee or officer of PFM's financial advisory business, nor any of PFM's affiliated companies, accept any liability whatsoever for any direct or consequential loss arising from negligence or from any use of this presentation or its contents. The ultimate decision to proceed with any transaction rest solely with the client.

Thank You



Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Applicant Information

Applicant Entity Type:	Government
Applicant Name:	City of Chester
NAICS Code	9211
FEIN/SSN Number	XXXXXXXXXX
DUNS Number:	
CEO:	Thaddeus Kirkland
CEO Title:	Mayor
SAP Vendor #:	XXXXXXX
Contact Name:	Cody Deal
Contact Title:	Executive Assistant
Phone:	(717)-623-2412 Ext.
Fax:	
E-mail:	codeal@pa.gov
Mailing Address:	419 Avenue of the States Suite 400
City:	Chester
State:	PA
Zip Code:	19013

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Enterprise Type

Indicate the types of enterprises that describe the organization listed above. You may select more than one type.

<input type="checkbox"/> Advanced Technology	<input type="checkbox"/> Agri-Processor	<input type="checkbox"/> Agri-Producer	<input type="checkbox"/> Authority	<input type="checkbox"/> Biotechnology / Life Sciences
<input type="checkbox"/> Business Financial Services	<input type="checkbox"/> Call Center	<input type="checkbox"/> Child Care Center	<input type="checkbox"/> Commercial	<input type="checkbox"/> Community Dev. Provider
<input type="checkbox"/> Computer & Clerical Operators	<input type="checkbox"/> Defense Related	<input type="checkbox"/> Economic Dev. Provider	<input type="checkbox"/> Educational Facility	<input type="checkbox"/> Emergency Responder
<input type="checkbox"/> Environment and Conservation	<input type="checkbox"/> Exempt Facility	<input type="checkbox"/> Export Manufacturing	<input type="checkbox"/> Export Service	<input type="checkbox"/> Food Processing
<input checked="" type="checkbox"/> Government	<input type="checkbox"/> Healthcare	<input type="checkbox"/> Hospitality	<input type="checkbox"/> Industrial	<input type="checkbox"/> Manufacturing
<input type="checkbox"/> Mining	<input type="checkbox"/> Other	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Recycling	<input type="checkbox"/> Regional & National Headquarters
<input type="checkbox"/> Research & Development	<input type="checkbox"/> Retail	<input type="checkbox"/> Social Services Provider	<input type="checkbox"/> Tourism Promotion	<input type="checkbox"/> Warehouse & Terminal

Government,

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Overview

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Overview

Project Name:

Municipal Act 47 – Receiver Recovery Plan Salary Supplement, RECAST, and Municipal Comp Plan

Is this project related to another previously submitted project?

No

If yes, indicate previous project name:

Have you contacted anyone at DCED about your project?

No

If yes, indicate who:

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Site Locations

Address:	Chester City Hall 1 Fourth Street
City:	Chester
State:	PA
Zip Code:	19103
County:	Delaware
Municipality:	Chester City
PA House:	Thaddeus Kirkland (159)
PA Senate:	John Kane (9)
Current Employees:	236 ♦
Jobs To Be Created:	1 ♦
Designated Areas:	Act 47 Distressed Community

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Budget

	Act 47	Total
Operating Costs / Working Capital	\$125,000.00	
Salary/Fringe Benefits	\$125,000.00	\$125,000.00
Related Costs	\$95,000.00	
Professional Services/Consultants	\$95,000.00	\$95,000.00
Total	\$220,000.00	
	Budget Total:	\$220,000.00

Basis of Cost

Provide the basis for calculating the costs that are identified in the Project Budget.

Bids/Quotations, Contractor Estimates

Budget Narrative

The narrative must specifically address each of the cost items identified in the Project Budget section. If an amount is placed in any of the OTHER categories, you must specify what the money will be used for. **NOTE:** Some programs have specific guidelines regarding the narrative necessary to qualify for that particular resource. Please read the Program Guidelines for details.

The cost for the COO was synthesized from comparable figures.

We received direct quotes for both the Recast Boost - \$25,000, and the Comprehensive Plan - \$70,000.

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Narrative

What do you plan to accomplish with this project?

Identify the problem(s) that need to be resolved.

The City of Chester is applying for additional Act 47 funding in order to compensate the newly created Chief Operating Officer position to work alongside the Mayor of Chester, complete a Municipal Comprehensive Plan for the City, and also perform a Recast Boost.

How do you plan to accomplish it?

Include expected outcomes that are measurable, obtainable, clear and understandable, and valid. Examples of measurable outcomes include jobs created or retained, people trained, land or building acquired, housing units renovated or built, etc.

Currently - the COO has already been selected, the Municipal Comprehensive Plan will be put out to bid competitively, and the consultant to perform the Recast has already been selected.

How do you plan to use the funds?

Should include specific use of funds and reflect the budget provided with the application.

The funds will be used to directly compensate the new COO, complete and implement the Municipal Comprehensive Plan, and perform the Recast Boost.

Projected Schedule and Key Milestones and Dates

A detailed schedule of activities, including key milestones and dates, must accompany this application if applicable to the project.

All activities involved in these projects will begin as soon as approval is received. The timeline for Receivership is currently set to run through at least June 2022, with annually renewable terms after that.



Pennsylvania Department of Community and Economic Development

Single Application for Assistance

Single Application #: 202105102490

This page must accompany all required supplemental information **Mail to:**

**Pennsylvania Department of Community and Economic Development
Commonwealth Keystone Building
Attn: Customer Service Center
400 North Street, 4th Floor
Harrisburg, PA 17120-0225**

I hereby certify that all information contained in the single application and supporting materials submitted to DCED via the Internet, Single Application # 202105102490 and its attachments are true and correct and accurately represent the status and economic condition of the Applicant, and I also certify that, if applying on behalf of the applicant, I have verified with an authorized representative of the Applicant that such information is true and correct and accurately represents the status and economic condition of the Applicant. I also understand that if I knowingly make a false statement or overvalue a security to obtain a grant and/or loan from the Commonwealth of Pennsylvania, I may be subject to criminal prosecution in accordance with 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and 31 U.S.C. §§ 3729 and 3802 (relating to false claims and statements).



Signature: Cody Deal

The Pennsylvania Department of Community and Economic Development reserves the right to accept or reject any or all applications submitted on the Single Application for Assistance contingent upon available funding sources and respective applicant eligibility.

OOR Exhibit 2

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **August 20, 2021**.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **July 1, 2021**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

June 22, 2021

Via Email Only:

Mr. Alfred Brown
Dailey LLP
1650 Market Street
Suite 3600
Philadelphia, PA 19103
abrown@daileyllp.com

Via Email Only:

Benjamin R Patchen, Esq
Campbell Durrant, PC
One Belmont Ave
Bala Cynwyd, PA 19004
bpatchen@cdblaw.com

Agency Open Records Officer
Receiver for the City of Chester
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
mdoweary@pa.gov

RE: OFFICIAL NOTICE OF APPEAL - Brown and Dailey LLP v. Receiver for the City of Chester OOR Dkt. AP 2021-1218

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

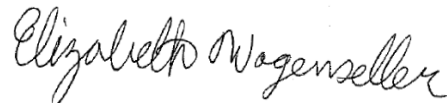
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on June 21, 2021. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the enclosed information regarding the coronavirus (COVID-19). If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Jordan Davis, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

jorddavis@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



IN THE MATTER OF

**ALFRED BROWN,
Requester**

v.

**RECEIVER FOR THE CITY OF
CHESTER,
Respondent**

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:

Docket No.: AP 2021-1218

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before August 20, 2021.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

OOR Exhibit 3

From: [Applegate, Kyle](#)
To: [Alfred Anthony Brown](#); [Benjamin Patchen](#)
Cc: [Davis, Jordan](#)
Subject: RE: [External] RE: Brown v. Chester City: AP 2021-1218
Date: Wednesday, June 23, 2021 9:34:50 AM
Attachments: [image002.png](#)

Thank you both. The new submission schedule will be July 23rd, and Appeals Officer Davis will be in touch in the future about any necessary adjustment of the Final Determination due date.

From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Wednesday, June 23, 2021 9:27 AM
To: Benjamin Patchen <bpatchen@cdblaw.com>; Applegate, Kyle <kyapplegat@pa.gov>
Cc: Davis, Jordan <jorddavis@pa.gov>
Subject: RE: [External] RE: Brown v. Chester City: AP 2021-1218

July 23rd works for me as well. Thank you.

Alfred Anthony Brown
Attorney

Dailey^{LLP}

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Benjamin Patchen <bpatchen@cdblaw.com>
Sent: Wednesday, June 23, 2021 9:09 AM
To: Applegate, Kyle <kyapplegat@pa.gov>
Cc: Alfred Anthony Brown <abrown@daileyllp.com>; Davis, Jordan <jorddavis@pa.gov>
Subject: Re: [External] RE: Brown v. Chester City: AP 2021-1218

Confirmed that works for me. Thank you.

Sent from my iPhone

On Jun 23, 2021, at 9:05 AM, Applegate, Kyle <kyapplegat@pa.gov> wrote:

Good morning,

As Appeals Officer Davis is out of the office, your emails were forwarded to me for a response. Would a submission due date of July 23rd work for both of you? The Appeals Officer may need to extend the Final Determination issuance date to accommodate such an extension, but it sounds like a date after July 18th will work best for both of you.

Sincerely,

<[image002.jpg](#)> **Kyle Applegate**
Chief Counsel
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
<https://www.openrecords.pa.gov>
[@OpenRecordsPA](#)

From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Tuesday, June 22, 2021 6:38 PM
To: Davis, Jordan <jorddavis@pa.gov>; Benjamin Patchen <bpatchen@cdblaw.com>; DC, OpenRecords <RA-OpenRecords@pa.gov>
Subject: [External] RE: Brown v. Chester City: AP 2021-1218

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Adding openrecords@pa.gov per the instructions in Appeals Officer Davis' out-of-office email auto-reply. Please see the thread below.

Thank you.

Alfred Anthony Brown

Attorney

<image003.png>

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Alfred Anthony Brown

Sent: Tuesday, June 22, 2021 6:08 PM

To: jorrdavis@pa.gov; Benjamin Patchen <bpatchen@cdblaw.com>

Subject: RE: Brown v. Chester City: AP 2021-1218

Dear Appeals Officer Davis: I am happy to agree to an identical extension for both parties to submit position statements. I would prefer a date not within the range of July 8th through 18th, when I will be out of town, but let us know what works best for you.

Respectfully,

Alfred Anthony Brown

Attorney

<image009.png>

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Benjamin Patchen <bpatchen@cdblaw.com>

Sent: Tuesday, June 22, 2021 4:44 PM

To: jorrdavis@pa.gov

Cc: Alfred Anthony Brown <abrown@daileyllp.com>

Subject: FW: Brown v. Chester City: AP 2021-1218

Mr. Davis,

I represent the Receiver for the City of Chester in the above referenced appeal, which I received today. I plan on participating in the appeal process and submitting legal argument and other information on behalf of the Receiver in this appeal. However, my wife is scheduled to be induced tonight and I will not be able to submit a response by July 1, the current deadline. I am respectfully requesting an extension of that deadline in order to provide a meaningful response on behalf of my client.

Thank you.

Ben Patchen

<image007.jpg>

Benjamin R. Patchen

Attorney at Law

Campbell Durrant, P.C.

One Belmont Avenue, Suite 300

Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

Confidentiality Notice: This e-mail transmission and any documents, files, or previous e-mail messages attached to it, are confidential and are protected by the attorney-client privilege and/or work product doctrine. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of any of the information contained in, or attached to this e-mail transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify me by returning this e-mail to me at the above address or by telephone at my phone number included above and then delete the message and its attachments from your computer.

Warning to clients: Despite this confidentiality notice, some employers have a policy demanding access to all your email and other communications. Do not use a computer, other device, any email account which you can access at your workplace or on the Internet, provided by your employer to communicate confidential information to your lawyer.

From: DC, OpenRecords <RA-OpenRecords@pa.gov>
Sent: Tuesday, June 22, 2021 3:26 PM
To: Alfred Anthony Brown <abrown@daileyllp.com>; Doweary, Michael <mdoweary@pa.gov>; Benjamin Patchen <bpatchen@cdblaw.com>
Cc: Davis, Jordan <jorddavis@pa.gov>
Subject: Brown v. Chester City: AP 2021-1218

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records and an associated submission. The above mentioned matter has been assigned to Appeals Officer Jordan Davis (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,

<image008.jpg> **Dylan Devenyi**
Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
[@OpenRecordsPA](https://openrecords.pa.gov)

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OOR Exhibit 4

From: [Alfred Anthony Brown](#)
To: [Davis, Jordan](#)
Cc: [Benjamin Patchen](#); [John McLaughlin](#)
Subject: [External] OOR appeal, docket no. AP 2021-1218
Date: Friday, July 23, 2021 3:11:37 PM
Attachments: [image001.png](#)
[2021-07-23 AP 2021-1218 Requester's position statement.pdf](#)

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

Dear Appeals Officer Davis:

Please see my attached position statement with respect to the above-referenced appeal. The attorneys for the other party involved in this appeal are copied herewith.

Respectfully submitted,

Alfred Anthony Brown

Attorney

Dailey^{LLP}

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

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Alfred Anthony Brown
Direct Dial: 215.282.5180
Email: abrown@DaileyLLP.com

July 23, 2021

Via email
jordddavis@pa.gov

Jordan Davis, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: In the matter of Alfred Brown, requester v. Receiver for the City of Chester, respondent
Docket No. AP 2021-1218

Dear Appeals Officer Davis:

Please allow this letter to serve as my position statement pursuant to the Office of Open Records' ("OOR") June 22, 2021 Notice of Appeal ("OOR Notice"), regarding items I requested from the Receiver for the City of Chester, Pennsylvania ("the Receiver") pursuant to the Right-to-Know Law (65 P.S. § 67.101 et .seq.) (the "RTKL"). By email dated June 23rd, the OOR extended the due date for the parties to submit position statements from to July 1 to July 23, 2021, following an extension request by the Receiver's counsel to which I agreed.

I. Overview

The Receiver's response to my RTKL request, where he objected to production of certain records and claimed that other items do not exist, should be rejected for six principal reasons. First, the scant materials produced cannot possibly comprise all the responsive, non-privileged records in the Receiver's possession, custody, or control. Second, the Receiver has not met his burden to prove there are no further responsive records. Third, there is no indication he has made a good faith search for responsive items or made inquiries of appropriate third parties (indeed, a strong indication otherwise). Fourth, the records for which the Receiver has asserted a privilege are not by their nature privileged, he has offered no evidence to show otherwise, and even if they do contain privileged information, they should be produced with appropriate redactions. Fifth, the Receiver's claimed statutory exemptions to certain items (65 P.S. §§ 67.708(b)(10)(i)(A) and (b)(26)) are not applicable. And sixth, contrary to the Receiver's RTKL response, all my requests were sufficiently specific, and all properly seek only records (not answers to questions).

1650 Market Street / 36th Floor / Philadelphia, PA 19103 / DaileyLLP.com

Philadelphia, PA / Media, PA / New York, NY / Wilmington, DE

Jordan Davis, Esquire
July 23, 2021

II. Procedural and factual history

On April 23, 2021, the Receiver, Michael Doweary, received my RTKL request (the “Request”). See OOR Notice at 49-52.

An attorney for the Receiver, John P. McLaughlin, Esquire of Campbell Durrant, P.C., responded to my Request on April 27th with an email and attached letter, claiming an extension to May 30th for reasons authorized by 65 P.S. § 902(a)(1), (2), (3), (4), and (7). See OOR Notice at 46-48. I agreed to this extension by email dated April 28th. *Id.* at 37.

By email and letter dated May 28, 2021, another attorney for the Receiver, Benjamin R. Patchen, Esquire, also of Campbell Durrant, further responded to my Request, asserting seven general, prefatory “denial reasons,” followed by full or partial “specific” denials of all items in my Request except items 2 and 6. All of the specific denials were based on one or more of the seven general “denial reasons.” *Id.* at 26-32. The documents Mr. Patchen agreed to produce on behalf of the Receiver were provided by a Dropbox link. Except for files responsive to item no. 2 of my Request, which is not at issue in this appeal, these can be found in the OOR Notice at 53-143.

In a follow-up email on June 8th (see *id.* at 24) I asked Mr. Patchen to provide three additional things:

- (1) a copy of “an updated version of the Asset Purchase Agreement” referenced in a produced July 21, 2020 email from Christopher Franklin (Chairman and CEO of Essential, Inc.) to the Receiver (see *id.* at 62), which I stated was properly subject to item no. 6 of my request and possibly others;
- (2) an exemption log for records and portions of records withheld; and
- (3) affidavits from those involved in the RTKL response regarding the completeness of the production, whether a thorough and good faith search was conducted and what steps were taken to do this, and whether appropriate inquiries were made with other agency personnel or relevant third parties pursuant to 65 P.S. § 67.506(d)(1) for responsive items.

Mr. Patchen responded on behalf of the Receiver on June 18th with an email (OOR Notice at 12), exemption log containing five entries (including one for the “Asset Purchase Agreement”) (*id.* at 20), and an unrequested and untimely update to his May 28th RTKL response letter wherein he reasserted the prior denials and attempted to claim an additional exemption under 65 P.S. § 67.708(26) to items 5 and 6 (*id.* at 13-19). Mr. Patchen also promised to “provide an affidavit on Monday” (June 21st) (*id.* at 12).

Jordan Davis, Esquire
July 23, 2021

On June 21st, after no affidavit had been forthcoming by close of business, I filed a timely appeal via the OOR's online web form for all the reasons set forth below. The OOR responded on June 22nd with its Notice of Appeal. As noted above, the deadline for the parties to submit position statements to the OOR, originally July 1st, was thereafter extended by agreement of both parties and the OOR to July 23rd.

Late today, July 23rd, the due date for the parties' position statements, Mr. Patchen served four additional documents, two of which appear on first review to be responsive to item no. 2 of my Request, which is not at issue in this appeal. The other two may or may not be responsive to other items in my Request that are at issue in this appeal, but even if they are, they do not change the arguments herein.

III. Legal argument

A. Requested items at issue in this appeal

At issue in this appeal are the Receiver's responses to eleven of twelve items in my April 23rd Request (i.e., all except no. 2). The Request specifically requested copies of the following, **as well as copies of records, documents, email(s), text messages or voice mail messages about:**

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

Denied in part "due to lack of specificity and request for information not a record" (OOR Notice at 16).¹

3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23).²

Denied in part "due to lack of specificity and because you are requesting information or records that include pre-decisional deliberations" (id.).

¹ Unless otherwise noted in this position statement, page references regarding the Receiver's responses are to the Receiver's updated RTKL response of June 18, 2021, which is identical to his original May 28th response except for his reference to the 65 P.S. § 67.708(b)(26) exemption and amended responses to items 5 and 6 of my Request. As noted in section III.E below, the Receiver's June 18th updated RTKL response (OOR Notice at 13-19) is untimely. My citation to it is for purposes of responding to all the Receiver's asserted claims, and is without waiver of the untimeliness argument.

² The relevant Status Update and Presentation, which are relevant to items 3 and 4 of the Request, can be found on the Receiver's website at: https://www.chesterreceivership.com/s/Receiver-Status-Report_20201103.PDF.

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4. The “independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management” conducted or being conducted by the Receiver’s team, as referenced on page 22 of the Presentation.

Denied in part “because you are requesting information or records that include pre-decisional deliberations” (id.).

5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.

Denied in part “because the requested record falls under 65 P.S. § 67.708(b)(26)” (id. at 17).

6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.³

Denied in part “because the requested record falls under 65 P.S. § 67.708(b)(26)” (id.).

7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.

Denied in part “because no responsive records exist” (id.).

8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.

Denied in part “because no responsive records exist” (id.).

9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver

Denied “because you are requesting records protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine” (id.).

10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.

Denied in part “because you are requesting records protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine” (id. at 17-18).

³ Essential Utilities, Inc. is the new name for Aqua America Inc., following Aqua America’s acquisition of Peoples (a Pittsburgh based natural gas distribution company). See January 16, 2020 Aqua America Inc. press release at: <https://www.businesswire.com/news/home/20200116005755/en/Aqua-America-Announces-New-Name-and-Executive-Leadership-Team-Ahead-of-Peoples-Closing>.

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11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.

Denied “because you are requesting records protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine” (id. at 18).

12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

Denied in part “because no responsive records exist” (id.).

In connection with the above-listed requests and responses, the Receiver produced just eight⁴ documents. As discussed below, this is an impossibly miniscule selection that cannot possibly reflect the volume of responsive, non-exempt documents in his possession, custody, or control.

B. The Receiver’s claim that just eight documents exist with respect to the eleven items of my Request at issue in this appeal is not credible, reflects an inadequate search for responsive records, and should be rejected.

- 1. It is inconceivable that the Receiver has no further responsive, non-exempt documents to produce.**

A “Statement from Receiver Doweary” on the Receiver’s own website notes the following:

Governor Wolf has appointed me to be the Receiver for the City of Chester, and Judge Crompton of the Pennsylvania Commonwealth Court has confirmed my appointment.

* * *

In the coming weeks and months, we will be developing a plan to get Chester out of receivership and put it back on its feet. As I mentioned previously, everything is on the table. We will start by listening, and we will be meeting many people, including spending time with residents and various stakeholder community groups. We will need your help, and we will need the help of others. We realize the challenge that is in front of us, and I look forward to working with you to address it.

See <https://www.chesterreceivership.com/updates>. The Receiver’s website contains numerous reports, plans, updates, meeting minutes, a calendar of events, and more, all relating to his responsibilities on behalf of the City of Chester. See, e.g., *id.*; and

⁴ These eight documents include the two produced only late this afternoon (July 23rd) that may or may not be responsive to items at issue in this appeal, but the arguments herein continue to apply. See last paragraph of section II above.

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<https://www.chesterreceivership.com/documents>. These resources confirm that the Receiver is, among other things, a nexus and conduit for information relating to the City of Chester and its finances.

Among the many pieces of information the Receiver and his agents acquire are communications relating to efforts to generate money on behalf of the City. This is illustrated in one of the documents the Receiver produced in response to my RTKL request: an October 26, 2020 reply email from the Receiver to Christopher H. Franklin, Chairman and CEO of Essential, Inc., an entity that has expressed interest in purchasing the Chester Water Authority or its assets. In his reply, the Receiver wrote:

Thank you for reaching out last week. I have been concerned with returning your call so I decided to put my response in writing.

With all that is going on, **it would probably be best for us to limit our interactions outside of the prescribed channels. PFM** and I are very appreciative of the responsiveness and information sharing to date. From a financial perspective, **they will continue to be my intermediary**. However, if needed, I can introduce our legal counsel as well but I would hate to involve lawyers on every communication.

I hope this is not offensive in any way. In the end, my intention is to protect both of us.

Emphasis added. A copy of this email is in the OOR Notice at 60. Mr. Franklin replied on November 10, 2020: "I appreciate the sentiment and agree that all interactions should remain in prescribed channels...We appreciate the amount of diligence, legal and financial review that has been undertaken by the Office of the Receiver" (see OOR Notice at 55).

Against this backdrop, the Receiver has incredibly produced a mere eight documents in response to the eleven items of my Request at issue in this appeal (see section III.A above).⁵ Surely, given the Office of the Receiver's "diligence, legal and financial review," there are more. The Receiver plainly has not met and cannot meet his burden to show that there are no further responsive records, nor is there any indication that he has made a good faith search for responsive items (e.g., with the "prescribed channels" referenced in his email above).

⁵ As noted in section II above, item no. 2 of my Request and the files the Receiver produced in response to it are not at issue in this appeal.

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2. The Receiver has not met his burden to prove that there are no further records responsive to my Request.

The Receiver bears the burden to prove that no further records exist, but to-date has offered no evidence toward meeting that burden. And while an affidavit that no records exist may be some degree of evidence (if one is even produced), it is not conclusive nor immune from legal challenge. In *Diaz v. Dauphin County*, OOR docket no. AP 2020-0948 at 8-9, 2020 PA O.O.R.D. LEXIS 1630 at *10-12, Appeals Officer Jill S. Wolfe, Esq. observed:

In this instance, it appears that the County has only submitted evidence related to the records in the possession of the County Prison and has not provided sufficient evidence [of further inquiry beyond the Prison; therefore] the evidence submitted by the County fails to demonstrate that it conducted a good faith search for responsive records. As such, the County has not proven that it does not possess additional records responsive to Items 3, 5, 6 and 8 of the Request...The OOR is mindful that an agency cannot produce records that do not exist within its “possession, custody or control” and, accordingly, is not ordering the creation of any records listed in the Request. Absent an agency’s provision of a sufficient evidentiary basis as to whether any responsive records exist in the first place, however, the OOR will order the disclosure of responsive public records.

Id., citing *Sindaco v. City of Pittston*, OOR Dkt. AP 2010-0778, 2010 PA O.O.R.D. LEXIS 755; *Schell v. Delaware County*, OOR Dkt. AP 2012-0598, 2012 PA O.O.R.D. LEXIS 651. This analysis is especially compelling where, as here, the Receiver’s scant production of just eight records in response to eleven Request items, and his assertion that no records exist with respect to items 7, 8, and 12 of my Request, are simply not credible.

3. There is no indication the Receiver has made a good faith search for responsive items (indeed, a strong indication otherwise), and there is no indication that the Receiver has notified or made inquiries of third parties relating to my Request.

The Receiver is required to make a good faith effort to search for items responsive to my Request. See PENNSYLVANIA OOR AGENCY OPEN RECORDS OFFICER GUIDEBOOK (rev. Sept. 9, 2015) (the “GUIDEBOOK”), § III.B.1 at 12 and cases cited therein. There is no indication the Receiver has done so. As part of his good faith obligation, and to the extent my Request seeks items relating to third parties, the Receiver is also required to make inquiries with third parties, including but not limited to his outside consultant PFM Financial Advisors (discussed in sections III.B.1 above and III.D below). See, e.g., 65 P.S. § 67.506(d)(1); GUIDEBOOK § III.B.1.b-c at 13-14. There is no indication the Receiver has done that, either. The Receiver should be required make a good

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faith effort to search for responsive items, and to notify and make proper inquiries of all applicable third parties, to comply with my Request.

C. Records relating to attorney conflict of interest waivers, engagement letters, joint representation agreements, and the like are administrative and contractual in nature, and should not be deemed privileged absent proof of privileged content.

The Receiver has denied items 9, 10, and 11 of my Request, claiming without evidence or indicia that the records requested are protected by the attorney-client privilege and/or work product doctrine. Those items (set forth in full in section III.A above) seek certain conflict of interest waivers, engagement letters, joint representation agreements, common interest letters, and the like, as well as materials relating to them. While the Receiver provided an “appointment” letter and “contract for legal services” despite the denials (see OOR Notice at 17-18, 53-54, 63-88), other documents were completely withheld for claimed privilege as reflected by the first four of five entries on his exemption log (*id.* at 20).

1. The Receiver has not established that the attorney/client privilege applies to records sought by items 9, 10, or 11 of my Request.

For the attorney/client privilege to apply:

an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client.

Hemler v. Borough of Gettysburg, OOR Dkt. AP 2017-0022 at 7, citing *Nationwide Mutual Insurance Company v. Fleming*, 924 A.2d 1259, 1263-1264 (Pa.Super. 2007). The burden of proof rests on the agency claiming privilege. *Id.* at 4 and Pennsylvania appellate decisions cited therein.

An agency may not, however, rely on a bald assertion that the attorney-client privilege applies. See *Clement v. Berks County*, OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 (“Simply invoking the phrase ‘attorney-client privilege’ or ‘legal advice’ does not excuse the agency from the burden it must meet to withhold records”).

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Id. at 7. Here, the Receiver's exemption log provides no evidence that four withheld documents (a "joint privilege agreement," two "potential conflict of interest waiver[s]," and "email correspondence regarding potential conflict of [interest] waiver") are anything more than administrative materials or contractual documents governing the ordinary business aspects of the Receiver's relationship with Campbell Durrant, P.C. There is certainly no evidence or indication that any of these withheld documents contains a request for specific legal advice, the actual provision of legal advice, or otherwise "relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter" (*Hemler*; *Nationwide*). The first three entries do not reference any of the recipients; the fourth does not specify an author; and none provide any reasoning or evidence behind the Receiver's bare assertions of privilege. These are precisely the kinds of privilege claims that have been deemed insufficient under the preceding authorities.

2. The Receiver has not established that the work product doctrine applies to records sought by items 9, 10, or 11 of my Request.

The OOR's Final Determination in *Hemler* observed:

The attorney-work product doctrine prohibits disclosure "of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories." Pa.R.C.P. 4003.3. The Pennsylvania Supreme Court has explained that the attorney-work product doctrine "manifests a particular concern with matters arising in anticipation of litigation." *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 59 n.16 (Pa. 2011) (citing *Nat'l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Commw. Ct. 2001) and stating that [t]he 'work product rule' is closely related to the attorney-client privilege but is broader because it protects any material, regardless of whether it is confidential, prepared by the attorney in anticipation of litigation"); *see also Heavens v. Pa. Dep't of Env't. Prot.*, 65A.3d 1069, 1077 (Pa. Commw. Ct. 2013) ("[U]nder the RTKL the work-product doctrine protects a record from the presumption that the record is accessible by the public if an agency sets forth facts demonstrating that the privilege has been properly invoked").

Hemler at 7-8 (emphasis added). Here, as with the attorney/client privilege, the Receiver has failed to set forth any facts demonstrating that the work product doctrine has been properly invoked, and there is not even a suggestion in the exemption log that any of the items would disclose "mental impressions of [the Receiver's] attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories" (see OOR Notice at 20).

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Again, the requested items are administrative and contractual in nature. The Receiver has provided no evidence, let alone met his burden to prove, that the work product doctrine could apply to the records sought by items 9, 10, and 11 of my Request.

3. Even if the attorney/client privilege or work product doctrine applies, responsive records should be redacted, not withheld.

Claims of attorney/client privilege and work product doctrine properly relate only to legal advice and an attorney's mental impressions, etc. prepared in anticipation of litigation, not to the entirety of documents as a general rule, and certainly not to the types of documents listed on the Receiver's exemption log. Even if the withheld records contain some privileged information, the legally appropriate response is to redact, not withhold. See 65 P.S. § 67.706, which states in relevant part:

If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted.

If the OOR does not compel the Receiver to produce the withheld documents in full, he should at least be directed to redact them.

D. The Receiver has not met and cannot meet his burden to show that he is entitled to a "pre-decisional deliberations" exemption under 65 P.S. § 67.708(b)(10)(i)(A) for items 3 and 4 of my Request.

Items 3 and 4 in my Request are concisely phrased and seek:

copies of the following, as well as copies of records, documents, email(s), text messages or voice mail messages about:

* * *

3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)

4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial

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Management” conducted or being conducted by the Receiver’s team, as referenced on page 22 of the Presentation.

Although the Receiver has produced one document entitled, “PFM’s Water System Build Analysis” in response to these two items, he has otherwise denied them as seeking pre-decisional deliberations of an agency. Yet the Receiver has not made any related entries on his exemption log (OOR Notice at 20), nor offered any evidence that suggests any responsive items in his possession, custody, or control are entitled to the “predecisional deliberations” exemption of 65 P.S. § 67.708(b)(10)(i)(A). That statute provides:

§ 67.708. Exceptions for public records

* * *

(b) EXCEPTIONS.— Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(10) (i) A record that reflects:

(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

To establish entitlement to this exemption, the Receiver bears the burden to show for each item on which he is claiming an exemption:

(1) the information is **internal** to the agency; (2) the information is **deliberative** in character; and (3) the information is **prior to a related decision**, and thus “predecisional.” *Carey v. Dep’t of Corr.*, 61 A.3d 367 (Pa. Cmwlth. 2013). “Only information that constitutes ‘confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice’ is protected as ‘deliberative.’” *Id.* at 378 (*quoting In re Interbranch Comm’n on Juvenile Justice*, 605 Pa. 224, 988 A.2d 1269, 1277-78 (Pa. 2010) (quotation omitted)). Records satisfy the “internal” element when they are maintained internal to one agency or among governmental agencies. *Id.*

Pennsylvania Department of Education. v. Bagwell, 114 A.3d 1113, 1122-1123 (Pa. Commw. 2015) (emphasis added). To prove that records withheld under this exemption are internal, the

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Receiver must identify who participated in preparing any such records and who may have seen or had access to them. On this point, the Pennsylvania Supreme Court has recently ruled that records are not internal (and the pre-decisional deliberations exemption does not apply) where they have been communicated to an agency's outside consultants:

[T]he statutory provision [the pre-decisional deliberations exemption of 65 P.S. § 67.708(b)(10)(i)(a)] facially does not apply to communications with outside consultants. *See generally N. Hills News Record v. Town of McCandless*, 555 Pa. 51, 58, 722 A.2d 1037, 1040 (1999) (explaining that, where the provisions of a statute are clear, courts “are forbidden from diverging from the plain meaning under the mere pretext of pursuing the spirit of the enactment.”). And the requirement of narrow construction further solidifies the interpretation that private consultants providing services as independent contractors do not qualify as agencies, members, employees, or officials who may engage in protected internal communications.

Chester Water Authority v. Pennsylvania Department of Community and Economic Development, 249 A.3d 1106, 1113 (Pa. 2021) (emphasis added). To the extent the Receiver is attempting to apply the pre-decisional deliberations exemption to materials that have been exchanged with outside consultants, his exemption claim must be rejected and the materials must be produced.

The Receiver must also prove that the information is deliberative in character and prior to a related decision. *Bagwell*, 114 A.3d at 1122-1123. Further, he must prove that these standards apply to all the other items I requested that are about such materials. As the Commonwealth Court in *Bagwell* further observed:

In order “to demonstrate that the withheld documents are deliberative in character, an agency must ‘submit evidence of specific facts showing how the information relates to deliberation of a particular decision.’” *McGowan v. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 383 (Pa. Cmwlth. 2014) (*quoting Carey*, 61 A.3d at 379). Affidavits that are conclusory or merely parrot the exemption do not suffice. *Office of the Governor v. Scolforo*, 65 A.3d 1095 (Pa. Cmwlth. 2013) (en banc).

As we explained in *Scolforo*:

[i]t is not enough to include in the [a]ffidavit a list of subjects to which internal deliberations may have related. The [a]ffidavit must be specific enough to permit the OOR or this Court to ascertain how disclosure of the entries would reflect

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the internal deliberations on those subjects. Because this [a]ffidavit is not detailed, but rather conclusory, it is not sufficient, standing alone, to prove that the [records] are exempt from disclosure.

65 A.3d at 1104. As to the predecisional deliberative exception, this Court holds each of the three elements must be established by the underlying facts, as the absence of any of the elements precludes protection under the exception. *See, e.g., Carey* (holding agency did not establish exception because it did not set forth facts to substantiate all three elements).

The only evidence the Department submitted here to support its denial was the Verification. The Verification does not directly address any of the three elements required to establish the predecisional deliberative exception.

Of relevance, the Verification is silent as to whether the content was deliberative in nature or internal. Indeed, OOR invited the Department to supplement the record to clarify with whom the E-mails were shared, if anyone. The Department elected to rely exclusively on the Verification. Because it contains none of the predicate facts required to establish this exception, the Verification is insufficient. Based on the foregoing, we affirm OOR's determination that the Department did not meet its burden of proving the predecisional deliberative exception applies.

Bagwell, 114 A.3d at 1123.

In the present matter, not only has the Receiver failed to meet his burden with respect to any of these elements, he cannot do so with respect to the "internal" element. Item no. 4, and the Receiver's responses to items 3 and 4 indicate that responsive information was exchanged at the very least with outside consultant PFM Financial Advisors. *See* the Receiver's response and the PFM document produced (OOR Notice at 16, 103-136).

E. The Receiver's claim of a 65 P.S. § 67.708(b)(26) exemption to items 5 and 6 of my Request is inappropriate and should be rejected.

As noted in Section II above, I asked the Receiver's counsel to provide a copy of the "updated version of the Asset Purchase Agreement" that was referenced in a produced July 21, 2020 email from Christopher Franklin (Chairman and CEO of Essential, Inc.) to the Receiver (*see* OOR Notice at 62). I noted that the Asset Purchase Agreement was properly subject at least to

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item no. 6 of my Request. In reply, the Receiver's counsel unilaterally updated his general "denial reasons" and responses to items 5 and 6 of my RTKL Request on June 18th.

The Receiver's updated RTKL response (*see* OOR Notice at 13-19) should be rejected for at least two reasons. First, it was untimely, well past the agreed-to extended deadline of May 30th for the Receiver to respond to my Request. Second, the assertion of a new exemption under 65 P.S. § 67.708(b)(26) (in the general "denial reasons," and with respect to items 5 and 6 of my Request) is substantively inappropriate, as is the Receiver's assertion of this exemption with respect to the Asset Purchase Agreement on his concurrently-produced exemption log.

Section 67.708(b)(26) provides an exemption for:

A proposal pertaining to **agency procurement or disposal of supplies, services or construction** prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

Emphasis added. This exemption does not apply to items 5 and 6 of my Request or to the Asset Purchase Agreement for the following reasons. First, the exemption applies only to matters for the benefit of the **agency** (procurement or disposal, etc.) , but items 5 and 6 of my Request and the Asset Purchase Agreement relate to Aqua America Inc./Essential Utilities, Inc's interest in the **Chester Water Authority** or its assets for a putative financial benefit to the **City of Chester**. These have nothing whatsoever to do with procurement or disposal for the **agency** (i.e., the Office of the Receiver). Second, the exemption only applies to certain information about proposals for the "procurement or disposal of **supplies, services or construction**" (including related financial information of a bidder or offeror and records of agency proposal evaluation committees). Here, neither the communications with Aqua America/Essential Utilities nor Essential's Asset Purchase Agreement concern the procurement or disposal of supplies, services, or construction; again, they relate to a proposal to acquire a legal entity (the Chester Water Authority) or its assets.

If the statutory exemption had been intended to apply to activities beyond those done on behalf of the agency, or to a wider variety of procurements or disposals (such as corporate acquisitions of entire businesses), appropriate wording could have been included in the statute. But it was not, and more expansive interpretations cannot be justified given the statute's plain and unambiguous wording. 1 Pa.C.S. § 1921(b); *A.S. v. Pa. State Police*, 636 Pa. 403, 438 (Pa. 2016) ("This Court may not alter the meaning of unambiguous statutory language in order to achieve what it perceives to be a preferable result").

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Because the requested items relate neither to agency procurement or disposal, nor to supplies, services, or construction, the exemption of 65 P.S. § 67.708(b)(26) does not apply. The Receiver should be ordered to produce the referenced Asset Purchase Agreement and all materials responsive to items 5 and 6 of my Request.

F. Items 1 and 3 of my RTKL request are sufficiently specific, and the Receiver's denial based on insufficient specificity should be rejected.

The Receiver partially denied items 1 and 3 of my Request, claiming a "lack of specificity." In his general "Denial Reason 1," he cites *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124-1125 (Pa.Commw. 2015) for a three-part "balancing" test for specificity that "examin[es] the extent to which the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought." *Id.* at 1124. The Commonwealth Court further explained in that opinion that the "subject matter" referenced in the first prong must identify the "transaction or activity of the agency for which the record is sought (*id.* at 1125); the "scope" referenced in the second prong requires identification of a discrete group of documents, either by type or by recipient (*id.*, citing *Carey v. Department of Corrections*, 61 A.3d 367, 372 (Pa.Commw. 2013)); and that the "timeframe" should identify a finite period of time for which records are sought (*id.* at 1126). Yet under the "balancing" nature of the test, satisfaction of all three elements is not necessarily required – for example, the "failure to identify a finite timeframe will not render an otherwise sufficiently specific request overbroad." *Pittsburgh Post-Gazette*, 119 A.3d at 1126 (internal citation omitted).

But here, items 1 and 3 amply meet all three prongs. Item 1 satisfies the first and second prongs by reference to the transactions, activities, types of documents and recipients: "[r]equests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester" (OOR Notice at 16, 52). Item 3 likewise satisfies the first and second prongs by reference to "[r]ecords and documents relating to recommendations in the November 3, 2020 presentation...that is attached to the Status Update and is entitled 'Receiver's Assessment of the City of Chester's Financial and Operational Condition' that the Chester Water Authority be 'monetized' as part of a 'grand bargain'" (*id.*). And both requests satisfy the third prong because the overall request specifically states: "Unless otherwise specified, the time period for these requests is January 1, 2016 to the present (*id.* at 51).

Moreover, that the Receiver has already identified and produced two documents in response to Request items 1 and 3 (an "Application for Assistance to DCED Act 47 Program" and "PFM's Water System Build Analysis") should be considered as evidence establishing that the request for these items was sufficiently specific. See *Easton Area School District v. Baxter*, 35 A.3d 1259, 1265 (Pa.Commw. 2012). And the Receiver's lack of evidence of an "unreasonable burden" indicates the Request is sufficiently specific to enable him to locate and produce

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responsive records. *See Vendel v. City of Harrisburg*, OOR Dkt. AP 2016-0321 at 5, 2016 PA O.O.R.D. LEXIS 609 at *7-8.

To the extent the Receiver has withheld or failed to search for any documents based on his denial for alleged lack of specificity, he should be required to locate and produce them forthwith.

G. Item no. 1 of my Request properly seeks records, not answers to questions.

The Receiver also partially denied item 1 of my Request for allegedly seeking “information not a record” (OOR Notice at 16, *see also id.* at 14). The denial relies on two authorities that stand for the proposition that a request must seek records rather than answers to questions.⁶ Here, item no. 1 of my Request is plainly asking for records, not answers to questions. It specifically seeks:

copies of the following, as well as copies of records, documents, email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

The entire wording of this item (including the word “copies”) plainly indicates a request for records. It is certainly not seeking information in the form of answers to questions. The Receiver’s objection here makes no sense; it should be rejected and the Receiver should be ordered to produce all materials responsive to item no. 1 of my Request.

H. The items sought by my Request are public records.

Although an RTKL requester is not required to prove that the requested items are subject to public access, the most cursory examination of the Request (*see* section III.A above) makes plain that the items requested here are indeed public records.

As noted above, nothing in this Request could be construed to be among the thirty listed exceptions from public records as set forth in 65 P.S. § 67.708(b), which in any event must be narrowly construed because the RTKL “is remedial legislation designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions” *Pennsylvania State Troopers Association v. Scolforo*, 18 A.3d 435, 1100 (Pa.Commw. 2011) (quoting *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa.Commw. 2010) and affirming the OOR’s determination that certain supplementary employment requests of current Pennsylvania State Police employees

⁶ *Moll v. Wormleysburg Borough*, OOR Dkt. AP 2012-0308 at 3-4; *Stidmon v. Blackhawk School District*, Civil Action No. 11605-2009 (Beaver County CCP, December 14, 2009) (memorandum opinion and order) at 5.

Jordan Davis, Esquire
July 23, 2021

were not exempt from disclosure under 65 P.S. § 708(b)(1)(ii)). In addition, none of the requested items seek privileged material, none are exempt under any Federal or State law or regulation, and all are sufficiently specific to enable the Receiver to ascertain what is being requested. *See* 65 P.S. § 67.703).

I. Should the OOR require further information to grant my appeal, I request an *in camera* review of all items not produced and/or that are listed on the Receiver's exemption log.

As noted above, the Receiver denied most of the items in my RTKL request for a variety of reasons, but produced an exemption log with only five items that invoked only privilege and a 65 P.S. § 67.708(b)(26) exemption. The Receiver should be required to explain each of his denials, identify all responsive materials withheld, and prove that withholding each of them is proper.

If the OOR requires further information to grant my appeal, I respectfully request an *in camera* review of any records the OOR deems necessary to do so. *See* OFFICE OF OPEN RECORDS PROCEDURAL GUIDELINES (Pennsylvania OOR, rev'd Sept. 9, 2015) (the "OOR GUIDELINES"), § V(E); *Office of Open Records v. Center Township*, 95 A.3d 354, 370-371 (Pa.Comm.w. 2014). As part of the *in camera* review process, the Receiver should be required to produce a detailed inspection index, "referencing each record, and each item within each record, claimed to be an exempt record citing the applicable exemption(s)." OOR GUIDELINES, § V(E)(3). From this review, I respectfully ask the OOR to order the Receiver to produce in unredacted form any records for which the OOR determines the Receiver is not entitled to an exemption under the RTKL.

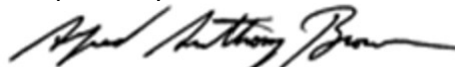
IV. Conclusion

For all the foregoing reasons, I respectfully request that my appeal in this matter be granted.

V. Attestation/verification

I verify that the facts set forth in the foregoing position statement are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,



Alfred Anthony Brown

cc: Benjamin R. Patchen, Esquire (via email)
John P. McLaughlin, Esquire (via email)

00R Exhibit 5

From: [Benjamin Patchen](#)
To: [Davis, Jordan](#)
Cc: [John McLaughlin](#); [Alfred Anthony Brown](#); [Tiffany Allen](#)
Subject: [External] RE: OOR appeal, docket no. AP 2021-1218
Date: Friday, July 23, 2021 4:34:55 PM
Attachments: [image001.png](#)
[Position Statement With Exhibits.pdf](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Good afternoon,

Please see the attached Position Statement on behalf of the Receiver for the City of Chester.

Ben Patchen



Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

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Warning to clients: Despite this confidentiality notice, some employers have a policy demanding access to all your email and other communications. Do not use a computer, other device, any email account which you can access at your workplace or on the Internet, provided by your employer to communicate confidential information to your lawyer.

From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Friday, July 23, 2021 3:10 PM
To: Davis, Jordan <jorddavis@pa.gov>
Cc: Benjamin Patchen <bpatchen@cdblaw.com>; John McLaughlin <jmclaughlin@cdblaw.com>
Subject: OOR appeal, docket no. AP 2021-1218

Dear Appeals Officer Davis:



*One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004*

Benjamin Patchen
Attorney at Law
Direct Dial: (610) 227-2594
bpatchen@cdblaw.com

IN REFERENCE TO: PACOMM-3791

July 23, 2021

Delivered via e-mail: jorddavis@pa.gov

Jordan Davis, Esq., Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Right to Know Law Appeal ("RTKL"), Docket # AP 2021-1218

Dear Mr. Davis:

Please allow this correspondence to serve as my entry of appearance on behalf of Respondent, Receiver for the City of Chester, and a response to the above-referenced appeal. Included with this response is an attached affidavit of Michael Doweary.

I. Procedural Background

On April 23, 2021, the Receiver for the City of Chester (sometimes referred to herein as the "Receiver") received a request under the Right-to-Know Law ("RTKL") from Dailey LLP (hereinafter "Requestor"). The request, a copy of which is attached hereto as **Exhibit A**, contained 12 individual requests. On April 27, 2021, the Receiver invoked the 30-day extension of time under the RTKL for legal review, and the Receiver submitted its responses to the RTKL Request on May 28, 2021. A copy of the Receiver's responses to the RTKL Request is attached as **Exhibit B**¹. On June 18, 2021 the Receiver provided supplemental responses to the RTKL request. A copy of the Receiver's supplemental responses are attached as **Exhibit C**. On July 23, 2021, the Receiver provided additional documents in response to the Right to Know Request. Email Correspondence and Attachments are attached as **Exhibit D**.

¹ The Response also included public comments contained on an excel spreadsheet, which are not included with this submission but are available if the OOR deems them relevant to this appeal.

II. Factual Background

The City of Chester has been designated as a distressed municipality under Act 47 since 1995. *Davin v. City of Chester*, 336 M.D. 2020, Memorandum and Order p. 1, attached as **Exhibit E**. On April 13, 2020, Governor Tom Wolf issued a Declaration of Fiscal Emergency as to the City of Chester. **Exhibit E**, page 2. On June 22, 2020, the Commonwealth Court appointed Michael Doweary as Receiver to the City of Chester. *Id.*

This present appeal involves 12 requests under the RTKL in Requestor's April 23, 2021 Request to the Receiver for the City of Chester. The Receiver has already produced all responsive documents and information for Requests 1, 2, 3, 4, 6, 7, 8, 10 and 12. See **Michael Doweary Affidavit**. As such, the only issue on appeal is the documents withheld from production in the exemption log, which are arguably responsive to requests 5, 9 and 11.

III. Legal Argument

The documents withheld by the Receiver are exempt from the RTKL.

A. Request 5 – Any communications from January 1, 2020 to the present to or from Aqua America, Inc.

First, the Receiver notes that all communications responsive to this request have been produced. The only issue on appeal with respect to this request is whether Aqua's Proposal in response to the City of Chester's Requests for Proposals, which was attached to one of the email correspondences produced, is subject to disclosure under the RTKL. The City of Chester issued a Request for Proposals for the Acquisition of the Chester Water Authority. See **Michael Doweary Affidavit**. Aqua Pennsylvania Inc. submitted a bid in response to the RFP. See **Michael Doweary Affidavit**. That bid was later forwarded via electronic mail to the Receiver as part of his duties as the Receiver for the City of Chester. **Exhibit D**. To date, no contract has been awarded and negotiations are ongoing. See **Michael Doweary Affidavit**.

The bid submitted by Aqua Pennsylvania in response to the City of Chester's RFP is not subject to disclosure under the RTKL. Under the RTKL, "[a] record in the possession of a Commonwealth agency ... shall be presumed to be a public record." Section 305(a) of the RTKL, 65 P.S. § 67.305(a). The agency has the burden of proving the applicability of an exception under the RTKL "by a preponderance of the evidence." Section 708(a)(1) of the RTKL, 65 P.S. § 67.708(a)(1). "An agency may meet its burden through an unsworn attestation or a sworn affidavit." *West Chester University of Pennsylvania v. Schackner*, 124 A.3d 382, 393 (Pa.Cmwlt.2015).

Section 708(b)(26) of the RTKL exempts from disclosure:

A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability.

Section 708(b)(26) temporarily exempts offerors' proposals from disclosure until a contract is awarded or the procurement is canceled. 65 P.S. § 67.708(b)(26); *UnitedHealthcare of Pennsylvania, Inc. v. Pennsylvania Dep't of Hum. Servs.*, 187 A.3d 1046, 1054 (Pa. Commw. Ct. 2018) (citing *Department of Transportation v. Walsh/Granite JV*, 149 A.3d 425, 430 (Pa. Cmwlth. 2016)); see *Greco v. Department of General Services* (Pa. Cmwlth., No. 260 C.D. 2016, filed July 10, 2017), slip op. at 6–8, 2017 WL 2915903. The Commonwealth Court has held that the General Assembly intended the phrase “award of the contract” for purposes of Section 708(b)(26) to mean the execution of the contract, not the selection of offerors. *UnitedHealthcare of Pennsylvania, Inc. v. Pennsylvania Dep't of Hum. Servs.*, 187 A.3d 1046, 1058 (Pa. Commw. Ct. 2018).

In applying Section 708(b)(26) to the facts of this case, it is clear that the document at issue, the Asset Purchase Agreement, was submitted in response to a Request for Proposal by the City of Chester. Because no contract has been executed and negotiations continue, this proposal is exempt from the RTKL under Section 708(b)(26). *UnitedHealthcare of Pennsylvania, Inc. v. Pennsylvania Dep't of Hum. Servs.*, 187 A.3d 1046, 1058 (Pa. Commw. Ct. 2018).

B. Request 9 – Any Written Waiver of Conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver and Request 11 – Any joint representation, joint prosecution, joint defense or common interest letters or agreement that you have with any party, lawyer or law firm

Both Request 9 and Request 11 are exempt from the RTKL because they are covered by the attorney-client privilege and attorney-work product doctrine. Section 102 of the RTKL defines “public record,” in pertinent part, as “[a] record including a financial record of a Commonwealth or local agency that ... is not protected by a privilege.” 65 P.S. § 67.102. In turn, a “privilege” is defined as “the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.” *Id.* The agency bears the burden to prove, by a preponderance of the evidence, that a record contains privileged material and, hence, is protected from disclosure. 65 P.S. § 67.708(a)(1); *Pennsylvania Pub. Util. Comm'n v. Sunrise Energy, LLC*, 177 A.3d 438, 442 (Pa. Commw. Ct. 2018)(citing *Office of the District Attorney of Philadelphia v. Bagwell (Bagwell IV)*, 155 A.3d 1119 (Pa. Cmwlth. 2017)).

In Pennsylvania, the attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice. *Gillard v. AIG Ins. Co.*, 609 Pa. 65, 88–89, 15 A.3d 44, 59 (2011). The attorney-client privilege protects communications between attorneys and clients from compelled disclosure. It applies to any communication that satisfies the following elements: it must be (1) a communication (2) made between privileged persons (3) in confidence and (4) for the purpose of obtaining or providing legal assistance for the client.” *In re Teleglobe Communications Corp.* 493 F.3d 345, 359 (3d Cir. 2007). The purpose of the attorney-client privilege is to “encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Jaffee v. Redmond*, 518 U.S. 1, 11, 116 S. Ct. 1923, 1929, 135 L. Ed. 2d 337 (1996)

The attorney-work product doctrine acknowledges that “attorneys need a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.” *Hickman v. Taylor*, 329 U.S. 495, 510–11, 67 S.Ct. 385, 91 L.Ed. 451 (1947). Thus, the attorney-work-product doctrine serves the purpose of safeguarding the mental processes of an attorney, as well as the materials prepared by agents of that attorney. *Bagwell I*, 103 A.3d at 416.

With respect to the RTKL, courts have held that the attorney-work-product doctrine not only “protects the mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties, particularly in anticipation or prevention of litigation from disclosure,” but also “any material prepared by the attorney in anticipation of litigation, regardless of whether it is confidential.” *Id.* (internal citations and quotation marks omitted). The Pennsylvania Supreme Court has established that materials constituting attorney-work-product are not subject to compulsory disclosure under the RTKL. *See Pennsylvania Pub. Util. Comm’n v. Sunrise Energy, LLC*, 177 A.3d 438, 442–43 (Pa. Commw. Ct. 2018)(citing *LaValle v. Office of General Counsel*, 564 Pa. 482, 769 A.2d 449, 459 (2001) (decided under Pennsylvania's former RTKL).

i. The Joint Defense Agreement is Protected by the Attorney-Client Privilege and Attorney-Work Product Doctrine

Request 11 seeks copies of all joint defense agreements entered into by the Receiver. Joint defense agreements are covered by the attorney-client privilege and the attorney work product doctrine, and thus, exempt from disclosure under the RTKL. Courts replaced the joint-defense privilege, which only applied to criminal co-defendants, with a broader one that protects all communications shared within a proper “community of interest,” whether the context be criminal or civil. *In re Teleglobe Commc’ns Corp.*, 493 F.3d 345, 364 (3d Cir. 2007), as amended (Oct. 12, 2007) (citing 20 RICE § 4:35; see also Andrew R. Taggart, Parent-Subsidiary Communications & the Attorney-Client Privilege, 65 U. CHI. L.REV.. 315 (1998)). The community-of-interest privilege allows attorneys representing different clients with similar legal interests to share information without having to disclose it to others. It applies in civil and

criminal litigation, and even in purely transactional contexts. RICE § 4:35; RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 76.

Joint defense agreements themselves are generally considered privileged. See, *A.I. Credit Corp. v. Providence Washington Ins. Co.*, No. 96CIV7955AGS AJP, 1997 WL 231127, at *4 (S.D.N.Y. May 7, 1997)(citing *United States v. Bicoastal Corp.*, 92–CR–261, 1992 WL 693384 at *6 (N.D.N.Y. Sept.28, 1992) (“This court does find that the disclosure of the existence of such an [joint defense] agreement would be an improper intrusion into the preparation of the defendants' case. Thus, this court will deny any motion by the Government to be provided with any joint defense agreement should one exist.”); *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 218 (Tenn. Ct. App. 2002)(Defendant was entitled to assert the common interest privilege with regard to the draft agreement itself and the communications relating to this draft).

Applying the law to the facts of this case, it is clear that the joint defense agreement at issue is covered by both the attorney client privilege and attorney work product doctrine, and thus, exempt from disclosure. Notably, parties enter into a joint defense agreement to preserve the attorney client privilege between counsel for different clients. The decision as to whether to enter into a joint defense agreement entails legal strategy for each client and requiring disclosure of the existence of a joint defense agreement and the identities of the parties involved in a joint defense agreement would result in disclosure of strategy involving ongoing litigation, in violation of the attorney-client privilege and attorney-work product doctrine. Because this agreement itself is intertwined with the parties' strategy, it is protected by the attorney-work product doctrine in addition to the attorney client privilege.

ii. The Written Waiver of Conflict is Protected by Attorney-Client Privilege

Request 9 seeks written waivers of conflict from any attorney representing the Receiver. However, this request clearly seeks a privileged communication, and thus, is exempted from the RTKL. This document is a communication drafted by the Receiver's attorney addressed to the Receiver. Because the requested information involves correspondence from the Receiver's attorney to the Receiver for purpose of providing legal advice, it clearly meets the requirement of *In re Teleglobe Communications Corp.*, which requires the privileged material to be a “(1) a communication (2) made between privileged persons (3) in confidence and (4) for the purpose of obtaining or providing legal assistance for the client.” Because this request would result in confidential communications between the Receiver and his attorney being disclosed, it is exempt from disclosure under the RTKL.

Jordan Davis, Esq., Appeals Officer
Pennsylvania Office of Open Records
July 23, 2021
Page 6

C. Conclusion

In light of the foregoing, it is respectfully requested on behalf of the Receiver for the City of Chester that the Pennsylvania Office of Open Records deny the within appeal.

Very truly yours,



Benjamin Patchen

Enclosures

cc: Mr. Alfred Brown (via email) (abrown@daileyllp.com)

AFFIDAVIT

I, MICHAEL DOWEARY, Receiver for the City of Chester, hereby swear and affirm that:

1. I was appointed to be the Reciever for the City of Chester on June 22, 2020.
2. The City of Chester is a distressed municipality under Act 47.
3. As Receiver for the City of Chester, I am responsible for developing a recovery plan to continue the provision of vital and necessary services, provide for the payment of lawful obligations of the City and its authorities and provide for timely deposits of required payments to the pension funds.
4. Based on my duties as Receiver, I am aware that the City of Chester has issued a Request for Proposals for the Acquisition of Assets of the Chester Water Authority.
5. One of the bids in response to the RFP was submitted by Aqua Pennsylvania, Inc.
6. Aqua Pennsylvania, Inc.'s bid was forwarded to me in a July 23, 2020 email correspondence by their counsel.
7. To date, no contract has been executed, and the City of Chester is still considering its options with respect to the potential acquisition of the Chester Water Authority.
8. I have reviewed the Right to Know request filed by Dailey LLP.
9. In my capacity as Receiver for the City of Chester, I am familiar with the records contained in my office.
10. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of my office, and searched my email account for all responsive documentation.
11. After conducting a good faith search of the my office's files and email account, I have identified all of the records within the Agency's possession, custody and control that are

responsive to the request and not subject to any exemptions and provided those documents to the requester through my attorney via electronic mail on May 28, 2021, June 18, 2021 and July 21, 2021.

12. Other than documents that were withheld subject to exemption under the Right to Know Law and identified in the attached privilege log, I have produced all responsive documents in my possession.

13. I have reviewed each of the records withheld and the description of record type, record date, number of pages, the subject matter, authors of the record, and the recipients of the records as described in the preceding exemption log are true and correct.

14. The facts set forth above are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.



7/23/2021

DATE

MICHAEL DOWEARY
RECEIVER
CITY OF CHESTER

RTLK Log for Exemptions, Redactions and Privileged Records

Records of the Receiver for the City of Chester

Record Type	Record Date	Number of Pages	Subject Matter	Authors	Recipients	Legal Basis for Exclusion
Joint Privilege Agreement	2021	5	Litigation	Campbell Durrant, P.C.		Attorney Client Privilege and/or Attorney Work Product Doctrine
Potential Conflict of Interest Waiver	August 12, 2020	2	Litigation	Campbell Durrant, P.C.		Attorney Client Privilege and/or Attorney Work Product Doctrine
Potential Conflict of Interest Waiver	February 12, 2021	2	Litigation	Campbell Durrant, P.C.		Attorney Client Privilege and/or Attorney Work Product Doctrine
Email Correspondence regarding Potential Conflict of Waiver	February 28, 2021	2	Litigation		Campbell Durrant, P.C.	Attorney Client Privilege and/or Work Product Doctrine
Asset Purchase Management Contract	July 23, 2020	57	Proposal	Aqua Pennsylvania, Inc.	Michael Doweary	65 P.S. § 67.708(26)

EXHIBIT A



pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Receiver for the City of Chester (Attn: AORO)

Date of Request: 4/23/2021 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Alfred Brown Company (if applicable): Dailey LLP

Mailing Address: 1650 Market Street, Suite 3600

City: Philadelphia State: PA Zip: 19103 Email: abrown@daileyllp.com

Telephone: 215.282.5180 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

See attached.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)

☒ Yes, electronic copies preferred if available

☐ No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☒ \$100 (or) ☐ \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020

Pursuant to the Right-to-Know Law, 65 P.S. § 67.101, et seq., please provide copies of the following documents to:

Alfred Anthony Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 19103

We are happy to pay the costs associated with this request.

To the extent you do not have documents responsive to the requests, please state that in an affidavit.

To the extent documents exist in digital format, please provide us copies of those in digital format.

Unless otherwise specified, the time period for these requests is January 1, 2016 to the present.

We request that you provide copies of the following, as well as copies of records¹, documents², email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

¹ Record or records is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. See 65 P.S. §67.102.

² As used herein, the term "document" or "documents" is defined in the broadest sense including, but not limited to, the following items, whether printed or recorded or reproduced by any other digital process, mechanical process, or written or produced by hand: Electronic mail, calendars, notes, transcripts of any proceedings, meetings or conversations, diaries, statistics, letters, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications, telephone calls, meetings or other communications, bulletins, printed matter (including newspapers, magazines and other publications, and articles and clippings, therefrom), press releases, computer tapes and printouts, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), representations of any kind (including without limitation, photographs, charts, graphs, and videotape, or film recordings) and digital, electronic, mechanical or electrical records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, thumb drives or other media) or transcriptions thereof, work papers, preliminary drafts or notes, diagrams, agreements, communications, government hearings or reports, correspondence, telegrams, memoranda, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, videotape films, brochures, pamphlets, photographs, circulars, any marginal comments under any documents, charts, schedules, diaries, all recording tapes or wires, any form of magnetic data whether stored on disks, drum, core or in any other matter and all writings or recorded material by whatever means or method recorded or stored.

2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present;
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver
10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

EXHIBIT B

One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

Benjamin Patchen
Attorney at Law
Direct Dial: 610-227-2594
Email: bpatchen@cdblaw.com

May 28, 2021

Via email and regular mail

Alfred Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 190103
abrown@daileyllp.com

RE: Right to Know Request

Dear Mr Brown:

This firm is counsel to the Receiver for the City of Chester. I am writing in response to your request under the Pennsylvania Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* A copy of your request is attached. *See* Exhibit A. Your request was emailed to the Receiver, Michael Doweary, at 4:23 p.m. on Friday, April 23, 2021. On April 27, 2021, this firm sent you a letter invoking a further 30 days to respond to your request.

Your requests are granted in part (as indicated below) and denied in part for the reasons set forth below. We believe that your requests should be denied for legal reasons set forth in the specific responses to your requests. In addition to the below specific denials, the Receiver denies that he is the Commonwealth or a Commonwealth Official under the applicable legal standards, and reserves his right to contest that legal conclusion in any pending or future proceeding.

Denial Reason 1 – Lack of Specificity, 65 P.S. § 67.703

In *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Cmwlth. 2015), the Commonwealth Court set forth a three-part balancing test to evaluate whether a request was sufficiently specific, examining

whether the request identified: (1) the subject matter of the request; (2) the scope of the documents sought; and (3) the timeframe for the records sought. *Id.* at 1125; *see also Carey v. Department of Corrections*, 61 A.3d 367, 372 (Pa. Cmwlth. 2013). Because many of your requests have not identified a transaction or activity, a discrete group of documents, or a finite period of time for which the records are sought, your requests are denied in part because you have not met the elements for the PA Office of Open Records three prong test for specificity.

Denial Reason 2 – Lack of Specificity, Requesting Answers or Information Not a Record, RTKL, 65 P.S. § 67.703

Your requests are denied in part for lack of specificity. RTKL, 65 P.S. 67.703. Your request is denied because you are requesting answers to questions or information and the RTKL does not apply to requests for answers, only requests for records. In accordance with the RTKL, written requests must “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” RTKL, 65 P.S. § 67.703.

Denial Reason 3 – Request for Information Not a Record

Your requests are denied in part because you are requesting information that is not a record. Under the RTKL, a request must seek records rather than answers to questions. *See Moll v. Wormleysburg Borough*, No. AP 2012-0308 (Pa. O.O.R.D. March 30, 2012; *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (the [RTKL] d[oes] not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”).

Denial Reason 4 – Records Do Not Exist, RTKL, 65 P.S. § 67.705

Your request is denied because the records you are seeking do not currently exist as you requested or because the agency does not currently compile, maintain, format or organize the record in the manner requested. RTKL, 65 P.S. § 67.705, Creation of Record states, “When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

Denial Reason 5 – Pre-Decisional Deliberations, RTKL, 65 P.S. 67.708(b)(10)(i)(A)

Your request is denied in part because the requested records include or reference pre-decisional deliberations of an agency. RTKL, 65 P.S. 67.708(b)(10)(i)(A).

Denial Reason 6 – Attorney Client Privilege and/or the Attorney Work Product Doctrine, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records requested are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine. RTKL, 65 P.S. § 67.102.

Denial Reason 7 – Attorney Client Communications, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records you requested contain descriptions revealing attorney-client communications which is protected by the Attorney Client Privilege. See *Levy v. Senate of Pa.*, 619 Pa. 586 (Pa. 2013); RTKL, 65 P.S. § 67.102.

SPECIFIC REQUESTS AND RESPONSES TO REQUESTS ARE AS FOLLOWS:

Request 1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

RESPONSE: Your request is denied in part due to lack of specificity and request for information not a record. Without waiving that objection, See Application for Assistance to DCED Act 47 Program.

Request 2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present.

RESPONSE: All responsive comments in the possession of the Receiver are maintained on Microsoft Excel files, which are included in the responsive documents.

Request 3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8 and 21-23).

RESPONSE: Your request is denied in part due to lack of specificity and because you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, See PFM's Water System Build Analysis.

Request 4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on Page 22 of the Presentation.

RESPONSE: Your request is denied in part. Your request is denied in part as you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, See PFM's Water System Build Analysis.

Request 5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.

RESPONSE: See the communications between the Receiver and Essential Utilities, Inc.

Request 7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine. Without waiving those objections, a copy of responsive Engagement Letter is included in the responsive documents.

Request 11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 12. Any documents where you have exercised your powers to compromise claims, whether against the City of Chester or asserted by the City of Chester.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

RIGHT TO APPEAL

YOU HAVE A RIGHT TO CHALLENGE A DENIAL OF YOUR REQUESTS. IN ORDER TO DO SO, YOU MUST FILE YOUR APPEAL WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. YOUR APPEAL MUST INCLUDE:

- A COPY OF THE RTK REQUEST
- A COPY OF THE AGENCY'S RESPONSE (OR WRITTEN STATEMENT THAT THE REQUEST WAS DEEMED DENIED MEANING THE AGENCY DIDN'T RESPOND AT ALL
- A STATEMENT INCLUDING THE GROUND(S) SUPPORTING YOUR ASSERTION THAT YOUR REQUEST(S) IS A REQUEST(S) FOR A PUBLIC RECORDS AND A STATEMENT ADDRESSING ANY GROUND(S) STATED BY THE AGENCY IN DENYING YOUR REQUEST(S)

APPEAL FORMS AND DETAILED INSTRUCTIONS FOR FILING THE APPEAL CAN BE FOUND ON THE PENNSYLVANIA OFFICE OF OPEN RECORDS WEBSITE; *See*

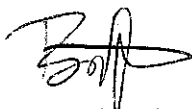
<http://www.openrecords.pa.gov/Appeals/HowtoFile.cfm> (last visited May 24, 2021).

YOUR APPEAL MUST BE SENT TO THE FOLLOWING OFFICE:

Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Via Facsimile: 717-425-5343
Via Email: openrecords@pa.gov

Thank you for your consideration and please feel free to contact me if you have any questions or concerns regarding this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Patchen', with a stylized flourish at the end.

Benjamin Patchen

EXHIBIT A



pennsylvania
OFFICE OF OPEN RECORDS

Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Receiver for the City of Chester (Attn: AORO)

Date of Request: 4/23/2021 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Alfred Brown Company (if applicable): Dailey LLP

Mailing Address: 1650 Market Street, Suite 3600

City: Philadelphia State: PA Zip: 19103 Email: abrown@daileyllp.com

Telephone: 215.282.5180 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

See attached.

DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)

☒ Yes, electronic copies preferred if available

☐ No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ☒ \$100 (or) ☐ \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$_____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: *In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>*

Form updated Feb. 3, 2020

Pursuant to the Right-to-Know Law, 65 P.S. § 67.101, et seq., please provide copies of the following documents to:

Alfred Anthony Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 19103

We are happy to pay the costs associated with this request.

To the extent you do not have documents responsive to the requests, please state that in an affidavit.

To the extent documents exist in digital format, please provide us copies of those in digital format.

Unless otherwise specified, the time period for these requests is January 1, 2016 to the present.

We request that you provide copies of the following, as well as copies of records¹, documents², email(s), text messages or voice mail messages about:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

¹ Record or records is defined as information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document. See 65 P.S. §67.102.

² As used herein, the term "document" or "documents" is defined in the broadest sense including, but not limited to, the following items, whether printed or recorded or reproduced by any other digital process, mechanical process, or written or produced by hand: Electronic mail, calendars, notes, transcripts of any proceedings, meetings or conversations, diaries, statistics, letters, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications, telephone calls, meetings or other communications, bulletins, printed matter (including newspapers, magazines and other publications, and articles and clippings, therefrom), press releases, computer tapes and printouts, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), representations of any kind (including without limitation, photographs, charts, graphs, and videotape, or film recordings) and digital, electronic, mechanical or electrical records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, thumb drives or other media) or transcriptions thereof, work papers, preliminary drafts or notes, diagrams, agreements, communications, government hearings or reports, correspondence, telegrams, memoranda, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture films, videotape films, brochures, pamphlets, photographs, circulars, any marginal comments under any documents, charts, schedules, diaries, all recording tapes or wires, any form of magnetic data whether stored on disks, drum, core or in any other matter and all writings or recorded material by whatever means or method recorded or stored.

2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present;
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the Chester Water Authority be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver
10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

June 22, 2020

John P. McLaughlin
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
jmclaughlin@cdblaw.com

RE: Appointment Letter
Receiver for the City of Chester
Project: *Chester Receivership*, 336 M.D. 2020 (Pa. Commw.)

Dear Mr. McLaughlin:

I hereby appoint you and your firm, Campbell Durrant, P.C., (the “Firm”), to provide advice and counsel to and representation of the Receiver for the City of Chester (the “Chester Receiver”) with regard to labor relations and personnel matters in the above-captioned proceeding. This engagement will be governed by all terms and conditions in connection with your contract for legal services, which will be routed for execution.

This letter sets forth: (1) information regarding the engagement and specific scope of work to be performed; and (2) amended compensation to be paid for these services.

1. Information Regarding the Engagement and Scope of Work

The purpose of this specific appointment is for the Firm to provide advice and counsel to and representation of the Chester Receiver with regard to labor relations and personnel matters. On June 1, 2020, the Department of Community and Economic Development (“DCED”) filed a Petition for Appointment of Receiver for the City of Chester and Related Relief in the Commonwealth Court of Pennsylvania (the “Court”). By Order dated June 22, 2020, the Court appointed Michael Doweary as Receiver for the City of Chester; that Order also requires the Receiver to develop a recovery plan and submit said plan to the Court, DCED, the Chester City Council, and the Mayor of Chester.

Please review the above-described information carefully to ensure there are no conflicts of interest posed in the proposed representation of the Chester Receiver in connection with providing the requested legal services. Should you require additional information to evaluate any potential conflicts prior to your acceptance of this appointment, please contact me at mdoweary@pa.gov.

2. Compensation

It is agreed upon by the Firm and all parties to this agreement, consistent with its proposal for this engagement, that the Firm shall be paid at the following rates: Attorneys will be billed at \$275 per hour; Paralegals and Law Clerks will be billed at \$180 per hour.

Letter to John P. McLaughlin
RE: Legal Services Engagement (Chester Receiver)
June 22, 2020
Page 2

By accepting this appointment, you are acknowledging that the Firm has completed a conflict of interest analysis and identified nothing to be reported prior to the acceptance of work on behalf of the Chester Receiver. Should a conflict or potential conflict be identified at any time during the term of this engagement, the Firm is under a continuing obligation to disclose such matter, in writing, to me and the Department of Community and Economic Development.

Please acknowledge your receipt and acceptance of this letter by signing where indicated and returning the *original* correspondence to me at the Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

Due to the urgent need for legal services, approval has been granted for the Firm to begin work immediately. I look forward to working with you on this important matter for the Commonwealth of Pennsylvania.

Sincerely,



Michael T. Doweary
Receiver for the
City of Chester, Pennsylvania

Accepted on Behalf of the Firm:

By: _____
(Name) (Date)

cc: J. Michael Adams, Jr., Chief Counsel, Department of Community and Economic Development

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:42 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, November 10, 2020 4:14 PM
To: Doweary, Michael <mdoweary@pa.gov>
Subject: RE: [External] Follow up

Michael,

Thank you for your note a couple of weeks ago. I appreciate the sentiment and agree that all interactions should remain in prescribed channels.

The purpose of my note directly to you today is to acknowledge the legal argument put forth before Commonwealth Court today, which in our opinion, was compelling regarding the City's right to unilaterally repossess CWA's assets. I am hopeful that we will receive the court's decision by the end of the calendar year.

The second reason for my note is to request an update on the RFP process that the city initiated and in which Aqua participated. It is unusual that we would allow an offer of \$410 million including a \$12 million upfront payment to remain outstanding for an undefined period. Our last offer of \$410 million was made in June of this year so I'm sure you understand that the Essential board of directors is anxious for some feedback.

We appreciate the amount of diligence, legal and financial review that has been undertaken by the Office of the Receiver. Knowing the extent of work that had to be completed, we have waited patiently for a response from the city and Receiver. However, now that that Commonwealth Court argument has been completed, it is important that we receive some guidance on your timeline for a decision on the RFP.

Any direction you are willing to provide would be most appreciated.

Best Regards,
Chris



Christopher Franklin
Chairman & CEO
O: 610.645.1081
C: 610.324.1079

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Wednesday, July 22, 2020 9:54 AM

To: Franklin, Christopher H <CHFranklin@essential.co>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com;
greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: RE: [External] Follow up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Chris,

It was a pleasure to meet you and Joel as well. We look forward to continued discussions and resolving the myriad of open matters as soon as possible.

Thank you for taking the time to meet and for providing the additional information. Despite the added complication of coordination with the Receiver's office, Kevin will continue to run point. We'll need a little time to digest the information provided in addition to getting up to speed on the terms in the latest offer. In the meantime, we appreciate your continued patience and look forward to connecting soon.

Best regards,

Mike

Michael T. Doweary | Receiver
Office of The Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
www.visitPA.com



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From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, July 21, 2020 6:11 PM
To: Doweary, Michael <mdoweary@pa.gov>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com;
greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: [External] Follow up

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Michael,

Thanks again for taking the time to meet with us last week. I felt it was a great discussion and we look forward to taking the next steps with the City of Chester regarding the Chester Water Authority. As a follow up, I want to provide you with answers and supporting data for three questions you asked in the meeting.

1. **Expected Capital Expenditures in the City of Chester:** In the event we are the winner bidder for the Chester Water Authority, we estimate capital spending of at least \$10M-\$13M over the next 5 years. This would largely consist of pipe replacement given CWA's water treatment plant is located outside the City, and this level of spending will likely increase once we conduct further due diligence. You will recall that due to the unusual circumstances, we do not have access to CWA records or internal capital plans. Through the acquisition of DELCORA, we expect to spend significantly more in the City - approximately \$150M over the next 10-15 years. This capital is needed to address the EPA's Long Term Control Plan related to the City's combined storm and sewer system.
2. **Diversity at Essential/Aqua:** As an organization we are committed to supporting racial and gender diversity within our organization at all levels, making meaningful progress since 2016. Additionally, over that same time period, we have made great progress in enhancing diversity within our vendor network. Although we acknowledge that our work to promote racial and gender diversity is far from finished, we are proud of the progress we have made and are well ahead of our peers in this effort.
3. **Overlap between Aqua (and DELCORA's) Operations and the CWA:** We already serve water to most of Delaware county and will also serve wastewater to much of the county once we acquire DELCORA. Because of this, there is significant geographic proximity and overlap with CWA's operations, and Aqua has four current interconnections. We are already a big part of the communities in and around the City of Chester, making Aqua the logical buyer of the asset. We are committed to SE Pennsylvania given we were founded here 130 years ago, and if we were to own CWA, we would be able to make a real difference in the City going forward.

Please reach out with any questions you have and I look forward to continuing our dialogue. In the meantime, we will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.

Best Regards,

Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:42 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up
Attachments: Receiver Inquiry Responses_7.21.pdf

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, July 21, 2020 6:11 PM
To: Doweary, Michael <mdoweary@pa.gov>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: [External] Follow up

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Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:43 PM
To: Benjamin Patchen
Subject: FW: Thank you

From: Doweary, Michael
Sent: Monday, October 26, 2020 6:27 PM
To: Franklin, Christopher H <CHFranklin@essential.co>
Subject: Thank you

Good afternoon Chris,

Thank you for reaching out last week. I have been concerned with returning your call so I decided to put my response in writing.

With all that is going on, it would probably be best for us to limit our interactions outside of the prescribed channels. PFM and I are very appreciative of the responsiveness and information sharing to date. From a financial perspective, they will continue to be my intermediary. However, if needed, I can introduce our legal counsel as well but I would hate to involve lawyers on every communication.

I hope this is not offensive in any way. In the end, my intention is to protect both of us.

Kind regards,

Michael

Michael T. Doweary | Receiver
Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
www.visitPA.com



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Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:43 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up

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Sent: Wednesday, July 22, 2020 9:54 AM
To: Franklin, Christopher H <CHFranklin@essential.co>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
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Best regards,

Mike

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From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, July 21, 2020 6:11 PM
To: Doweary, Michael <mdoweary@pa.gov>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: [External] Follow up

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Michael,

Thanks again for taking the time to meet with us last week. I felt it was a great discussion and we look forward to taking the next steps with the City of Chester regarding the Chester Water Authority. As a follow up, I want to provide you with answers and supporting data for three questions you asked in the meeting.

1. **Expected Capital Expenditures in the City of Chester:** In the event we are the winner bidder for the Chester Water Authority, we estimate capital spending of at least \$10M-\$13M over the next 5 years. This would largely consist of pipe replacement given CWA's water treatment plant is located outside the City, and this level of spending will likely increase once we conduct further due diligence. You will recall that due to the unusual circumstances, we do not have access to CWA records or internal capital plans. Through the acquisition of DELCORA, we expect to spend significantly more in the City - approximately \$150M over the next 10-15 years. This capital is needed to address the EPA's Long Term Control Plan related to the City's combined storm and sewer system.
2. **Diversity at Essential/Aqua:** As an organization we are committed to supporting racial and gender diversity within our organization at all levels, making meaningful progress since 2016. Additionally, over that same time period, we have made great progress in enhancing diversity within our vendor network. Although we acknowledge that our work to promote racial and gender diversity is far from finished, we are proud of the progress we have made and are well ahead of our peers in this effort.
3. **Overlap between Aqua (and DELCORA's) Operations and the CWA:** We already serve water to most of Delaware county and will also serve wastewater to much of the county once we acquire DELCORA. Because of this, there is significant geographic proximity and overlap with CWA's operations, and Aqua has four current interconnections. We are already a big part of the communities in and around the City of Chester, making Aqua the logical buyer of the asset. We are committed to SE Pennsylvania given we were founded here 130 years ago, and if we were to own CWA, we would be able to make a real difference in the City going forward.

Please reach out with any questions you have and I look forward to continuing our dialogue. In the meantime, we will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.

Best Regards,

Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Applicant Information

Applicant Entity Type:	Government
Applicant Name:	City of Chester
NAICS Code	9211
FEIN/SSN Number	XXXXXXXXXX
DUNS Number:	
CEO:	Thaddeus Kirkland
CEO Title:	Mayor
SAP Vendor #:	XXXXXXX
Contact Name:	Cody Deal
Contact Title:	Executive Assistant
Phone:	(717)-623-2412 Ext.
Fax:	
E-mail:	codeal@pa.gov
Mailing Address:	419 Avenue of the States Suite 400
City:	Chester
State:	PA
Zip Code:	19013

Single Application for Assistance

Web Application Id: 8753532

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Applicant: City of Chester

Program Selected: Act 47

Enterprise Type

Indicate the types of enterprises that describe the organization listed above. You may select more than one type.

<input type="checkbox"/> Advanced Technology	<input type="checkbox"/> Agri-Processor	<input type="checkbox"/> Agri-Producer	<input type="checkbox"/> Authority	<input type="checkbox"/> Biotechnology / Life Sciences
<input type="checkbox"/> Business Financial Services	<input type="checkbox"/> Call Center	<input type="checkbox"/> Child Care Center	<input type="checkbox"/> Commercial	<input type="checkbox"/> Community Dev. Provider
<input type="checkbox"/> Computer & Clerical Operators	<input type="checkbox"/> Defense Related	<input type="checkbox"/> Economic Dev. Provider	<input type="checkbox"/> Educational Facility	<input type="checkbox"/> Emergency Responder
<input type="checkbox"/> Environment and Conservation	<input type="checkbox"/> Exempt Facility	<input type="checkbox"/> Export Manufacturing	<input type="checkbox"/> Export Service	<input type="checkbox"/> Food Processing
<input checked="" type="checkbox"/> Government	<input type="checkbox"/> Healthcare	<input type="checkbox"/> Hospitality	<input type="checkbox"/> Industrial	<input type="checkbox"/> Manufacturing
<input type="checkbox"/> Mining	<input type="checkbox"/> Other	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Recycling	<input type="checkbox"/> Regional & National Headquarters
<input type="checkbox"/> Research & Development	<input type="checkbox"/> Retail	<input type="checkbox"/> Social Services Provider	<input type="checkbox"/> Tourism Promotion	<input type="checkbox"/> Warehouse & Terminal

Government,

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Overview

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Overview

Project Name:

Municipal Act 47 – Receiver Recovery Plan Salary Supplement, RECAST, and Municipal Comp Plan

Is this project related to another previously submitted project?

No

If yes, indicate previous project name:

Have you contacted anyone at DCED about your project?

No

If yes, indicate who:

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Site Locations

Address:	Chester City Hall 1 Fourth Street
City:	Chester
State:	PA
Zip Code:	19103
County:	Delaware
Municipality:	Chester City
PA House:	Thaddeus Kirkland (159)
PA Senate:	John Kane (9)
Current Employees:	236 ♦
Jobs To Be Created:	1 ♦
Designated Areas:	Act 47 Distressed Community

Single Application for Assistance

Web Application Id: 8753532

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Applicant: City of Chester

Program Selected: Act 47

Project Budget

	Act 47	Total
Operating Costs / Working Capital	\$125,000.00	
Salary/Fringe Benefits	\$125,000.00	\$125,000.00
Related Costs	\$95,000.00	
Professional Services/Consultants	\$95,000.00	\$95,000.00
Total	\$220,000.00	
	Budget Total:	\$220,000.00

Basis of Cost

Provide the basis for calculating the costs that are identified in the Project Budget.

Bids/Quotations, Contractor Estimates

Budget Narrative

The narrative must specifically address each of the cost items identified in the Project Budget section. If an amount is placed in any of the OTHER categories, you must specify what the money will be used for. **NOTE:** Some programs have specific guidelines regarding the narrative necessary to qualify for that particular resource. Please read the Program Guidelines for details.

The cost for the COO was synthesized from comparable figures.

We received direct quotes for both the Recast Boost - \$25,000, and the Comprehensive Plan - \$70,000.

Single Application for Assistance

Web Application Id: 8753532

Single Application Id: 202105102490

Applicant: City of Chester

Program Selected: Act 47

Project Narrative

What do you plan to accomplish with this project?

Identify the problem(s) that need to be resolved.

The City of Chester is applying for additional Act 47 funding in order to compensate the newly created Chief Operating Officer position to work alongside the Mayor of Chester, complete a Municipal Comprehensive Plan for the City, and also perform a Recast Boost.

How do you plan to accomplish it?

Include expected outcomes that are measurable, obtainable, clear and understandable, and valid. Examples of measurable outcomes include jobs created or retained, people trained, land or building acquired, housing units renovated or built, etc.

Currently - the COO has already been selected, the Municipal Comprehensive Plan will be put out to bid competitively, and the consultant to perform the Recast has already been selected.

How do you plan to use the funds?

Should include specific use of funds and reflect the budget provided with the application.

The funds will be used to directly compensate the new COO, complete and implement the Municipal Comprehensive Plan, and perform the Recast Boost.

Projected Schedule and Key Milestones and Dates

A detailed schedule of activities, including key milestones and dates, must accompany this application if applicable to the project.

All activities involved in these projects will begin as soon as approval is received. The timeline for Receivership is currently set to run through at least June 2022, with annually renewable terms after that.



Pennsylvania Department of Community and Economic Development

Single Application for Assistance

Single Application #: 202105102490

This page must accompany all required supplemental information **Mail to:**

**Pennsylvania Department of Community and Economic Development
Commonwealth Keystone Building
Attn: Customer Service Center
400 North Street, 4th Floor
Harrisburg, PA 17120-0225**

I hereby certify that all information contained in the single application and supporting materials submitted to DCED via the Internet, Single Application # 202105102490 and its attachments are true and correct and accurately represent the status and economic condition of the Applicant, and I also certify that, if applying on behalf of the applicant, I have verified with an authorized representative of the Applicant that such information is true and correct and accurately represents the status and economic condition of the Applicant. I also understand that if I knowingly make a false statement or overvalue a security to obtain a grant and/or loan from the Commonwealth of Pennsylvania, I may be subject to criminal prosecution in accordance with 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and 31 U.S.C. §§ 3729 and 3802 (relating to false claims and statements).



Signature: Cody Deal

The Pennsylvania Department of Community and Economic Development reserves the right to accept or reject any or all applications submitted on the Single Application for Assistance contingent upon available funding sources and respective applicant eligibility.

Chester's Retiree Benefit Situation

MFRAC Committee Meeting

May 25, 2021



THE KAPOOR COMPANY
ADVISORS & CONSULTANTS

Overview

- The purpose of this presentation is to provide the basic facts surrounding the City of Chester's pension and retiree health care situation
- The City's pension and retiree health care funding situation are the worst of any city in the Commonwealth
- The police pension plan remains critically underfunded and close to running out of money to pay pension benefits.
- In 2021, the City will spend approximately \$14.6 million or 27.8% of its entire General Fund budget on pension and retiree health care costs
 - Every dollar spent on these legacy costs is a dollar that the City cannot spend on other City needs. By contrast, the budget allocates only \$500,000 for capital or economic and community development initiatives
- The key question that we face is:
 - How can the City contribute enough to its employee pension plans – especially the police plan which is nearly insolvent – without drawing so much money from the City's limited resources that it cripples City operations or pushes taxes and fees to a level that residents cannot afford?



Basic Facts on Chester's Pension Situation

- Chester has three employee pension plans:
 - Police Pension Plan (PPP) for police retirees
 - Fire Pension Plan (FPP) for fire retirees
 - Officers and Employees Pension Plan (O&E) for eligible City employees not in the PPP or FPP
- These three plans are “defined benefit” plans which means that the monthly benefit payments that retirees receive during retirement are set at a specific level, regardless of the plan’s funding status. The risk for a defined benefit plan is on the City and by extension taxpayers.
 - In “defined contribution” plans, which are common in the private sector, the benefit is determined by how much is available to fund the benefit and the risk is on the retiree.
- Every two years, an actuary conducts a **valuation** which compares the assets of a pension fund to the liabilities that it owes. The last valuations completed for the City’s funds were as of January 1, 2019.
- Every year, the actuary calculates how much the City legally needs to contribute to the plans which is called the **Minimum Municipal Obligation** or “**MMO**”



Basic Facts on Chester's Pension Situation (continued)

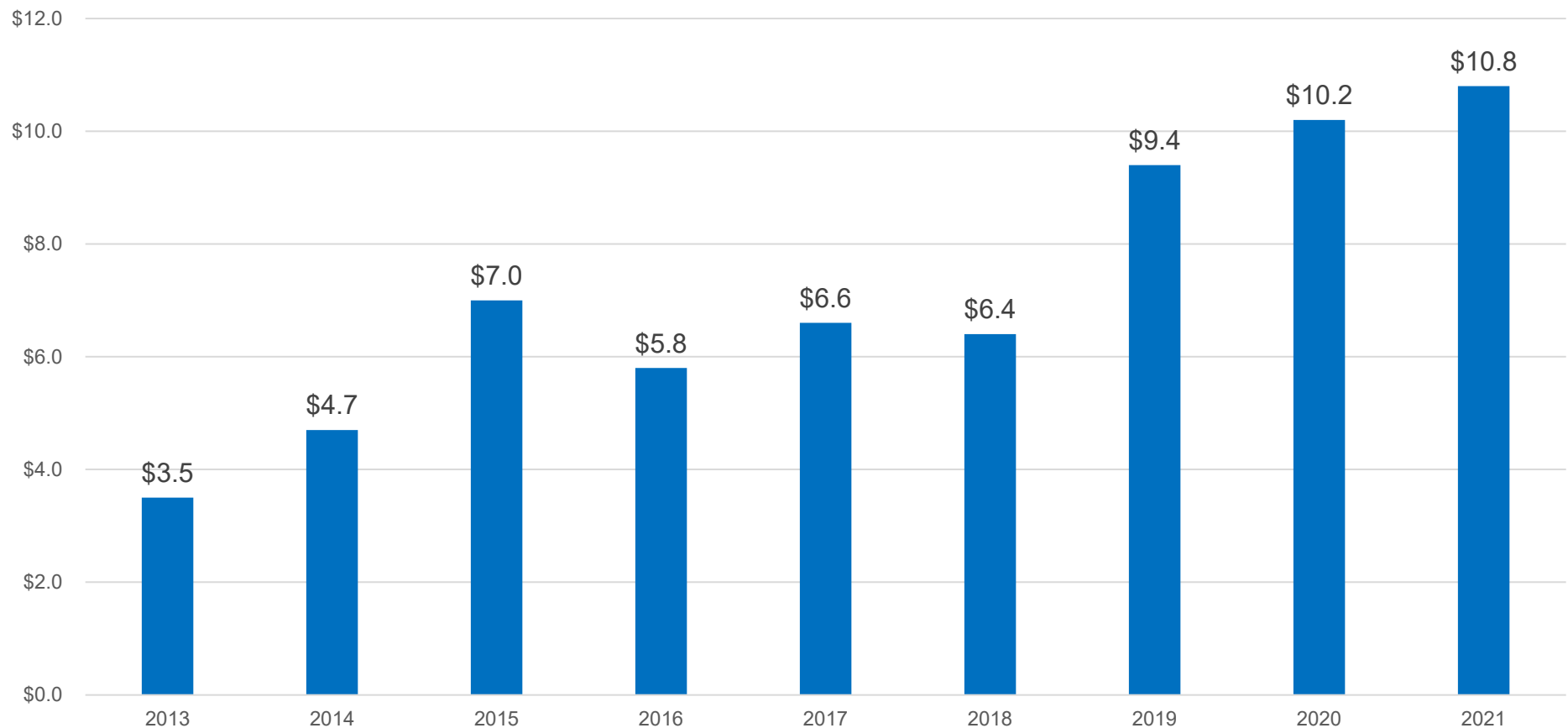
- Chester's MMOs have more than tripled since 2013 to \$10.8 million in 2021.
- Due to the number of retirees and its relative financial weakness, the police pension plan comprises approximately \$8.5 million or 85% of the City's 2021 MMO.
- The City has not been able to afford making its full MMO payment since 2013. As a result, the City is incurring penalties and interest costs on these missed payments and its police pension plan is dangerously close to running out of money to pay benefits.
- Chester's pension situation is the worst of any city in the Commonwealth and is even worse than reflected in the 1/1/2019 valuation because those valuations assume that there is much more money in the police pension plan than there actually is.
 - We discuss this in more detail on slide 7
- The next group of slides provides data to support the statements on this slide.



City MMO Growth

The City's combined Minimum Municipal Obligation for its three pension funds has more than tripled since 2013.

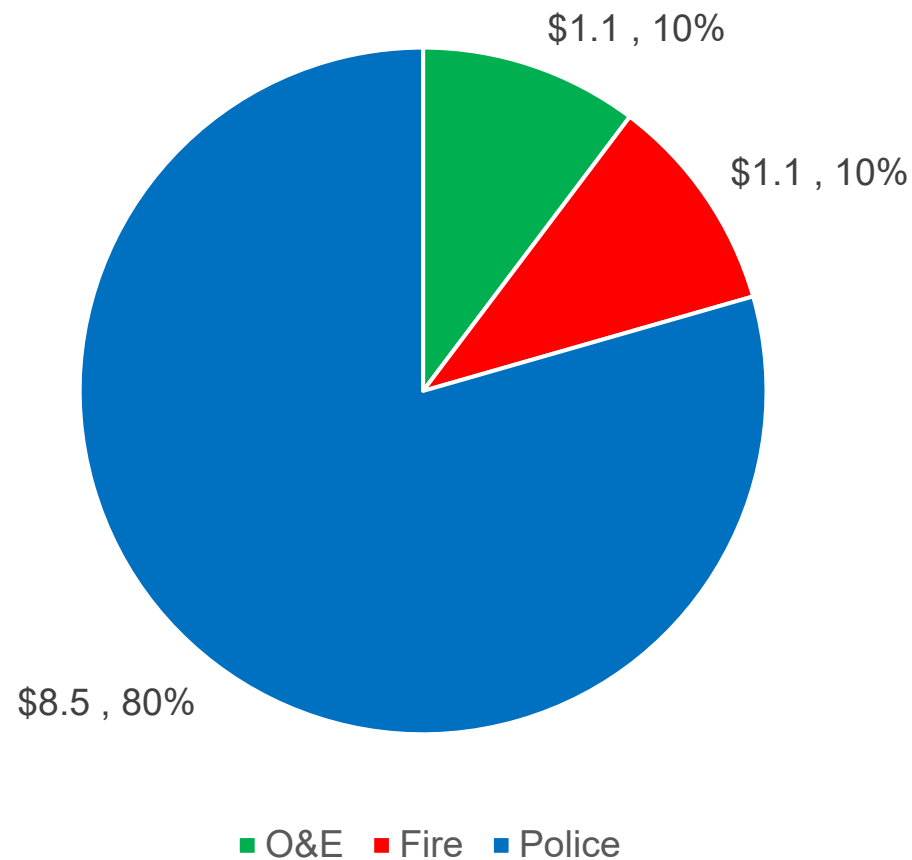
City Minimum Municipal Obligations (\$ Millions), 2013 - 2021



City MMO by Plan

Because of the number of retirees and its relative financial weakness, the police pension plan makes up approximately 80% of the City's total MMO.

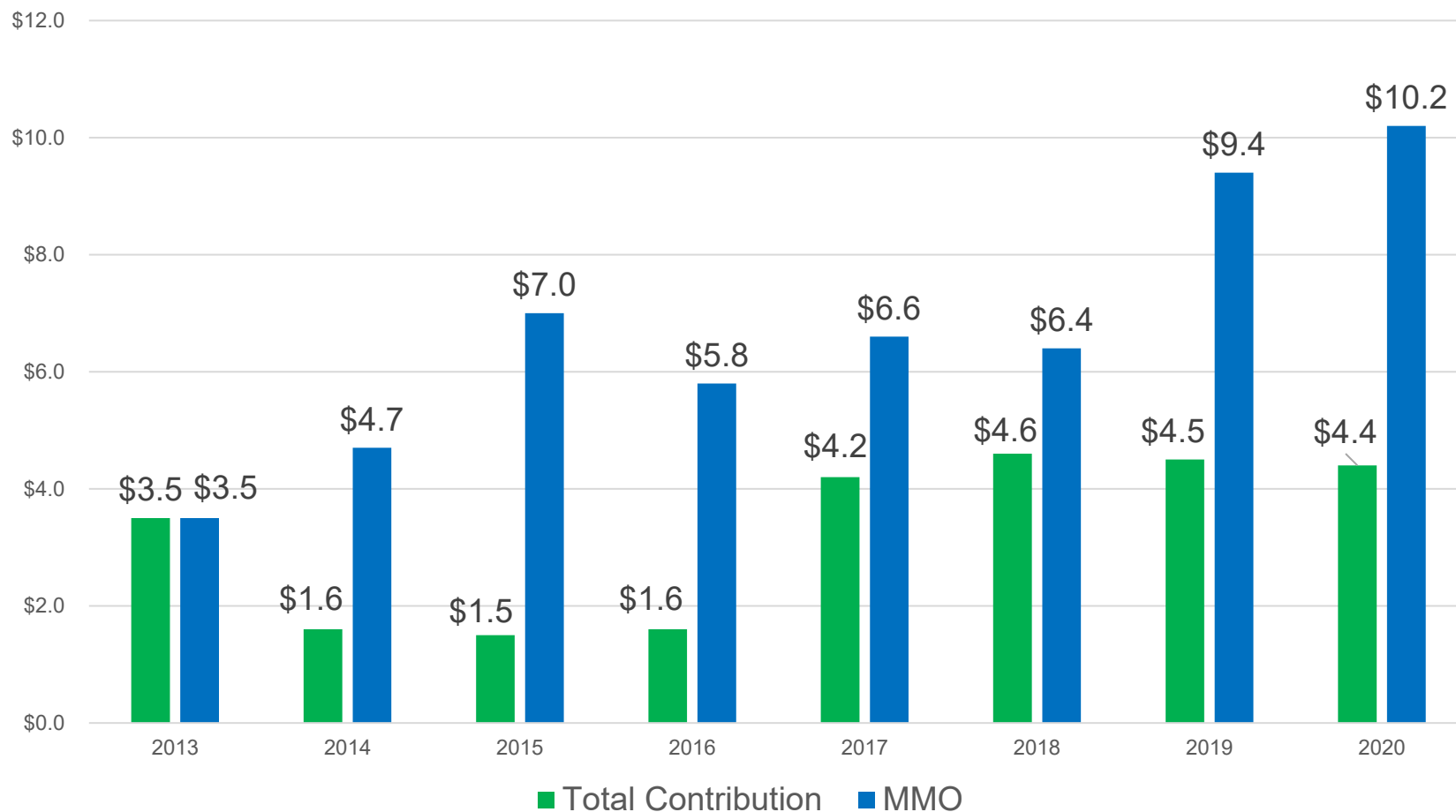
City MMO by Plan (Millions), 2021



City MMOs vs. City Contributions

The City has not been able to afford to make its full MMO payment since 2013. Last year, the City only contributed \$4.4 million towards a \$10.2 million MMO.

City Contributions Relative to MMOs (\$ Millions), 2013-2020



The True Status of Chester's Pension Funds

- Although many Pennsylvania cities have underfunded pensions, as of 1/1/2019, the Chester's situation is the worst among Pennsylvania cities. The following table reflects the funding percentages of the plans in the 1/1/19 valuation.

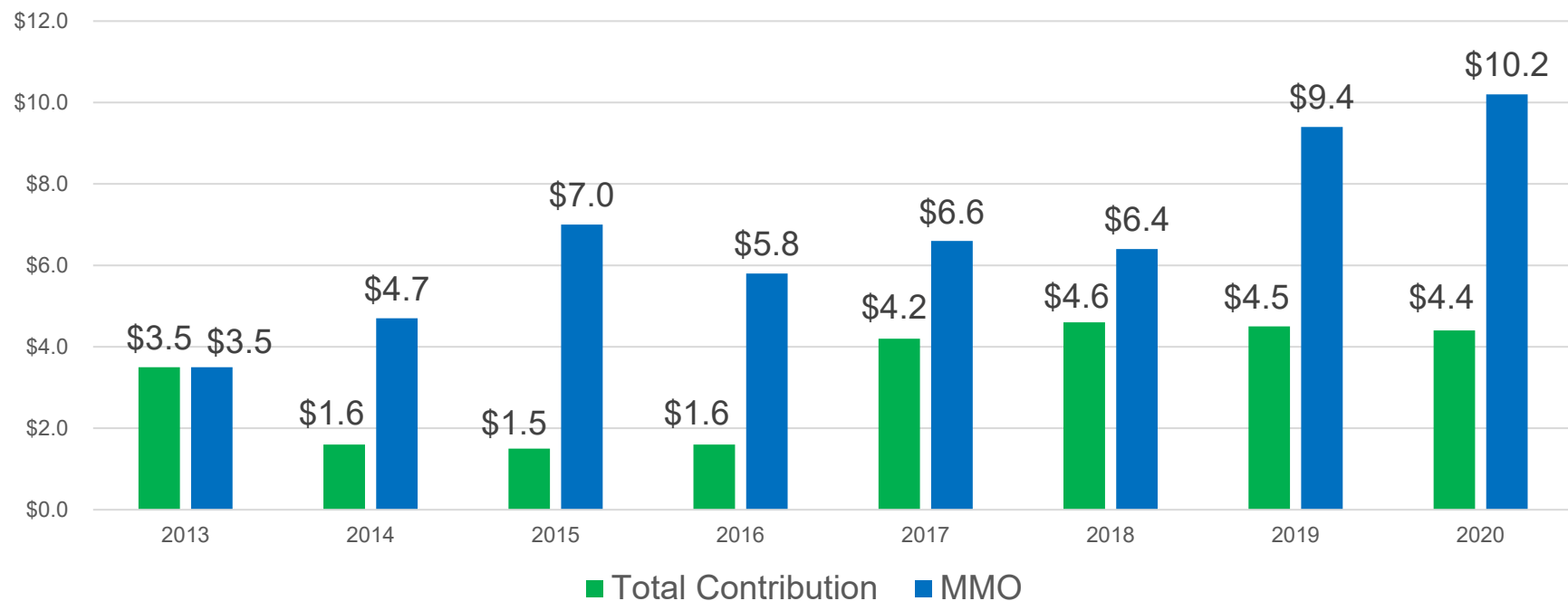
	PPP	FPP	O&E	Total
Liabilities	\$83,195,607	\$39,891,425	\$8,028,817	\$131,115,849
Assets	\$27,992,535	\$33,275,475	\$2,674,647	\$63,942,657
Unfunded Liability	-\$55,203,072	-\$6,615,950	-\$5,354,170	-\$67,173,192
Funded %	33.6%	83.4%	33.3%	49%

- However, the problem is even worse than what appears in the 1/1/2019 valuations because those calculations treat the MMO contributions that the City did not make in prior years and still owes as if that money was already in the plan because they are “receivables” due to the plan.**
- In the above table, the police pension plan appears to have \$27,992,535 in assets as of 1/1/2019 with a funding percentage of 33.6%. However, almost all of those assets are “receivables.” Excluding the receivables, as of 12/31/2019, the police pension plan's funding percentage was closer to 3%.
- Excluding receivables, which is a more accurate reflection of reality, will also cause the MMO to increase. The actuary is in the process of determining this amount and we expect an answer soon.

How Did Things Get So Bad in the Pension Funds?

- The City fell behind on its MMO payments in 2014 and has never been able to catch up
 - Note: Part of the reason why the police pension fund is so poorly funded relative to the fire plan is that in previous years, the City made contributions to the fire pension fund but not the police pension fund. In recent years, the City only contributed to the police pension fund

City Contributions Relative to MMOs (\$ Millions), 2013-2020



How Did Things Get So Bad in the Pension Funds? (Continued)

- The benefits offered to police employees are far richer than what Chester can afford and far rich than the standards established in Pennsylvania's Third Class City code
 - Police officers hired before 2/1/17 can retire with 20 years of service regardless of age and can accelerate their retirement date by purchasing pre-employment military time resulting in officers retiring in their 40s
 - Police officers hired before 2/1/17 receive a benefit starting at 50% of final pay and increasing to 70% with 25 years of service, plus any service increment. Those hired after receive a benefit of 50% of the higher of final monthly salary or highest annual average during any five preceding years
 - The pension benefit calculation for police officers hired before 2/1/17 included overtime which enables officers to work large amounts of overtime before retirement resulting an elevated pension benefit. Overtime is not counted in the pension benefit for officers hired after that date
 - In 2020, three police officers ages 44, 45, and 42 entered the DROP program with pensionable salaries of \$210,874, \$207,414 and \$143,311 respectively. Under the current benefit provisions, their pensions will be \$108,073, \$103,707 and \$71,652. The median household income for Chester in 2019 was \$32,403
 - The City had an unusually high number of disability pensions and until recently, disability pensions were paid at a higher rate (100% of last 12 months salary) than non-disability pensions, creating an incentive to retire on disability



Basic Facts on Chester's Retiree Health Care Situation

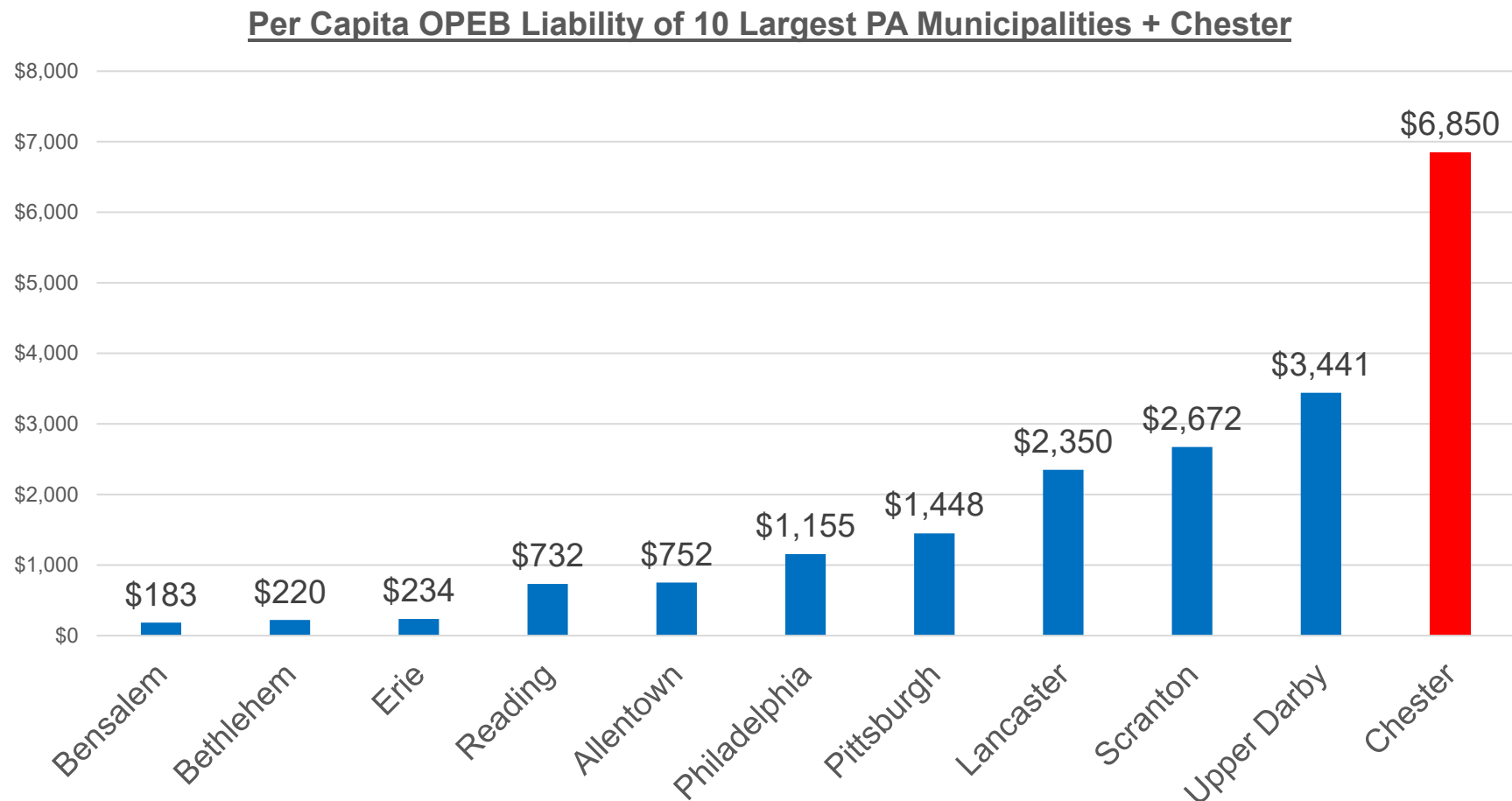
- In addition to pension benefits, the City also provides many of its employees and retirees with retiree health care which the City must pay for (these benefits are referred to as “other post-employment benefits” or OPEB)
 - As of February 2021, there were 178 retired employees on the City's retiree health care plans
- While the City has put aside some money for pension liabilities (albeit not nearly enough), it has not put aside any for retiree health care liabilities and pays claims from the City's general fund as they are received.
- As of the 12/31/2018 retiree health care valuation, the City has an unfunded retiree health care liability of \$232.9 million which is close to 3.5 times greater than the City's unfunded liability for employee pensions at the same point
 - The following table has the OPEB liabilities by employee group as of 12/31/2018

Group	OPEB Liabilities in Millions
Police	\$135.7
Fire	\$66.7
O&E	\$30.5
TOTAL	\$232.9



Putting Chester's Retiree Health Care Liabilities in Context

Chester's per capita OPEB liability (liability divided by population) is significantly higher than the OPEB liability of the 10 largest Pennsylvania municipalities.



What Has Been Done?

■ What Has Been Done to Address the Situation?

- In 2017, the City and the FOP agreed to fix many of the pension benefits; however, most of the changes only apply to officers hired after February 1, 2017 and most of the cost is from already-retired police officers
- Police officers hired after 2/1/2017 and FFs hired after 1/1/2017 are not eligible for retiree health care
- In order to comply with the law, the City raised the distressed pension earned income tax on residents beginning in 2021. That money will go into the pension funds.
- Receiver has issued a directive that DROP payments from police pension fund be temporarily suspended to ensure enough money remains in the fund to pay benefits

■ What Is Being Done to Address the Situation?

- Receiver and City are working to control spending costs so that City will make \$10.8 million MMO payment this year. Also in the process of determining MMO excluding receivables
- City and Receiver team in process of moving retirees to lower cost Medicare Supplemental plan
- City and Receiver working to collect tax information for police disability pensioners to determine whether the pensioners owe offsets to the pension fund
- City and Receiver in process of conducting eligibility audit to ensure that only eligible retirees (and active employees) and their dependents are receiving retiree health care



Conclusion

How Do We Really Fix These Problems?

- There is no way to truly fix Chester's retiree benefit situation – or Chester's long-term financial health - without **both** reducing the unaffordable costs of the pension and retiree health care benefits **and** a substantial cash infusion into the plans
 - While a large one-time contribution to the pension funds will have to be part of the solution, such a payment alone will not solve the problem. The unaffordable benefits must also be addressed or else the problem will continue to grow and be handed to future generations who will have fewer options to solve it
 - Some Pennsylvania communities have sold assets to put money into pension funds without addressing benefit costs and are now facing the same financial problems that existed before the asset sale – though now, they do not have an asset to sell
- All options are on the table to deal with this crisis, including potential asset monetization
 - The Receiver has retained bankruptcy counsel



CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services ("Contract"), entered into as of the **DATE** by and between **CAMPBELL DURRANT, PC** ("Law Firm") and the Commonwealth of Pennsylvania (the "Commonwealth"), acting by and through the **RECEIVER FOR THE CITY OF CHESTER** ("the Receiver").

The Receiver has a need for professional and specialized legal services to represent the Receiver in matters described in Appendix A.

Section 706(a)(11) of Act 47 of July 10, 1987 (P.L. 246), as amended, known as the Municipalities Financial Recovery Act (53 P.S. §11701.101 et. seq.), (the "Act") authorizes the Receiver to employ financial or legal experts deemed necessary to develop and implement the recovery plan.

The Receiver has engaged the Law Firm via an appointment letter after negotiating fair and reasonable compensation, and the Law Firm has agreed to perform such professional and specialized legal services.

NOW, THEREFORE, the Receiver and the Law Firm, with the intention of being legally bound, hereby agree as follows:

1. Definitions. The following definitions shall apply when used in this Contract:
 - a. "Effective Date" shall mean: a) the date the Contract has been fully executed by the Law Firm and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later or c) in cases where the Receiver has determined an emergent need for counsel as provided below, the date on the Notice to Proceed. The Contract shall not be a legally binding contract until after a copy of the fully-executed Contract and a Notice to Proceed have been sent to the Law Firm except as otherwise provided for urgent services noted below.
 - b. "Notice to Proceed" shall mean a written notice sent to the Law Firm stating that the contract has been fully executed and that the Law Firm may commence performance, or an appointment letter indicating an immediate need to begin work with the permission of the Receiver as provided below. The Receiver shall send a Notice to Proceed to the Law Firm either via U.S. Mail or via email, and the Receiver shall send a fully executed copy of the contract with the notice to proceed.
2. Services. The Law Firm shall perform the services described in Appendix A of this Contract.

3. Compensation. The Law Firm shall be compensated by the Receiver for the services contracted in accordance with the provisions established in Appendices B and C of this Contract.

4. Term of Contract.

a. The term of this Contract shall commence on the Effective Date and shall end on June 30, 2021, subject to the other provisions of this Contract.

b. Except as otherwise specifically provided for herein, the Commonwealth of Pennsylvania, including the Receiver, shall not be liable to pay the Law Firm for any services or work performed or expenses incurred before the Effective Date of the Contract.

c. The Receiver and the Law Firm may extend the term of this Contract at any time during the term of the Contract or any renewals or extensions thereof pursuant to Paragraph 9 of this Contract.

d. If the services to be provided by the Law Firm hereunder have been approved by the Receiver as an emergency procurement until full execution of this Contract, the Law Firm may provide these services based upon such emergency approval. The approval to begin working immediately due to such urgent need will be set forth in the appointment letter (Notice to Proceed) to the Law Firm. Upon full execution of this Contract, all services provided during the period between the date of emergency approval in the appointment letter and the Effective Date of the Contract shall be merged into and covered by the terms of this Contract.

5. Billing. The Law Firm shall submit monthly invoices to the Receiver for services performed during each billing period. Invoices shall be forwarded to the following contact and address:

Michael Doweary
Receiver for the City of Chester
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

a. Each invoice shall be under cover of a letter on law firm letterhead and itemized listing the services performed by attorney and legal assistant by date, by hours worked, and by rate and shall generally follow the format appearing in Appendix D of this Contract. The following information must be included on all invoices. Failure to include this information will result in return of the invoice and a request for a new invoice:

- (1) Funds Commitment Number;
- (2) Invoice Date;
- (3) Service Dates (i.e., start and end dates for services covered by invoice);
- (4) Invoice Number;
- (5) Gross/Total Amount.

b. The amount shown on each invoice for labor costs shall be in accordance with the rates set forth in Appendix B of this Contract.

c. The invoices shall also list non-labor costs such as those incurred for travel, food, and lodging, as described in Appendix C of this Contract.

d. The Receiver agrees to pay the Law Firm for travel, meal costs, and lodging costs for which supporting documentation is provided, in reasonable amounts incurred in connection with performance of services under the Contract, as described in Appendix C of this Contract.

e. The Receiver will use its best effort to make payments on invoices within 45 days of their receipt, in final form.

f. All invoices shall contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

g. All invoices or accompanying letters of transmittal shall be signed by the Law Firm and shall set out the Law Firm's federal employer identification number.

6. Consultation. The Law Firm shall consult with and keep the Receiver fully informed as to the progress of all matters covered by this Contract. The Law Firm shall consult and cooperate with, and shall be responsible directly to, the Receiver, and other officials as designated by the Receiver on all matters of strategy and tactics. The duty of the Law Firm shall be to advise, counsel, and recommend actions to the Receiver or the other officials designated by him, and to carry out to the best of its ability their directions. The Law Firm will not make any offer, settlement, or compromise without the written consent of the Receiver. The Law Firm shall offer the Receiver the opportunity to review court documents and briefs prior to filing. The Law Firm shall promptly furnish the Receiver with copies of all correspondence and all court documents and briefs prepared in connection with the services rendered under this Contract and such additional documents as may be requested.

7. Subcontracting, Key Personnel, and Experts. Subcontracting, assignment, or transfer of all or part of the interest of the Law Firm in this Contract or in the work covered by this Contract is prohibited without the prior written approval of the Receiver. In the event such consent is given, the terms and conditions of this Contract shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors and experts so engaged. The Law Firm, with respect to any replacement of key personnel assigned to this matter, shall consult with the Receiver. The Receiver's consent to the proposed assignment is required and may not be withheld unreasonably. Notwithstanding the foregoing, the Law Firm may, with the prior written approval of the Receiver, engage experts in various fields related to the subject matter of this Contract to assist the Law Firm in the performance of its services under this Contract. The hourly rates, fees, or other compensation to be paid to such experts shall also be subject to the approval of

the Receiver. Approved compensation of such experts, as incurred, shall be included in the Law Firm's invoices presented pursuant to the provisions of Paragraph 5 of this Contract, without addition, surcharge, or increase by the Law Firm of the actual fees billed to the Law Firm by such experts. The terms and conditions of this Contract including, but not limited to, the provisions of Appendices C and D, shall apply to and bind the subcontractors or experts engaged as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors or experts so engaged.

8. Ownership Rights. All documents, data, and records produced by the Law Firm and any experts in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of the Commonwealth.

a. The Commonwealth shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the Law Firm and any experts and the Law Firm and any experts shall have no right or interest therein.

b. Upon completion of the services hereunder or at the termination of this Contract, all such documents, data, and records shall, if requested by the Receiver, be appropriately arranged, indexed, and delivered to the Receiver by the Law Firm.

c. Any documents, data, and records given to or prepared by the Law Firm and any subcontractors or experts under this Contract shall not be made available to any individual or organization by the Law Firm or any subcontractors or experts without the prior approval of the Receiver. Any information secured by the Law Firm and any subcontractors or experts from the Commonwealth in connection with carrying out the services under this Contract shall be kept confidential unless disclosure of such information is approved in writing by the Receiver or is directed by a court or other tribunal of competent jurisdiction.

d. Notwithstanding the provisions of Paragraph 8 of this Contract, the Law Firm may retain copies of documents delivered to the Receiver.

9. Modification or Changes. The Receiver and the Law Firm may make modifications to this Contract at any time during the term of the Contract or any renewals or extensions thereof. Changes regarding funding of a Contract that refers to the total estimated amount of the Contract as set forth in paragraph 3 may be accomplished via a funding adjustment pursuant to Commonwealth procedures. Changes regarding funding of a Contract that states an amount not to exceed as set forth in paragraph 3, or a change in Contract length, may be accomplished by a letter of mutual consent signed by the Receiver and the Law Firm. All other changes to contract terms, including changes in the scope of work, must be incorporated into a formal written amendment to this Contract, signed by both parties, and executed in the same manner as this original Contract and in accordance with applicable law.

10. Conflict of Interest. The Law Firm represents and warrants that it has no conflicting representation that has not been fully disclosed to and waived by the Receiver and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by the Receiver. Any conflicting representation shall be promptly disclosed to the

Receiver. The Receiver shall determine whether such conflict is cause for termination of this Contract.

11. Inability to Perform. The Law Firm agrees that if, because of death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal or principals and, in particular, the principals assigned to this project, to render the services set forth in this Contract, neither the Law Firm nor the surviving principals shall be relieved of their obligations to complete performance hereunder. The Law Firm shall, with respect to any replacement principal proposed to be assigned to this matter, consult with the Receiver. The Receiver's consent to the proposed replacement is required and may not be withheld unreasonably.

12. License to Appear. The Law Firm represents and warrants that attorneys involved in this representation are duly licensed and in good standing to practice before the judicial forum, court, board, or tribunal before which they will appear or practice on behalf of the Commonwealth. The Law Firm, subject to approval by the Receiver, may obtain a subcontractor to act as co-counsel where appearance by the Receiver is required in a forum or jurisdiction where its attorneys are not licensed to practice, provided, however, that the firm's use of the subcontractor in that circumstance is subject to Paragraph 7 of this Contract.

13. Independent Contractor. In performing the services required by this Contract, the Law Firm will act as an independent contractor and not as an employee or agent of the Commonwealth.

14. Termination Provisions. The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Law Firm.

a. Termination for Convenience. The Commonwealth shall have the right to terminate this Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Law Firm shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Law Firm be entitled to recover loss of profits.

b. Non-Appropriation. The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate this Contract. The Law Firm shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. Termination for Cause. The Commonwealth shall have the right to terminate this Contract for Law Firm default upon written notice to the Law Firm. The Commonwealth shall also have the right, upon written notice to the Law Firm, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth

erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 14.a.

15. Integration Clause. This Contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in appendices hereto shall have the same meanings as are ascribed thereto in this Contract unless otherwise defined therein. No agent, representative, employee, or officer of either the Commonwealth or the Law Firm has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to, detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished pursuant to Paragraph 9 of this Contract.

16. Nondiscrimination/Sexual Harassment. The Law Firm shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix E and incorporated by reference.

17. Integrity Provisions. The Law Firm agrees to comply with the Integrity Provisions, which are attached hereto as Appendix F and incorporated by reference.

18. Responsibility Provisions. The Law Firm agrees to comply with the Responsibility Provisions, which are attached hereto as Appendix G and incorporated by reference.

19. The Americans With Disabilities Act. The Law Firm agrees to comply with The Americans With Disabilities Act Provisions, which are attached hereto as Appendix H and incorporated by reference.

20. Enhanced Minimum Wage Provisions. The Law Firm agrees to comply with the Enhanced Minimum Wage Provisions, which are attached hereto as Appendix I and incorporated by reference.

21. Audit Provisions. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for this Contract. The Law Firm agrees to maintain records that will support the fees charged and costs incurred for this Contract.

The Law Firm shall preserve books, documents, and records that relate to fees, costs, or pricing data for this Contract for a period of three years from the date of final payment hereunder. The Law Firm shall give full and free access to all records to the Commonwealth and/or its authorized representatives.

22. Offset Provision. The Law Firm agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Law Firm or its subsidiaries to the Commonwealth against any payments due the Law Firm under any contract with the Commonwealth.

23. Indemnity. The Law Firm shall indemnify and defend the Commonwealth from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys and other fees, asserted by third parties ("Claims"), which Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the Law Firm or any of its officers, agents, employees and/or representatives in relation to professional services provided to the Commonwealth by the Law Firm under this Contract. This indemnity provision shall not apply to Claims for which payment is available under the Law Firm's professional liability insurance policies.

24. Insurance. The Law Firm represents and warrants that it carries malpractice insurance in the amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants that it will maintain such coverage throughout its representation of the Commonwealth.

25. Notice. Any written notice to the Receiver under this Contract shall be deemed sufficient if delivered to the Receiver personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

Michael Doweary
Receiver for the City of Chester
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

With a copy to:

J. Michael Adams, Jr
Chief Counsel
Office of Chief Counsel
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

Any written notice to the Law Firm under this Contract shall be deemed sufficient if delivered to the Law Firm personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

John P. McLaughlin
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

26. Contract Controversies. In the event of a controversy or claim arising from this Contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with the Receiver for a determination. The Receiver shall send a written determination to the Law Firm. The decision of the Receiver shall be final and conclusive unless, within 15 days after receipt of such written determination, the Law Firm files a claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of the Receiver, and the Commonwealth shall compensate the Law Firm pursuant to the terms of this Contract.

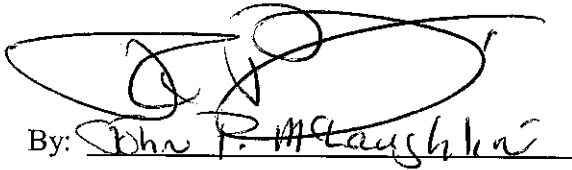
27. Applicable Law. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Law Firm consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Law Firm agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Commonwealth of Pennsylvania, acting by and through the **RECEIVER FOR THE CITY OF CHESTER**, and **CAMPBELL DURRANT, PC**, have caused this Contract to be executed on the date of the last signature below.

CAMPBELL DURRANT, PC

COMMONWEALTH OF PENNSYLVANIA,
acting by and through the
RECEIVER FOR THE CITY OF
CHESTER

By: 

By: _____
Michael Doweary

Title: Shareholder

Date: 8/12/2020

Date: _____

Vendor 187417

APPROVED AS TO FORM AND LEGALITY

Deputy Chief Counsel Date
Dept. of Community & Eco. Dev.

Deputy General Counsel Date

Deputy Attorney General Date

FISCAL APPROVAL BY COMPTROLLER OPERATIONS

This document is approved for fiscal responsibility, budgetary appropriateness, and the availability of funds under Appropriation Symbol 20048xx000 2430102000 6342100 FY 2020.

Comptroller Operations Date

APPENDIX A
DESCRIPTION OF SERVICES

1. The Law Firm is to serve as Receiver's counsel and to advise the Receiver with respect to labor relations and personnel matters with respect to the Receiver's efforts to achieve and implement a recovery plan for the City of Chester, Pennsylvania as contemplated under Section 703 of the Act.

2. The Law Firm shall consult with the Receiver on legal issues involved in the matters referred to in Paragraph 1 of this Appendix.

APPENDIX B
BILLING RATE INFORMATION

The Law Firm shall bill monthly at the following rates:

- Attorneys: \$275 per hour
- Paralegals and Law Clerks: \$180 per hour

The Contract for Legal Services will be capped at \$192,500 as set forth in Appendix C. In addition to the notice provisions set forth at Appendix C, section 5, *infra*, the Law Firm will provide notice to the Receiver when the amount of costs reaches \$150,000.

APPENDIX C COMPENSATION

The Receiver shall pay the Law Firm for the services under this Contract and reimbursement of the Law Firm's eligible costs. The Contract provides for compensation of the Law Firm's fees and costs up to the amount of One Hundred Ninety-Two Thousand Five Hundred Dollars (\$192,500.00). Payments of additional amounts may be made, and continued performance by the Law Firm will be required pursuant to Paragraph 9 of this Contract.

1. The Law Firm shall be reimbursed for all reasonable, actual, direct labor costs incurred in fulfilling the terms of this Contract in accordance with the rates established in Paragraphs 3 and 5 and Appendices B, C, and J of this Contract.

2. The Law Firm shall be reimbursed for all reasonable, actual, ordinary, and necessary direct non-labor costs incurred in fulfilling the terms of this Contract, subject to specific limitations such as those set forth in the Paragraph 5 of this Contract including, but not limited to, the following:

a. Reasonable, actual, ordinary, and necessary expenses for travel, meals, and lodging incurred by the Law Firm to fulfill the Law Firm's obligations under this Contract. The Law Firm shall retain all receipts thereof and shall provide copies to the Receiver if requested. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the Commonwealth for the use of personally owned motor vehicles. Expenses for lodging and meals shall be reimbursed at rates limited to the single-occupancy rate at the nearest Holiday Inn or other major moderately priced hotel or motel chain and the amount of reimbursement for meals shall be limited to the price of a moderately-priced meal at that hotel or motel. No reimbursement shall be allowed for any alcoholic beverages.

b. Reasonable, actual, ordinary, and necessary expenses for:

(1) Communications, including telephone, facsimile transmissions, telegraph, postage, parcel post, and freight and package express;

(2) Photocopies made by the Law Firm "in house," to be reimbursed at the maximum rate of \$.15 per page;

(3) Other reproduction costs (including, but not limited to, photographs, photocopies, prints, and offset work); and

(4) Document control and analysis contracted for with outside firms.

The Law Firm shall retain all receipts thereto and shall, upon request of the Receiver, provide any necessary documentation.

c. Reasonable, actual, ordinary, and necessary expenses for other specific materials required for and used solely in the fulfillment of this Contract. The Law Firm shall retain all

receipts thereto and shall, upon request of the Receiver, provide any necessary documentation.

3. Travel, meals, lodging, and other direct non-labor costs which the Law Firm expects to incur under this Contract outside of the Commonwealth of Pennsylvania, with the exception of telephone, mailing, and other similar communication expenses, shall require the prior approval of the Receiver, which approval shall not be unreasonably withheld. Prior approval by the Receiver of travel to be undertaken by the Law Firm outside of the Commonwealth of Pennsylvania as an incident of the Law Firm's performance of services under this Contract shall constitute approval for the Law Firm to incur reasonable, actual, ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs. The Law Firm shall retain all receipts and shall, upon request of the Receiver, provide any necessary documentation.

4. The Law Firm shall require approval by the Receiver before incurring any extraordinary or unusual expenses.

5. The Law Firm shall advise the Receiver when direct labor and other costs reach 50% of the amount initially encumbered for performance of this Contract and also 50% of any amount encumbered by any amendment.

APPENDIX D
INVOICE FORMAT (SUMMARY)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE: (DATE)
INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED
FROM (DATE) THROUGH (DATE)
\$(TOTAL FEES)

TOTAL EXPENSE ADVANCES MADE TO YOUR ACCOUNT
FROM (DATE) THROUGH (DATE)
\$(TOTAL EXPENSE ADVANCES)

BALANCE DUE: \$(GRAND TOTAL)

FEDERAL EMPLOYER I.D. NO. (FEDERAL I.D. NUMBER)

(RESPONSIBLE ATTORNEY AT LAW FIRM) on behalf of (LAW FIRM) hereby certifies
that the services supplied and expenses incurred as stated in the attached invoice have met all
of the required standards set forth in the Contract for Legal Services.

(SIGNATURE)

APPENDIX D
INVOICE FORMAT (TIME DETAIL)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE: (DATE)
INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

DATE	HOURS	DESCRIPTION OF SERVICES	ATTORNEY

APPENDIX D
INVOICE FORMAT (TIME SUMMARY)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE: (DATE)

INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

ATTORNEY	RATE	HOURS	TOTAL
		TOTAL:	

APPENDIX D
INVOICE FORMAT (COSTS)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(RECEIVER)
(RECEIVER ADDRESS)

(CLIENT #): (MATTER #)

DATE:(DATE)

INVOICE NO.: (INVOICE #)

ATTN: (RECEIVER)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

DATE	DESCRIPTION OF EXPENSE ADVANCES	AMOUNT
	TOTAL:	

APPENDIX E
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE
(dated August 2018)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and

policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

APPENDIX F
INTEGRITY PROVISIONS
(dated 1/14/15)

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “Law Firm” shall have the following definitions.

a. “Confidential information” means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to the Law Firm from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by the Law Firm without the use of confidential information of the Commonwealth.

b. “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.

c. “Financial Interest” means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

d. “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

e. “Law Firm” means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

2. The Law Firm shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to the Law Firm or that govern contracting with the Commonwealth.

3. The Law Firm shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. The Law Firm shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Law

Firm's employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all employees of the Law Firm.

5. The Law Firm, its affiliates, agents and employees and anyone in privity with the Law Firm shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

6. The Law Firm shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to the Law Firm's financial interest prior to Commonwealth execution of the contract. The Law Firm shall disclose the financial interest to the Commonwealth at the time of any proposal submission, or if no proposals are solicited, no later than the Law Firm's submission of the contract signed by the Law Firm.

7. The Law Firm, certifies to the best of its knowledge and belief that within the last five (5) years that it, its officers, and its affiliates have not:

a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

c. had any business license or professional license suspended or revoked;

d. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

e. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If the Law Firm cannot so certify to the above, then it must submit along with its contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Law Firm. The Law Firm's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Law Firm's certification or explanation to change. The Law Firm acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to

intervening factual circumstances or were false or should have been known to be false when entering into the contract.

8. The Law Firm shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa.C.S. § 13A01 et seq., and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of the Law Firm are not exempt and must be reported. The Law Firm also must comply with the requirements of Section 1641 of the *Pennsylvania Election Code* (25 P.S. §3260a).

9. When the Law Firm has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, the Law Firm shall immediately notify the Commonwealth in writing.

10. The Law Firm, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

11. The Law Firm shall cooperate with the Office of the Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Law Firm non-compliance with these provisions. The Law Firm agrees to make identified employees of the Law Firm available for interviews at reasonable times and places. The Law Firm, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to the Law Firm's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Law Firm's business or financial records, documents or files of any type or form that refer to or concern this contract. The Law Firm shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

12. For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Law Firm, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Law Firm to complete performance hereunder, and debar and suspend the Law Firm from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

APPENDIX G
RESPONSIBILITY PROVISIONS
(dated 4/5/13)

1. The Law Firm certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither the Law Firm, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Law Firm cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

2. The Law Firm also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other Commonwealth obligations.

3. The Law Firm's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to inform the Commonwealth if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Law Firm to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Contract with the Commonwealth.

5. The Law Firm agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of the Law Firm's compliance with the terms of this or any other Contract between the Law Firm and the Commonwealth, which results in the suspension or debarment of the Law Firm. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel, and lodging expenses; and expert witness and documentary fees. The Law Firm shall not be responsible for investigative costs for investigations that do not result in the Law Firm's suspension or debarment.

6. The Law Firm may obtain a current list of suspended and debarred Commonwealth contractors either by searching the Internet at www.dgs.state.pa.us, or by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

APPENDIX H
THE AMERICANS WITH DISABILITIES ACT PROVISIONS
(STD-271/278A, dated 07/99)

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the Law Firm understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Law Firm agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The Law Firm shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Law Firm's failure to comply with the provisions of Paragraph 1 of this Appendix.

APPENDIX I
ENHANCED MINIMUM WAGE PROVISIONS
(dated July 2018)

1. **Enhanced Minimum Wage.** Law Firm agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Law Firm shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Law Firm must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Law Firm shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

CONTRACTOR RESPONSIBILITY VERIFICATION

Document No: 4000023860

CAMPBELL DURRANT, PC

This Contract has been reviewed and the Law Firm has been determined to be responsible in accordance with the procedures outlined in Management Directive 215.9 Amended, dated October 25, 2010.

_____ Designated Senior Manager Department of Community and Economic Development	_____ Date
--	---------------



Cover Memorandum to City of Chester Water System Bid Analysis December 1, 2020

The Receiver for the City of Chester asked PFM Financial Advisors (“PFM”) to evaluate and compare bids previously received by the City to purchase the Chester Water Authority System assets (“CWA”). PFM conducted its own independent analysis and due diligence of the proposals received without influence from any other party. PFM was not involved in the bidding process.

The attached presentation provides an overview of PFM’s analysis, a summary comparison of the proposals, purchase price analysis, rate/average bill projections analysis, a discussion of a public-private partnership concept, and recommended next steps.

Conclusions

PFM came to the following conclusions as part of its analysis:

1. Based on commonly utilized valuation methodologies, PFM would expect CWA’s up-front fair market value to be in the range of \$385 million to \$400 million.
 - This is based on limited information and does not factor in a buyer’s additional strategic value multiplier.
 - Two of the three proposals (Aqua and Pennsylvania American) were above that range.
2. Although the CWA bid did not fall within the above range, documents appear to show that the City of Chester (“City”) and CWA contemplated a public-private partnership concept that would have potentially provided an additional \$314,900,000 in revenues to the City (in addition to the \$60.2m up-front payment) over 40 years. The Receiver asked PFM to include a description of this concept in PFM’s report.



- The approach appears to monetize the apparent difference between the annual revenues received and the operating cost for City of Chester ratepayers.
3. The future non-binding rate projections provided by Pennsylvania American and Aqua appear to be meaningfully lower than the current Zone 1 rates charged by each respective company. The Zone 1 rates are the rates that are charged to the majority of each company's current Pennsylvania water customers.
 - CWA only provided one future year of rates in their proposal.

Next Steps

PFM recommends the following next steps:

1. Continue to pursue information requested from CWA in order to properly compare the value of the various bids.
2. Explore the concept of a public-private partnership as previously contemplated by the City and CWA. Determine whether such a concept is feasible and what potential value it may bring to the City and its residents.
3. Once feasibility analysis is complete, compare it to the bids and make decision on path forward.

City of Chester



Water System Bid Analysis

December 1, 2020

Prepared by:
PFM Financial Advisors LLC
for the Receiver for the City of Chester

PFM Financial Advisors
LLC

213 Market Street
Harrisburg, PA 17101

717.232.2723
pfm.com



Analysis Outline

- Overview of Analysis
- Summary Comparison of Proposals
- Purchase Price Analysis
- Rate/Avg. Bill Projections Analysis
- Public-Private Partnership Concept
- Recommended Next Steps



Overview of Analysis



Introduction to Analysis

1. The Receiver for the City of Chester asked PFM Financial Advisors (“PFM”) to evaluate and compare bids previously received by the City to purchase the Chester Water Authority System assets (“CWA”). PFM was not involved in the bidding process.
2. PFM conducted its own independent analysis and due diligence of the proposals received without influence from any other party.
 - A. PFM contacted each proposer to clarify their existing proposals either directly or through an open records request filed by the Receiver. PFM did not engage in negotiations with any of the bidders.
 - B. PFM used information that was publicly available for its analysis. This information has not been verified by the City, CWA, or anyone else.
3. The outcomes of PFM’s analysis shown in this presentation are meant to help inform decision makers. PFM continues to try to obtain information relevant to its analysis from the CWA in order to properly evaluate the CWA’s bid. Additionally, PFM became aware of a public-private partnership concept discussed by the City and CWA prior to the RFP process which it believes merits consideration. Consequently, PFM cannot recommend the selection of a specific proposal to the Receiver at this time.




Goals of Analysis

1. For the purchase proposals submitted, PFM compared and analyzed the following:
 - A. Purchase Price – Do the purchase prices appropriately capture the value of the system?
 - B. Future Rate/Bill Projections (apples to apples basis).
 - C. Non-financial related information contained in the proposals.
2. PFM is **not** opining on the capabilities of the proposers, but simply analyzing the bid each submitted.
3. PFM is also **not** opining on whether the City of Chester should sell the water system.



PFM Experience in Similar Valuations

- Since 2014, PFM has assisted over 35 Pennsylvania clients in valuing and exploring the potential monetization of their utility (water & sewer) systems.

PFM ADVISED UTILITY VALUATION/MONETIZATION TRANSACTIONS 2014 - PRESENT		
 pfm	<u>Transaction Type</u>	<u># Transactions</u>
	Closed	9
	On-Going	17
	Client Terminated	<u>9</u>
	Total	35



Methodology

1. In order to accurately evaluate the various bids, PFM requested additional information from the bidders and relied upon publicly available information.
2. The Receiver also filed a Right-to-Know request with the CWA for the following information which the CWA denied except for the collective bargaining agreement:
 - Future Capital Improvement Plans including a) Any formal capital plans that have been approved in the last 10 years and b) If no formal capital plan has been approved, the projected capital spend (broken out between debt and pay-go) for the next 15-year period.
 - Rate Projections including any rate study or internal analysis that projects future water rates.
 - Number of total system EDUs broken out by customer class in 2019 (Residential, Commercial, Industrial, Fire Protection, Other Utilities).
 - Total annual billed flow in gallons for each customer class in 2019 (Residential, Commercial, Industrial, Fire Protection, Other Utilities).
 - Loan amortizations and agreements for any non-public debt (bank loans).
 - Most recent copies of collective bargaining agreements with unions. Any tentative agreement with unions for a successor collective bargaining agreement.



Conclusions

1. Based on commonly utilized valuation methodologies, PFM would expect CWA's up-front fair market value to be in the range of \$385 million to \$400 million.
 - This is based on limited information and does not factor in a buyer's additional strategic value multiplier.
 - Two of the three proposals (Aqua and Pennsylvania American) were above that range.
2. Although the CWA bid did not fall within the above range, documents appear to show that the City of Chester ("City") and CWA contemplated a public-private partnership concept that would have potentially provided an additional \$314,900,000 in revenues to the City (in addition to the \$60.2m up-front payment) over 40 years. The Receiver asked PFM to include a description of this concept in PFM's report.
 - The approach appears to monetize the apparent difference between the annual revenues received and the operating cost for City of Chester ratepayers.
3. The future non-binding rate projections provided by Pennsylvania American and Aqua appear to be meaningfully lower than the current Zone 1 rates charged by each respective company. The Zone 1 rates are the rates that are charged to the majority of each company's current Pennsylvania water customers.
 - CWA only provided one future year of rates in their proposal.



Summary Comparison of Proposals



Summary Comparison of Most Recent Proposals

	AQUA	PA AMERICAN WATER	CHESTER WATER AUTHORITY
Most Recent Purchase Price Offered	\$410,000,000	\$425,000,000	\$60,285,000 (no debt payoff needed)
Up-Front Deposit	-\$11.8mm At APA signing -\$6.1mm 1 year later (discretion) <i>No litigation risk</i>	-\$2mm escrow to fund legal fees -If larger deposit, need security	Notes that they can close faster
Rates	<i>See rate analysis</i>	<i>See rate analysis</i>	<i>See rate analysis</i>
Employees	Offers to all employees & honor CBA	Offers to all employees & honor CBA	Employees remain in place
Operations Location	In City of Chester	In City of Chester	In City of Chester

*The information above is a summary of key points, but full proposals should be read by decision makers. OOR Exhibit 5 Page 095



Summary Comparison of Proposals (Continued)

	AQUA	PA AMERICAN WATER	CHESTER WATER AUTHORITY
Contingencies	-All litigation must conclude -Purchase Price subject to final APA & approval Board of Directors	-All litigation must conclude -System due diligence	-Must agree not to sell for 40 years -Must sign settlement agreement
Authority Advisory Board	Yes	Will consider	Remain in place
5 Year Capital Spend	\$33,975,000	\$39,000,000	Unknown
Misc.	-Would pay for Comm. Devel. Employee (5 yrs)	-City can retain cell tower revenue -Grant easement for rec land	

*The information above is a summary of key points, but full proposals should be read by decision makers.

OOR Exhibit 5 Page 096



Purchase Price Analysis



Purchase Price Analysis Overview

1. There are three common approaches to valuing utility systems like the CWA:

- Cost Approach: utilizes the book value or depreciated original cost of assets being considered for sale and applies a multiple to that value.
- Market Approach: looks at how other systems compare to the system being considered for sale, usually via customer count.
- Income Approach: calculates the present value of the future estimated net operating cash flow to today's dollars, typically over a 20-year period.



Analyzing Purchase Price – Cost Approach

- The Cost Approach typically uses the book value or depreciated original cost of the assets being considered for sale.
- A typical book value multiple may be from 1.25 to 1.75 times; however, each situation differs as no two systems are exactly alike and PFM has seen transactions above and below that range.

COST APPROACH		
<u>Audit Date</u>	<u>Book Value</u>	
12/31/2019	\$282,114,520	
12/31/2018	\$277,881,505	
12/31/2017	\$271,133,389	
Multiple of 2019		
<u>Proposer</u>	<u>Purchase Price</u>	<u>Book Value</u>
PA American	\$425,000,000	1.51
Aqua	\$410,000,000	1.45
Chester Water Authority	\$60,285,000	0.21

*The information shown above was derived either through public sources or has been provided directly by the client. PFM cannot independently verify the accuracy of this information.

OOR Exhibit 5 Page 099



Analyzing Purchase Price – Market Approach

- The market approach typically looks at how other systems compare to the system being considered for sale, usually via customer count.
- A typical price per customer may range from \$4,000 - \$10,000 ; however, each situation differs as no two systems are exactly alike and PFM has seen transaction above and below that range.

MARKET APPROACH		
# of Customers	43,765	
<u>Proposer</u>	<u>Purchase Price</u>	<u>Price Per Customer</u>
Aqua	\$410,000,000	\$9,368
PA American	\$425,000,000	\$9,711
Chester Water Authority	\$60,285,000	\$1,377

*The information shown above was derived either through public sources or has been provided directly by the client. PFM cannot independently verify the accuracy of this information.

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Analyzing Purchase Price – Income Approach

- The income approach calculates a present value for future estimated net operating cash flows back to today's dollars to produce a value (typically 20 years). (PFM used the 2019 audit as the base year)

INCOME APPROACH	
Total 2019 Revenues	\$45,763,176
Total 2019 Expenses (Less Depreciation)	\$31,604,292
Operating Cash Flow	\$14,158,884
 20 Year Income Model Present Value	 \$373,154,136



Purchase Price – Litigation Considerations

1. The City is currently involved in litigation over the question of whether the City can sell the CWA assets. The matter was argued in Commonwealth Court on November 10, 2020. The City cannot sell the assets until the litigation is resolved.
2. Even if the City wins at the Commonwealth Court level, the matter could potentially be heard by the Pennsylvania Supreme Court. There is also additional underlying litigation that must also be resolved. This means that even if the City is successful in all litigation, the full value from any sale would likely not be realized soon.
3. A monetization agreement with the CWA itself may result in the City receiving the value of any agreement sooner and would not depend on the outcome of this litigation.



Purchase Price – Use of Proceeds

1. Section 707(a) of Act 47 provides as follows:
 - The proceeds from any sale, lease, conveyance, assignment or other use or disposition of assets of the distressed municipality or authority shall be applied to the payment of outstanding debt obligations owed by the distressed municipality or authority, subject to any lien, charge, covenant, restriction, contract, law, rule or regulation, that encumbers or is otherwise applicable to the assets. Proceeds remaining after payment of outstanding debt obligations owed by the distressed municipality or authority may be used by the receiver to restructure or provide escrow for the payment of future debt obligations or to meet operating and capital needs of the distressed municipality or authority.



Rate/Avg. Bill Projections Analysis



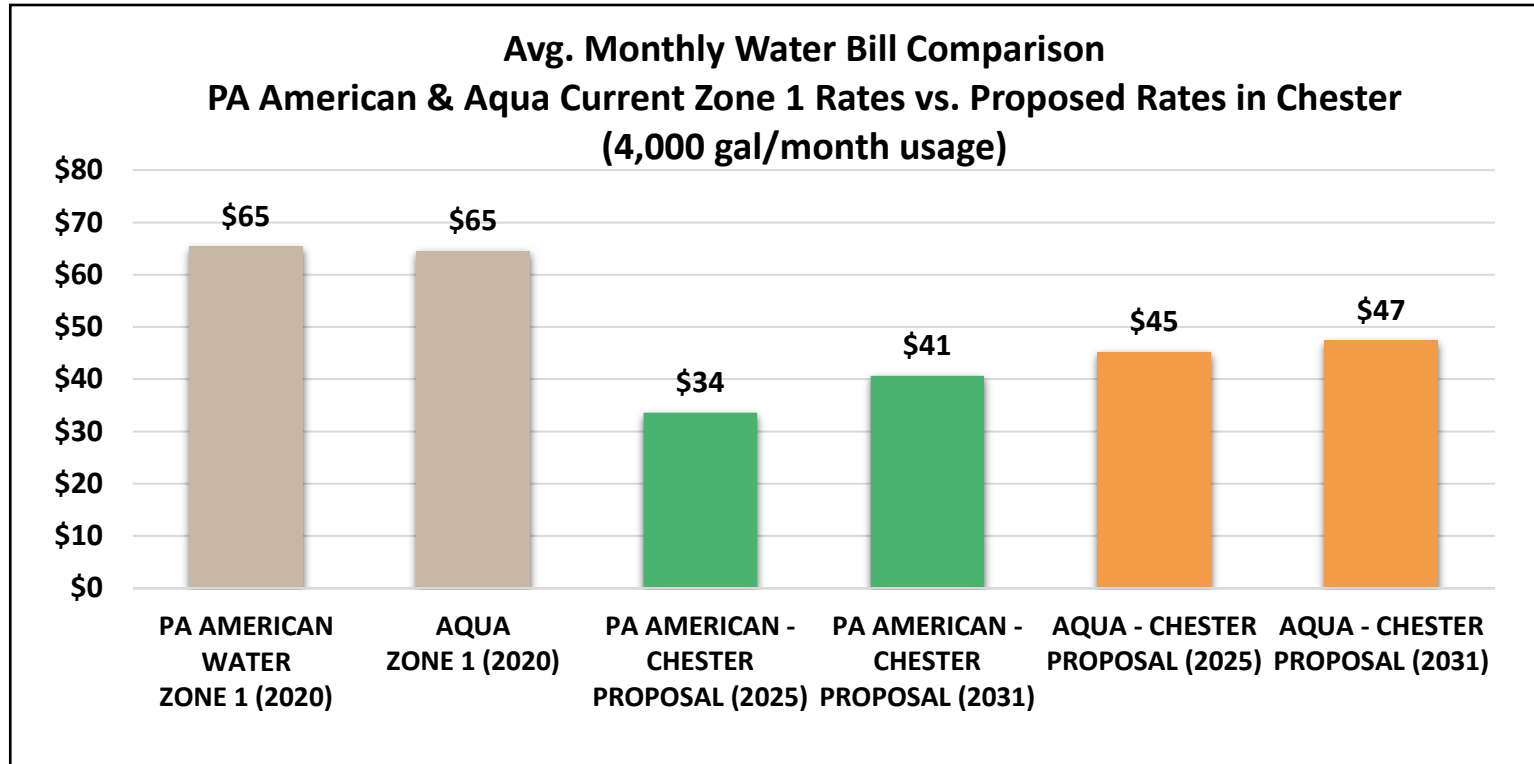
Rate/Bill Projections Provided by Bidders

1. As a part of its analysis, PFM reviewed water rate/bill projections that had been previously provided by bidders.
 - a. There were multiple proposals from each bidder that had differing assumptions.
2. In order to compare estimated future water bills on an apples-to-apples basis, PFM subsequently asked bidders to revise their projections and assume the following:
 - a. 4,000 gallons per month of usage for a typical residential customer.
 - b. No “Trust Fund” or “Rate Stabilization Fund” for initial comparison.
 - The City may wish to establish one or both funds with proceeds, but in order to compare bidders’ indicative rates, their inclusion is not needed at this stage.
3. When asked to provide the revised rates, CWA provided no response, Aqua provided similar rates as before except for removing the Trust Fund component, and PA American provided substantially different rates from earlier proposals (comparisons shown later in this presentation).



Rate/Bill Projections – Summary (Continued)

- The chart below shows a comparison between the current Zone 1 rates being charged by Aqua and Pennsylvania American to other statewide water customers vs. each company's proposed projected rates in Chester.



Note - For the analysis shown above, PFM accepted data provided by the prospective proposers and cannot opine on the accuracy of these projections. Chester proposal rates assume the Eastern Division. Zone 1 rates obtained by the Pennsylvania Public Utility Commission website.



PA American Water - Avg. Projected Bills Provided [1]

PA American Comparison of Proposals - Eastern Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$410 Million	3,500	\$0	\$28	\$33	\$38	\$44	\$51	\$60	\$69	\$80	\$93	\$108	14%
6/1/2020	\$410 Million	4,000	\$50 Million	\$31	\$31	\$31	\$31	\$31	\$31	\$64	\$74	\$86	\$99	13%
10/14/2020	\$425 Million	4,000	\$0	\$31	\$34	\$34	\$34	\$37	\$37	\$37	\$41	\$41	\$41	3%

PA American Comparison of Proposals - Western Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$410 Million	3,500	\$0	\$33	\$37	\$43	\$49	\$56	\$64	\$73	\$83	\$95	\$108	13%
6/1/2020	\$410 Million	4,000	\$50 Million	\$36	\$36	\$36	\$36	\$36	\$36	\$64	\$75	\$86	\$100	11%
10/14/2020	\$425 Million	4,000	\$0	\$36	\$39	\$39	\$39	\$43	\$43	\$43	\$48	\$48	\$48	3%

PA American original increased their purchase price to \$425 million in a July 1, 2020 letter to the City.

Note - For the analysis shown above, PFM accepted data provided by the prospective proposers as-is and cannot opine on the accuracy of these projections.

[1] Per PAWC - PAWC's indicative rates incorporate gradualism to future rate adjustments whereby PAWC would propose rate adjustments no greater than 10% per filing over the first ten years following closing, with an assumption of triennial rate cases. PAWC's indicative rates incorporate the effect of allocating a portion of the cost of service to PAWC's entire customer base and is consistent with rate plans proposed to the Pa-PUC. Residential customer with a 5/8-inch meter using 4,000 gallons per month. Base rate comparisons only.





Aqua - Avg. Projected Bills Provided [1]

Aqua Comparison of Proposals - Eastern Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$330 Million	4,000	\$55 Million	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$43	3%
3/9/2020	\$380 Million	4,000	\$55 Million	\$31	\$31	\$31	\$31	\$31	\$31	\$31	\$45	\$45	\$46	4%
10/9/2020	\$410 Million	4,000	\$0	\$31	\$31	\$31	\$45	\$45	\$45	\$47	\$47	\$47	\$47	4%

Aqua Comparison of Proposals - Western Division														
<u>Date Provided</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>Trust Fund Assumed</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
3/9/2020	\$330 Million	4,000	\$55 Million	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$43	2%
3/9/2020	\$380 Million	4,000	\$55 Million	\$36	\$36	\$36	\$36	\$36	\$36	\$36	\$45	\$45	\$46	3%
10/9/2020	\$410 Million	4,000	\$0	\$36	\$36	\$36	\$45	\$45	\$45	\$47	\$47	\$47	\$47	3%

Note - For the analysis shown above, PFM accepted data provided by the prospective proposers as-is and cannot opine on the accuracy of these projections.

[1] Per Aqua - Assumed that Eastern and Western Division are consolidated into a single tariff. Rate estimates do not include DSIC. Bills shown assume PUC-approved subsidization from all Aqua PA water customers.



An  Essential Utilities Company

OOR Exhibit 5 Page 108



Average Projected Bill Comparison – Most Recent Proposals

Eastern Division Avg. Bill Projections Comparison													
<u>Proposer</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
PA American	\$425 Million ^[1]	4,000	\$31	\$34	\$34	\$34	\$37	\$37	\$37	\$41	\$41	\$41	3%
Aqua	\$410 Million ^[2]	4,000	\$31	\$31	\$31	\$45	\$45	\$45	\$47	\$47	\$47	\$47	4%
CWA	\$60.285 Million + Debt	4,000	\$34					Not Provided					N/A

Western Division Avg. Bill Projections Comparison													
<u>Proposer</u>	<u>Purchase Price</u>	<u>Gallons/ Month</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>CAGR</u>
PA American	\$425 Million ^[1]	4,000	\$36	\$39	\$39	\$39	\$43	\$43	\$43	\$48	\$48	\$48	3%
Aqua	\$410 Million ^[2]	4,000	\$36	\$36	\$36	\$45	\$45	\$45	\$47	\$47	\$47	\$47	3%
CWA	\$60.285 Million + Debt	4,000	\$39					Not Provided					N/A

Note - For the analysis shown above, PFM accepted data provided by the prospective proposers as-is and cannot opine on the accuracy of these projections.

[1] Per PAWC - PAWC's indicative rates incorporate gradualism to future rate adjustments whereby PAWC would propose rate adjustments no greater than 10% per filing over the first ten years following closing, with an assumption of triennial rate cases. PAWC's indicative rates incorporate the effect of allocating a portion of the cost of service to PAWC's entire customer base and is consistent with rate plans proposed to the Pa-PUC. Residential customer with a 5/8-inch meter using 4,000 gallons per month. Base rate comparisons only.

[2] Per Aqua - Assumed that Eastern and Western Division are consolidated into a single tariff. Rate estimates do not include DSIC. Bills shown assume PUC-approved subsidization from all Aqua PA water customers.



Public-Private Partnership Concept



Public-Private Partnership Concept

1. During PFM's analysis, PFM became aware of a public-private partnership concept that the CWA and the City pursued prior to the RFP process. The Receiver requested that PFM describe that concept in this analysis.
2. The concept begins by restructuring CWA operations into two divisions – a City division and a Western division. There would be no changes to the existing CWA board governance, water rights or asset ownership.
3. The concept appears to monetize the difference between the estimated revenue from City ratepayers and the estimated CWA operating cost for those same ratepayers. The analysis estimates revenues from City ratepayers to be \$10,000,250 in 2019 compared to estimated CWA operating expenses of \$3,554,558 – a difference of \$6,445,692.



Public-Private Partnership Concept (continued)

4. The CWA would hire a third-party to manage capital projects and improve revenues and profitability of the City division.
5. In exchange for not pursuing the ownership litigation for up to 30 years, the City would receive an up-front lump sum payment of \$60.2m from CWA funded by the third-party from the management services fee. Additionally, the City would receive annual litigation settlement payments from CWA which would be calculated by subtracting the annual operating expenses, management services fee and any bond indenture payment from the annual revenues of the City division.



Public-Private Partnership Concept (continued)

6. The third-party estimated that the City could receive \$314,900,000 from the litigation settlement payments over 40 years in addition to the \$60.2m up-front lump sum as follows:

Years 1-10:	\$11,100,000
Years 11-20:	\$33,200,000
Years 21-30:	\$65,500,000
<u>Years 31-40:</u>	<u>\$205,100,000</u>
Total	\$314,900,000



Recommended Next Steps



Recommended Next Steps

1. Continue to pursue information requested from CWA in order to properly compare the value of the various bids.
2. Explore the concept of a public-private partnership as previously contemplated by the City and CWA. Determine whether such a concept is feasible and what potential value it may bring to the City and its residents.
3. Once feasibility analysis is complete, compare it to the bids and make decision on path forward.



Disclosure

The information and any analyses contained in this presentation are taken from, or based upon, information obtained from the recipient or from publicly available sources, the completeness and accuracy of which has not been independently verified, and cannot be assured by PFM. The information and any analyses in these materials reflect prevailing conditions and PFM's views as of this date, all of which are subject to change. To the extent projections and financial analyses are set forth herein, they may be based on estimated financial performance prepared by or in consultation with the recipient and are intended only to suggest reasonable ranges of results. Opinions, results, and data presented are not indicative of future performance. The printed presentation is incomplete without reference to the oral presentation or other written materials that supplement it. To the extent permitted by applicable law, no employee or officer of PFM's financial advisory business, nor any of PFM's affiliated companies, accept any liability whatsoever for any direct or consequential loss arising from negligence or from any use of this presentation or its contents. The ultimate decision to proceed with any transaction rest solely with the client.

Thank You



EXHIBIT C



One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004

Benjamin Patchen
Attorney at Law
Direct Dial: 610-227-2594
Email: bpatchen@cdblaw.com

June 18, 2021

Via email and regular mail

Alfred Brown
Dailey LLP
1650 Market Street, Suite 3600
Philadelphia, PA 190103
abrown@daileyllp.com

RE: Right to Know Request

Dear Mr Brown:

This firm is counsel to the Receiver for the City of Chester. I am writing in response to your request under the Pennsylvania Right to Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* A copy of your request is attached. *See* Exhibit A. Your request was emailed to the Receiver, Michael Doweary, at 4:23 p.m. on Friday, April 23, 2021. On April 27, 2021, this firm sent you a letter invoking a further 30 days to respond to your request. On May 28, 2021 this firm provided a response to your request. Please allow this correspondence to amend the May 28, 2021 response.

Your requests are granted in part (as indicated below) and denied in part for the reasons set forth below. We believe that your requests should be denied for legal reasons set forth in the specific responses to your requests. In addition to the below specific denials, the Receiver denies that he is the Commonwealth or a Commonwealth Official under the applicable legal standards, and reserves his right to contest that legal conclusion in any pending or future proceeding.

Denial Reason 1 – Lack of Specificity, 65 P.S. § 67.703

In *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Cmwlth. 2015), the Commonwealth Court set forth a three-part

balancing test to evaluate whether a request was sufficiently specific, examining whether the request identified: (1) the subject matter of the request; (2) the scope of the documents sought; and (3) the timeframe for the records sought. *Id.* at 1125; *see also Carey v. Department of Corrections*, 61 A.3d 367, 372 (Pa. Cmwlth. 2013). Because many of your requests have not identified a transaction or activity, a discrete group of documents, or a finite period of time for which the records are sought, your requests are denied in part because you have not met the elements for the PA Office of Open Records three prong test for specificity.

Denial Reason 2 – Lack of Specificity, Requesting Answers or Information Not a Record, RTKL, 65 P.S. § 67.703

Your requests are denied in part for lack of specificity. RTKL, 65 P.S. 67.703. Your request is denied because you are requesting answers to questions or information and the RTKL does not apply to requests for answers, only requests for records. In accordance with the RTKL, written requests must “identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” RTKL, 65 P.S. § 67.703.

Denial Reason 3 – Request for Information Not a Record

Your requests are denied in part because you are requesting information that is not a record. Under the RTKL, a request must seek records rather than answers to questions. *See Moll v. Wormleysburg Borough*, No. AP 2012-0308 (Pa. O.O.R.D. March 30, 2012; *see also Stidmon v. Blackhawk Sch. Dist.*, No. 11605-2009 at 5 (Beav. Com. Pl. Dec. 14, 2009) (the [RTKL] d[oes] not provide citizens the opportunity to propound interrogatories upon local agencies, rather it simply provides citizens access to existing public records”).

Denial Reason 4 – Records Do Not Exist, RTKL, 65 P.S. § 67.705

Your request is denied because the records you are seeking do not currently exist as you requested or because the agency does not currently compile, maintain, format or organize the record in the manner requested. RTKL, 65 P.S. § 67.705, Creation of Record states, “When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

Denial Reason 5 – Pre-Decisional Deliberations, RTKL, 65 P.S. 67.708(b)(10)(i)(A)

Your request is denied in part because the requested records include or reference pre-decisional deliberations of an agency. RTKL, 65 P.S. 67.708(b)(10)(i)(A).

Denial Reason 6 – Attorney Client Privilege and/or the Attorney Work Product Doctrine, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records requested are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine. RTKL, 65 P.S. § 67.102.

Denial Reason 7 – Attorney Client Communications, RTKL, 65 P.S. § 67.102.

Your request is denied in part as the records you requested contain descriptions revealing attorney-client communications which is protected by the Attorney Client Privilege. See *Levy v. Senate of Pa.*, 619 Pa. 586 (Pa. 2013); RTKL, 65 P.S. § 67.102.

Denial Reason 8 – Proposal – RTKL – 65 P.S. § 67.708(b)(26)

Your request is denied in part because Section 708(b)(26) expressly exempts “[a] proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of a contract or...the rejection of all bids....” Further, the proposals contain the “...financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability....” See 65 P.S. § 67.708(b)(26); see also *Global TelLink Corp. v. Wright*, 147 A.3d 978 (Pa. Commw. Ct. 2016) (financial information submitted to demonstrate a bidder's economic capability to perform the services is exempt from disclosure); *Kelman v. Pa. Dep't of Gen. Servs.*, OOR Dkt. AP 2011-0222, 2011 PA O.O.R.D. LEXIS 188; *Radwanski v. West Chester Univ. of Pa.*, OOR Dkt. AP 2010-0238, 2010 PA O.O.R.D. LEXIS 279.

SPECIFIC REQUESTS AND RESPONSES TO REQUESTS ARE AS FOLLOWS:

Request 1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester.

RESPONSE: Your request is denied in part due to lack of specificity and request for information not a record. Without waiving that objection, *See Application for Assistance to DCED Act 47 Program.*

Request 2. Comments from members of the public regarding any proposal to sell the Chester Water Authority, including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present.

RESPONSE: All responsive comments in the possession of the Receiver are maintained on Microsoft Excel files, which are included in the responsive documents.

Request 3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the “Presentation”) that is attached to the Status Update and is entitled “Receiver’s Assessment of the City of Chester’s Financial and Operational Condition” that the Chester Water Authority be “monetized” as part of a “grand bargain” (see, e.g., Presentation pages 2, 8 and 21-23).

RESPONSE: Your request is denied in part due to lack of specificity and because you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, *See PFM’s Water System Build Analysis.*

Request 4. The “independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management” conducted or being conducted by the Receiver’s team, as referenced on Page 22 of the Presentation.

RESPONSE: Your request is denied in part. Your request is denied in part as you are requesting information or records that include or reference a pre-decisional deliberations of an agency. Without waiving that objection, *See PFM’s Water System Build Analysis.*

Request 5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.

RESPONSE: Your request is denied in part because the requested record falls under 65 P.S. § 67.708(b)(26). Without waiving that objection, see the previously produced Communications with Essential Utilities, Inc.

Request 6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.

RESPONSE: Your request is denied in part because the requested record falls under 65 P.S. § 67.708(b)(26). Without waiving that objection See the communications between the Receiver and Essential Utilities, Inc.

Request 7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

Request 9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work

Product Doctrine. Without waiving those objections, a copy of responsive Engagement Letter is included in the responsive documents.

Request 11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.

RESPONSE: Your request is denied because you are requesting records that are protected by the Attorney Client Privilege and/or the Attorney Work Product Doctrine.

Request 12. Any documents where you have exercised your powers to compromise claims, whether against the City of Chester or asserted by the City of Chester.

RESPONSE: Your request is denied because no responsive records exist that are responsive to this request.

RIGHT TO APPEAL

YOU HAVE A RIGHT TO CHALLENGE A DENIAL OF YOUR REQUESTS. IN ORDER TO DO SO, YOU MUST FILE YOUR APPEAL WITHIN FIFTEEN (15) BUSINESS DAYS OF THE MAILING DATE OF THIS LETTER. YOUR APPEAL MUST INCLUDE:

- A COPY OF THE RTK REQUEST
- A COPY OF THE AGENCY'S RESPONSE (OR WRITTEN STATEMENT THAT THE REQUEST WAS DEEMED DENIED MEANING THE AGENCY DIDN'T RESPOND AT ALL
- A STATEMENT INCLUDING THE GROUND(S) SUPPORTING YOUR ASSERTION THAT YOUR REQUEST(S) IS A REQUEST(S) FOR A PUBLIC RECORDS AND A STATEMENT ADDRESSING ANY GROUND(S) STATED BY THE AGENCY IN DENYING YOUR REQUEST(S)

APPEAL FORMS AND DETAILED INSTRUCTIONS FOR FILING THE APPEAL CAN BE FOUND ON THE PENNSYLVANIA OFFICE OF OPEN RECORDS WEBSITE; *See*

<http://www.openrecords.pa.gov/Appeals/HowtoFile.cfm> (last visited May 24, 2021).

YOUR APPEAL MUST BE SENT TO THE FOLLOWING OFFICE:

Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Via Facsimile: 717-425-5343
Via Email: openrecords@pa.gov

Thank you for your consideration and please feel free to contact me if you have any questions or concerns regarding this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Patchen', with a stylized flourish extending from the end.

Benjamin Patchen

EXHIBIT D

Benjamin Patchen

From: Benjamin Patchen
Sent: Friday, July 23, 2021 2:23 PM
To: Alfred Anthony Brown
Cc: John McLaughlin; Tiffany Allen
Subject: Dailey LLP Right to Know Request City of Chester Receiver
Attachments: Chester CARES Act Request to B Zidek.pdf; Comments Log_through 6-4-2021.xlsx; Comments Log_through 6-18-2021.xlsx; EM from JF.pdf

Al,

I have attached additional documents that are responsive to the Right to Know request as well as public comments compiled after the initial response.

Ben Patchen



Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

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Benjamin Patchen

Subject: FW: [External] APA
Attachments: Asset Purchase Agreement - City of Chester - Aqua Pennsylvania Inc 2020 07 23.docx

From: Joel Frank <jfrank@lambmcerlane.com>
Sent: Thursday, July 23, 2020 9:48 AM
To: 'greenbergk@gtlaw.com' <greenbergk@gtlaw.com>; 'ken@schusterlaw.com' <ken@schusterlaw.com>
Cc: Doweary, Michael <mdoweary@pa.gov>
Subject: [External] APA

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Good morning. In an effort to keep this process moving along, we thought it prudent to provide you with Aqua's suggested draft of the Asset Purchase Agreement. It should be helpful in crystallizing the exact and comprehensive terms of what Aqua is proposing. We ask that you treat it and the terms thereof as confidential. Further, while we're not being presumptuous, hopefully if/when Aqua is formally soon selected as the winning bidder, having this document now will allow for a quicker negotiation and execution thereof which in turn will result in the City sooner receiving and being able to utilize the committed deposit monies. Aqua's next board meeting is on August 5th so if we could use these next two weeks to hammer out the final details of the deal, any additional "asks" by the City/Receiver could be presented to the board for its' consideration and approval at that time, so we could then promptly execute the APA. Lastly, you'll note that I copied Michael directly as I'm unsure of the current status of the City's/Receiver's legal representation. We look forward to your timely response and appreciate your consideration of this submission.

Joel L. Frank
Chairman / Managing Partner

L A M B | M c E R L A N E ^{PC}
ATTORNEYS AT LAW

Main: 610.430.8000
Direct: 610.701.4409
Fax: 610.692.0877
24 E. Market St. PO Box 565
West Chester, PA 19381

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www.lambmcerlane.com

[vCard](#) [Bio](#)

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October 8, 2020

VIA EMAIL - zidekb@co.delaware.pa.us

The Honorable Brian P. Zidek
Chairman
Delaware County Council
Government Center
201 W. Front St.
Media, PA 19063

Dear Chairman Zidek,

Since being appointed Receiver for the City of Chester, I have been extremely grateful for the kind words of support from the Delaware County Council regarding our shared responsibility to help the City of Chester recover financially. My team and I continue to work diligently to address the myriad of challenges the City faces. Over the next several weeks, we will be taking substantial steps toward that end which will impact current City employees, retirees and City residents. As part of the shared sacrifice to turn Chester around, we also need Delaware County's help.

I write to you to respectfully request \$9,119,547 in CARES Act funding for the City of Chester and to encourage the County to utilize CARES Act funding to implement Central Booking in Chester if such funding is needed. Chester's residents have disproportionately been impacted by COVID-19, the very reason for the CARES Act itself. According to a September 30, 2020, Washington Post article, "Job losses from the pandemic overwhelmingly affected low-wage, minority workers most. Seven months into the recovery, Black women, Black men and mothers of school-age children are taking the longest time to regain employment." Furthermore, Chester residents who have not lost their jobs often serve as front-line workers, providing critical services to all of us. The Post article concluded, "Recessions often hit poorer households harder, but this one is doing so at a scale that is the worst in generations."

This request addresses three critical needs – police public safety expenses, fire public safety expenses, and unemployment compensation costs stemming from the furloughing of one-third of the City's workforce earlier this year. We will utilize any CARES Act funding we receive from the County for those needs.

- **\$5,150,109 for Police Public Safety costs.** Due to the City's critical financial condition and reduced personnel in its police department, the City sometimes operates with only four patrol officers on patrol at any given time. For a City that has already experienced 28 murders this year, this staffing level is too low. While the City is in the process of hiring additional police officers to fill vacancies, its precarious financial condition doesn't permit it to spend significant amounts on overtime. The \$5,150,109 represents the cost of police department payroll from March 1, 2020, through December 31, 2020, (\$4,183,109 in actual incurred costs from March 1 – September 27th and \$967,000 estimated for the remainder of the year) which is a permitted use of CARES Act funds.

- **\$3,530,898 for Fire Public Safety costs.** The City of Chester maintains of the very few full-time paid fire departments in Delaware County. In addition to protecting the residents of Chester, the City's fire department is often called to help in neighboring Delaware County municipalities – often without reimbursement. The City's fire department personnel helps anchor special operations services in the County such as hazmat and confined space rescues. Additionally, simply having a professional fire department is a significant benefit to all communities in this part of Delaware County. The \$3,530,898 represents the cost of fire department payroll from March 1, 2020, through December 31, 2020, (\$2,865,898 in actual incurred costs from March 1 – September 27th and \$665,000 estimated for the remainder of the year) which is a permitted use of CARES Act funds.
- **\$438,540 for Unemployment Compensation costs.** Earlier this year, the City furloughed approximately one-third of its workforce. Because the City is self-insured, it is responsible for 50% of those costs (the CARES Act itself covers the other 50%). It is also likely that additional layoffs will occur this year to address the City's budget situation. The \$438,540 represents City's share of unemployment insurance costs this year (\$315,770 for the City share of bills received and \$122,770 in estimated for remainder of the year), which is a permitted use of CARES Act funds.

Finally, I respectfully request the use of CARES Act funds to help implement the Central Booking process in Chester, which is also a permitted use of CARES Act funds. In addition to being the right thing to do operationally, implementing Central Booking in Chester would permit one and possibly two additional officers to be deployed on patrol which is critical to public safety in Chester.

I fully recognize that you have received many funding requests and that the County is in a difficult financial situation. As Receiver, I can certainly sympathize. However, we are taking substantial steps here and Chester needs the County's help. Providing the City with these CARES Act funds will make a big difference in its financial recovery and will help keep the residents of the City safe during this difficult time.

Very truly yours,



Michael T. Doweary
Receiver for the City of Chester

EXHIBIT E

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis M. Davin, in his capacity as :
Secretary of the Department of :
Community and Economic :
Development, :
Petitioner :
v. : No. 336 M.D. 2020
City of Chester, :
Respondent. :

MEMORANDUM & ORDER

The instant matter, filed in this Court’s original jurisdiction, involves application of the Municipalities Financial Recovery Act, 53 P.S. §§11701.101-11701.712 (Act 47)¹ to the City of Chester (City). Dennis M. Davin, in his capacity as Secretary of the Department of Community and Economic Development (DCED), filed a “Petition for Appointment of Receiver for the City of Chester and Related Relief Pursuant to Subsection 702 of [Act 47]” (Petition) now before the Court for disposition. For the following reasons, this Court grants the Petition and appoints the designee Michael Doweary as Receiver for the City.

I. Background

The City, located in Delaware County, Pennsylvania, is a home-rule city of the third class. Its governing body, the City Council, is comprised of five members, including Mayor Thaddeus Kirkland (Mayor).²

The City's designation as a distressed municipality under Act 47 is long-standing. In 1995, the then Secretary of DCED (Secretary) determined that the City met the criteria necessary to issue a Determination of Municipal Financial Distress pursuant to the provisions of Act 47. The City adopted an initial Recovery Plan in 1996; however, due to difficult economic conditions it was compelled to adopt subsequent Recovery Plan amendments in 2006, 2013, and 2016. As part of the 2016 Recovery Plan, the City created the position of Chief Financial Officer.

¹ Act of July 10, 1987, P.L. 246, *as amended*.

² In addition, comprising City Council are Councilman William Morgan, Councilwoman Elizabeth Williams, Councilwoman Portia West, and Councilman William A. Jacobs.

On September 17, 2018, the Recovery Plan Coordinator, Econsult Solutions, Inc. (Econsult) submitted a three-year exit plan (Exit Plan). “Although [it] contained numerous recommendations addressing revenue enhancement, the City’s assets, cost containment, and economic development, the Exit Plan recognized that the City continued to suffer a significant (though smaller) structural deficit with the additional fiscal strain caused by a large amount of unpaid expenses, most notably the unpaid annual pension payments.” Joint Stipulation (Jt. Stip.) ¶3 (citing City’s Act 47 Exit Plan at 3).³ City Council adopted the Exit Plan⁴ on October 10, 2018.

On April 13, 2020, Governor Tom Wolf issued a Declaration of Fiscal Emergency as to the City (Declaration). Therein, Governor Wolf reviewed the City’s 25-year history of distressed and recovery status under Act 47. Governor Wolf also recognized the impairing effect of “a novel coronavirus (now known as “COVID-19”) [that] began infecting humans in December 2019, and has since spread to over 180 countries, including the United States.” See Ex. P-2. In early March, the Governor proclaimed the existence of a disaster emergency throughout the Commonwealth. Relevant here, on March 23, 2020, the Governor issued a stay at home order and closed non-life sustaining businesses in several counties, including Delaware County, adversely affecting local government revenues. Governor Wolf emphasized in the Declaration the ongoing fiscal distress of the City “jeopardizes the health, safety and welfare of its citizens and threatens the fiscal stability of neighboring communities,” acknowledging the City “is projected to be insolvent within 180 days.” *Id.*

The day after the Governor issued the Declaration, the Mayor issued a press release advising: “the members of [City] Council, support[s] the declaration of a fiscal emergency. This declaration is necessary to protect the [City] from financial devastation that could potentially bankrupt the City.”

Under Section 602(b)(1) of Act 47, the Governor adopted the Concise Statement of Facts supporting the existence of a fiscal emergency in the City. See Ex. P-1 (Statement). The Secretary notified the City of the Statement.

In accordance with the Declaration, DCED prepared an emergency action plan (EAP). See Ex. P-3. The EAP laid out a series of cost-saving measures, including, a hiring freeze, overtime restrictions, and DCED approval of debt obligations. In cooperation with DCED, the City began implementing the EAP.

³ The Exit Plan is posted on DCED’s website at: <https://dced.pa.gov/download/chester-city-act-47-exit-plan-adopted-2018-10-10/?wpdmdl=88894>.

⁴ The Exit Plan recommended a number of corrective actions including exploring the monetization of City assets. It identified two significant business-type assets, the water system owned by the Chester Water Authority (CWA), and the parking system owned by the City.

II. Procedural History

On June 1, 2020, the Secretary filed the Petition alleging, among other things, that Governor Wolf declared a state of fiscal emergency existing in the City pursuant to Section 602(b) of Act 47, 53 P.S. §11701.602(b). In the Declaration, the Governor directed the filing of this Petition seeking the appointment of a Receiver.

The City did not file an answer or oppose the Petition.⁵ This Court scheduled a hearing and held a pre-hearing conference attended via WebEx by counsel for the parties, DCED and the City, and the Chester Water Authority (CWA) which received notice of the proceedings.⁶

Pursuant to the statutory timeline, this Court held a hearing via WebEx on the Petition within 15 days, on June 15, 2020.⁷ *See* Section 702(c) of Act 47, 53 P.S. §11701.702(c). Through WebEx, a livestream video platform, this Court was able to hear and observe all participants.

In support of its Petition, DCED presented testimony of four witnesses: Andrew Sheaf, DCED's Local Government Policy Manager and Project Manager for Act 47 Program; Dan Connelly of Econsult, who has served as the City's Act 47 Coordinator since 2005 (Coordinator); the City's Chief Financial Officer (CFO) Nafis J. Nichols, appointed in 2016; and Michael Doweary, the designated Receiver (Designee). DCED proffered pre-marked exhibits uploaded prior to the hearing for admission into evidence. This Court admitted the proffered exhibits without objection,⁸ and placed the Joint Stipulation on the record.

⁵ Despite that it is not currently a party to the action, CWA filed an answer to the Petition.

⁶ A court reporter was engaged for the pre-hearing conference. However, as neither party to the action requested the inclusion of the transcript of the pre-hearing conference in the record, it is not included.

⁷ Section 702(d) of Act 47, 53 P.S. §11701.702(d), requires the Court to render a determination on the Petition within 60 after the filing of the Petition.

⁸ The City stipulated to the authenticity of the exhibits, and it acknowledged their admissibility. *See* Jt. Stip. ¶1. The admitted exhibits follow: P-1 (Concise Statement of Facts); P-2 (Governor's Declaration of Fiscal Emergency); P-3 (DCED's Emergency Action Plan); P-4 through P-6 (March, April and May 2020 Budget v. Actual); P-7 (Spreadsheet of Daily/Weekly Cash Flow); P-8 through P-10 (Cash Flow Projections for March, April and May); P-11 through P-13 (Cash Reports dated May 1, May 26, and June 1); P-14 (April Fire Pension Statement-redacted form); P-15 (April Police Pension Statement- redacted form); P-16 (April Officers and Employees Pension Statement- redacted form); P-17 (May Fire Pension Statement-redacted form); P-18 (May Officers and Employees Pension Statement- redacted form); P-19 (May Police Pension

The parties stipulated that the conditions precedent to receivership under Act 47 have been met. *See generally* Jt. Stip. (filed June 11, 2020); Ex. P-26. Specifically, the parties stipulated the conditions set forth in Section 702(d)(1), (d)(2)(i), and (d)(3) of Act 47 exist as of the time of this hearing. The City admitted it did not adopt an ordinance or consent agreement under Chapter 6 of Act 47. *See* Jt. Stip. ¶34. Further, the City stipulated it had no objections to the relief sought in the Petition and that Designee meets the qualifications for a Receiver set forth in Section 705(b) of Act 47. *See* Jt. Stip. ¶36.

Sheaf testified regarding the development of the EAP and the City's steps in implementing same. He emphasized the impending insolvency of the City before the end of the year, particularly given its inability to fund the police pension with minimum municipal obligations (MMOs). As to the fiscal emergency, Sheaf confirmed that as shown in Exhibit P-24, it is projected that in October 2020, the City will have a negative cash balance so it will be unable to meet payroll or fund pensions. That negative cash balance "deepens by December" 2020. Hr'g Tr., 6/15/20, at __. Sheaf was integral to preparing the EAP, the purpose of which is to ensure vital and necessary services are continued. He reviewed the eight main points of the EAP, including a hiring freeze, a freeze of grants and discretionary spending and several restrictions requiring DCED approval for overtime, undertaking debt or selling assets. He testified that the pension fund balances contained in the bank statements for the pension funds of the police (Exs. P-15, P-19), firefighters (Exs. P-14, P-17) and officers and non-uniformed employees (Exs. P-16, P-18), show that the City has to choose between making payroll and making mandatory pension contributions.

CFO testified about the financial affairs of the City, both current and projected. He emphasized the pension fund shortfall, particularly the police pension fund, noting the City has been unable to meet its MMOs since 2013. He noted that the police pension fund balance is currently approximately \$2 million, which is likely not sufficient to make beneficiary payments over the next four months. *See* Hr'g Tr. at __; *see also* Jt. Stip. ¶32. He testified the pension funds constitute a \$540,000 expense per month; the City has insufficient assets to fund that expense, so it incurs a \$505,000 deficit per month. In many of the past several years, the City contributed only what it received in state pension aid. Also, the unpaid balances of the MMOs accrue interest at the rate of 7.5%, such that the current unfunded liability of the police pension alone is over \$25 million. *See* Hr'g Tr. at __; *see also* Jt. Stip. ¶31.

Statement); P-20 through P-23 (Econsult Monthly Reports dated March 11, April 3, May 21 and June 10); P-24 (Cash Flow Forecast through December 2020); P-25 (Resume of Michael Doweary); and P-26 (Joint Stipulation).

CFO also testified about the City's revenue stream. In particular, he emphasized the City's reliance on the Harrah's Casino for monthly and quarterly cash flow. As a result of the virus-related closure, the City lost a significant revenue stream, as revenues from Harrah's alone comprise 20% of the City's annual budget.

CFO also testified about the historically high real estate taxes and earned income taxes (EIT) in the City. He explained the collection rate of real estate/property taxes is low, at 81%. He testified that despite undertaking furloughs and layoffs, (of 127 employees, of which 39 were part time) the City is projected to be insolvent in October 2020. *See* Jt. Stip. ¶20.

Further, CFO testified the appointment of a Receiver is necessary because the City has been unable to fully implement the numerous recovery plans it has attempted over its 25-year history under Act 47. Streamlining the process through one person would allow the City to address its fiscal emergency.

Coordinator described his familiarity with the City, having served as its Act 47 Recovery Plan Coordinator since 2005. He noted the long-term systemic economic problems that have been recently exacerbated by the reduced collections of its EIT and other tax revenue. He emphasized the City had insufficient funds to continue making payroll, and was consistently underfunding the police, fire and officer and employee pensions. He also underscored the reliance on Harrah's as a revenue stream, the interruption of which has, in part, caused a fiscal emergency.

III. Discussion

DCED bears the burden of proving the fiscal emergency the Governor declared continues to exist in that the City is projected as insolvent⁹ within 180 days.

Having observed each witness' demeanor via livestream video, and their evident first-hand knowledge, this Court finds the testimony of each witness credible. To the extent there is any conflicting testimony, this Court relies on the testimony that is consistent with the documentary evidence.

Based on the record, this Court is required to consider: (1) whether DCED established that the City meets the conditions in Section 602(b) for receivership, and, if so, (2) whether the Designee meets the statutory qualifications to serve the City as Receiver.

⁹ Act 47 defines "insolvent" as: "[u]nable to meet all financial obligations as they become due, including payment of debt obligations," which are defined as "[a]ny obligation to pay money, including amounts owed for payments relating to lease rental debt, debt service, bonds, notes, guarantees for bonds or notes, trust indentures, contracts or other agreements." 53 P.S. §11701.701.

1. Conditions for Receivership

Pursuant to Section 702(d) of Act 47, this Court shall issue an order under Section 702(e) of Act 47, 53 P.S. §11701.702(e), if it finds by a preponderance of the evidence that all of the following apply:

- (1) Thirty days have passed since the declaration of a fiscal emergency.
- (2) There has been a failure by:
 - (i) the governing body of the distressed municipality to adopt an ordinance under [S]ection 607;
 - (ii) the governing body of the distressed municipality to implement an ordinance under [S]ection 607;
 - (iii) an elected or appointed official of the distressed municipality or authority to strictly comply with an order issued by the Governor under [S]ection 604; or
 - (iv) (Reserved).
- (3) *A fiscal emergency under Section 602(a) continues to exist.*

Section 702(d) of Act 47, 53 P.S. §11701.702(d) (emphasis added).

Thirty days have elapsed since Governor Wolf declared a fiscal emergency for the City on April 13, 2020. *See* Ex. P-2. The Joint Stipulation also establishes the City did not adopt an ordinance under Section 607 of Act 47, and so did not implement such an ordinance. Thus, this Court considers whether a fiscal emergency under Section 602(a) of Act 47, 53 P.S. §11701.602(a), continues to exist.

Section 602(a) sets forth two grounds constituting a fiscal emergency. Either the distressed municipality: “(1)(i) is insolvent or is projected to be insolvent within 180 days or less; *and* (ii) is unable to ensure the continued provision of vital and necessary services; *or* (2) has failed to adopt or implement: (i) the [C]oordinator’s plan in accordance with Subchapter C or C.1 of Chapter 2; or (ii) an alternative plan that the [S]ecretary has approved under [S]ection 246 [of Act 47].” 53 P.S. §11701.602(a) (emphasis added). Here, DCED posits the City meets the first test.

The testimony, corroborated by the documentary evidence, establishes that the City is projected to be insolvent within 180 days, and is unable to ensure the continued provision of vital and necessary services. *See also* Jt. Stip. ¶23. Act 47 defines vital and necessary services as: “Basic and fundamental municipal services, including any of the following:

- (1) Police and fire services.
- (2) Ambulance and rescue services.
- (3) Water supply and distribution.
- (4) Wastewater services.
- (5) Refuse collection and disposal.
- (6) Snow removal.
- (7) Payroll and pension obligations.
- (8) Fulfillment of payment of debt obligations or any other financial obligations.

53 P.S. §11701.701 (definitions). Sheaf, CFO and Coordinator all agreed the City is projected to be insolvent by October 2020. *See also* Jt. Stip. ¶25. Essentially, the City will be placed in the position of being unable to fund payroll to pay any employees or make the MMOs on any of the three pension accounts. This Court recognizes that within the next 180 days the City likely may not be able to provide *any* services, much less vital and essential services, when it cannot pay its employees.

As to vital and necessary services, CFO testified that the City cannot meet its financial obligations in that it cannot pay its refuse collection vendor or meet the MMOs for the pension accounts for uniformed (police and fire) personnel. Its inability to pay its outside refuse collection vendor, and reduced staffing for waste disposal, compromise the City's ability to ensure proper refuse collection.

DCED established that the City, as projected, will have a negative cash balance (*see* Jt. Stip. ¶26) and so will be unable to meet payroll to pay employees or to fund its pension obligations by October 2020. The record shows the City regularly finishes the year with narrow margins of cash to cover payroll, the police pension fund is nearly depleted, and it lacks capacity to address mounting capital needs.

The City's financial difficulties of the past 25 years, significantly exacerbated by the recent revenue reduction, evince a current fiscal emergency in the City under Section 602(a) of Act 47.

The Joint Stipulation sets forth facts that bind this Court. *See Com. v. Carheart Corp.*, 299 A.2d 628 (Pa. 1973); *George v. Dep't of Transp.*, 453 A.2d 717 (Pa. Cmwlth. 1982). Moreover, the declarations contained in the Joint Stipulation are buttressed by the considerable documentary evidence submitted, and corroborated by the livestream-video testimony of the witnesses. The stipulated facts and record developed during the hearing constitute sufficient and competent evidence that establishes the statutory requirements for appointing a receiver and declaring the City in receivership. As such, this Court considers Designee's qualifications to serve as Receiver.

2. Designated Receiver Qualifications

This Court is required to appoint the named receiver to the City provided the designated receiver meets the statutory qualifications in Section 705(b) of Act 47, 53 P.S. §11701.705(b). Section 705(b) requires a Receiver to:

- (1) Have a minimum of five years' experience and demonstrable expertise in business, financial or local or state budgetary matters.
- (2) Be a resident of this Commonwealth for at least one year prior to the appointment.

53 P.S. §11701.705(b). The record evinces that Designee meets both criteria.

Designee meets the residency requirement as a York, Pennsylvania resident for more than a year. Designee confirmed his attendance at Penn State University, where he earned a Bachelor of Science in Finance. He continued his graduate studies in finance, later receiving a Master of Business Administration in Financial Management from York College. He is an Enrolled Agent for the Internal Revenue Service since 2009, and is awaiting licensure as a Certified Public Accountant. In addition, he is a candidate for a Level II Certified Financial Advisor.

Designee attested to his considerable experience in finance over the past decade. Most recently, starting in August 2018, he served Capital Region Water as Director of Administration. In that position, he supervised procurement, developed and managed budgets, reviewed operating costs and developed cost-saving measures. He also worked with risk management and information technology. Prior to becoming Director, he briefly served as Interim Chief Executive Officer.

Prior to his employment with Capital Region Water in Harrisburg, Designee served as Business Administrator for the City of York for over four years. In that capacity, he supervised all administrative functions of York's many departments, and was responsible for the fiscal and administrative functions of the city. His duties included reviewing audits, preparing budgets and financial reports, directing departmental expenditures and ensuring payments were on time. He served on pension boards, supervised processing of York's disbursements, and assisted with establishing and implementing fiscal policies and a financial management system.

In addition to Designee's testimony, the Court reviewed Designee's resume, admitted as Exhibit P-25. The testimonial evidence, for which Exhibit P-25 adds further detail, demonstrates Designee's significant qualifications satisfy the statutory criteria. Designee also confirmed upon this Court's questioning that he is unaware of any conflicts of interest or bias that would interfere with his duties. Thus, this Court appoints Designee as Receiver for the City pursuant and subject to Act 47.

O R D E R

AND NOW, this 22nd day of June 2020, upon consideration of the Joint Stipulation of the parties and the credible testimony of the witnesses presented during the hearing as well as the documentary evidence, it is hereby ORDERED and DIRECTED as follows:

1. The parties having agreed and stipulated to the existence of the conditions set forth in Section 702(d)(1), (d)(2), and (d)(3) of Act 47, and as established by the record evidence, this Court finds, by a preponderance of the evidence, that the following conditions apply and are established:

a. Thirty (30) days have elapsed from the date of the Governor's Declaration of Fiscal Emergency on April 13, 2020, in satisfaction of Section 702(d)(1) of Act 47, 53 P.S. §11701.702(d)(1);

b. There has been a failure by the Chester City Council, the governing body of the City of Chester, to adopt an ordinance under Section 607 of Act 47 in satisfaction of Section 702(d)(2)(i) of Act 47, 53 P.S. §11701.702(d)(2)(i); and

c. A fiscal emergency under Section 602(a) of Act 47, 53 P.S. §11701.602(a), continues to exist in the City of Chester in satisfaction of Section 702(d)(3) of Act 47, 53 P.S. §11701.702(d)(3).

2. The Pennsylvania Department of Community and Economic Development's (DCED) Petition for Appointment of Receiver for the City of Chester (City) is hereby GRANTED. The City is hereby DECLARED to be in receivership pursuant to Section 702(e)(2) of Act 47, 53 P.S. §11701.702(e)(2).

3. Michael Doweary is found qualified under Section 705(b) of Act 47, 53 P.S. §11701.705(b), has no known disqualifying conflicts of interest or bias, and is hereby APPOINTED to be the Receiver for the City for a period not to exceed two years, subject to extension under Section 710(b) of Act 47, 53 P.S. §11701.710(b).

4. The Receiver is ordered to develop a recovery plan within 30 days of the date of this Order under Section 703 of Act 47, 53 P.S. §11701.703 (Recovery Plan), and submit the Recovery Plan to this Court, the Secretary for DCED, the Chester City Council, and the Mayor of Chester.

5. The Receiver is required and empowered to implement the Emergency Action Plan (EAP) developed by the Secretary of DCED under Section 602 of Act 47, 53 P.S. §11701.602, until a recovery plan developed by the Receiver is approved by this Court pursuant to Section 703 of Act 47, 53 P.S. §11701.703.

6. During the fiscal emergency, the Chester City Council, including the Mayor, shall continue to carry out its duties, including duties relating to the City's budget, subject to and consistent with the provisions of the EAP, any Recovery Plan developed by the Receiver and approved by this Court, and Chapter 7 of Act 47.

Jurisdiction retained.



J. ANDREW CROMPTON, Judge

Certified from the Record

JUN 22 2020

And Order Exit

OOOR Exhibit 6

From: [Davis, Jordan](#)
To: [Alfred Anthony Brown](#)
Cc: [Benjamin Patchen](#)
Subject: RE: [External] RE: OOR appeal, docket no. AP 2021-1218
Date: Tuesday, July 27, 2021 11:29:00 AM
Attachments: [image004.png](#)
[image002.png](#)

Good morning,

Thank you for your email. Given the nature of the records produced and the specific nature of the claimed exemptions, I will grant the Requester leave to file a short reply. If you intend to raise any new arguments or submit any new evidence, please note that I will need to permit the agency an opportunity to review and respond to such, as they bear the burden of proof on appeal.

Please let me know if you have any questions at all regarding this appeal. Thank you.

Sincerely,



Jordan Davis

Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | <http://openrecords.pa.gov>
jorrdavis@pa.gov | [@OpenRecordsPA](#)

From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Tuesday, July 27, 2021 10:39 AM
To: Davis, Jordan <jorrdavis@pa.gov>
Cc: Benjamin Patchen <bpatchen@cdblawn.com>
Subject: [External] RE: OOR appeal, docket no. AP 2021-1218

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Dear Appeals Officer Davis: Last Friday afternoon, the date the parties' position statements were due in the above-referenced matter, the Receiver made a supplemental RTKL production through his counsel, Benjamin Patchen. I then submitted my position statement to meet the agreed-upon deadline, and the Receiver thereafter did likewise by the email below. In light of the Receiver's last-minute production and the issues raised in the position statement he submitted after my own, and to remedy what I feel is a resulting prejudicial situation, may I have leave to file a short reply by the end of this week (Friday, July 30th)?

Thank you in advance for your consideration.

Respectfully,

Alfred Anthony Brown

Attorney



1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

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From: Benjamin Patchen <bpatchen@cdblawn.com>

Sent: Friday, July 23, 2021 4:34 PM

To: Davis, Jordan <jorddavis@pa.gov>

Cc: John McLaughlin <jmclaughlin@cdblawn.com>; Alfred Anthony Brown <abrown@daileyllp.com>;

Tiffany Allen <tallen@cdblawn.com>

Subject: RE: OOR appeal, docket no. AP 2021-1218

Good afternoon,

Please see the attached Position Statement on behalf of the Receiver for the City of Chester.

Ben Patchen



Benjamin R. Patchen

Attorney at Law

Campbell Durrant, P.C.

One Belmont Avenue, Suite 300

Bala Cynwyd, PA 19004

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From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Friday, July 23, 2021 3:10 PM
To: Davis, Jordan <jorddavis@pa.gov>
Cc: Benjamin Patchen <bpatchen@cdblawn.com>; John McLaughlin <jmclaughlin@cdblawn.com>
Subject: OOR appeal, docket no. AP 2021-1218

Dear Appeals Officer Davis:

Please see my attached position statement with respect to the above-referenced appeal. The attorneys for the other party involved in this appeal are copied herewith.

Respectfully submitted,

Alfred Anthony Brown

Attorney



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From: [Alfred Anthony Brown](#)
To: [Davis, Jordan](#)
Cc: [Benjamin Patchen](#)
Subject: [External] RE: OOR appeal, docket no. AP 2021-1218
Date: Tuesday, July 27, 2021 10:41:33 AM
Attachments: [image003.png](#)
[image005.png](#)

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Dear Appeals Officer Davis: Last Friday afternoon, the date the parties' position statements were due in the above-referenced matter, the Receiver made a supplemental RTKL production through his counsel, Benjamin Patchen. I then submitted my position statement to meet the agreed-upon deadline, and the Receiver thereafter did likewise by the email below. In light of the Receiver's last-minute production and the issues raised in the position statement he submitted after my own, and to remedy what I feel is a resulting prejudicial situation, may I have leave to file a short reply by the end of this week (Friday, July 30th)?

Thank you in advance for your consideration.

Respectfully,

Alfred Anthony Brown

Attorney

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Cc: John McLaughlin <jmclaughlin@cdblav.com>; Alfred Anthony Brown <abrown@daileyllp.com>; Tiffany Allen <tallen@cdblav.com>
Subject: RE: OOR appeal, docket no. AP 2021-1218

Good afternoon,

Please see the attached Position Statement on behalf of the Receiver for the City of Chester.

Ben Patchen



Benjamin R. Patchen

Attorney at Law
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From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Friday, July 23, 2021 3:10 PM
To: Davis, Jordan <jorddavis@pa.gov>
Cc: Benjamin Patchen <bpatchen@cdblawn.com>; John McLaughlin <jmclaughlin@cdblawn.com>
Subject: OOR appeal, docket no. AP 2021-1218

Dear Appeals Officer Davis:

Please see my attached position statement with respect to the above-referenced appeal. The attorneys for the other party involved in this appeal are copied herewith.

Respectfully submitted,

Alfred Anthony Brown

Attorney



1650 Market Street, 36th Floor
Philadelphia, PA 19103
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OOR Exhibit 7

From: [Alfred Anthony Brown](#)
To: [Davis, Jordan](#)
Cc: [Benjamin Patchen](#); [John McLaughlin](#)
Subject: [External] OOR appeal, docket no. AP 2021-1218
Date: Friday, July 30, 2021 3:53:37 PM
Attachments: [image005.png](#)
[2021-07-30 AP 2021-1218 Requester's reply position statement.pdf](#)

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Dear Appeals Officer Davis:

Please see my attached reply position statement with respect to the above-referenced appeal. The attorneys for the other party involved in this appeal are copied herewith.

Respectfully submitted,

Alfred Anthony Brown

Attorney

Dailey^{LLP}

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Alfred Anthony Brown
Direct Dial: 215.282.5180
Email: abrown@DaileyLLP.com

July 30, 2021

Via email
jorddavis@pa.gov

Jordan Davis, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: In the matter of Alfred Brown, requester v. Receiver for the City of Chester, respondent
Docket No. AP 2021-1218

Dear Appeals Officer Davis:

Please allow this letter to serve as my reply position statement in the above-referenced matter.

I. Overview

The Receiver's position statement and affidavit (served on July 23rd) fail for the following five additional reasons. First, the Receiver has offered no argument or authority for most of the denial reasons he raised in response to my RTKL request. He has offered nothing to support his denials regarding alleged "lack of specificity," items purportedly seeking "information not a record," or "pre-decisional deliberations of an agency." Second, it remains inconceivable, after reviewing the Receiver's position statement and affidavit, that he has no further responsive, non-exempt records to produce. Third, it is now clear from the Receiver's affidavit that he has not conducted a good faith search for responsive materials, which would necessarily include making inquiries of relevant third parties. Fourth, the Receiver has failed to establish a basis for an exemption under 65 P.S. § 67.708(b)(26) (for proposals and certain related information "pertaining to agency procurement or disposal of supplies, services or construction"). And fifth, the Receiver has failed to establish that any withheld materials are subject to the attorney-client privilege or work product doctrine.

II. Supplemental procedural and factual history

I add the following information to the procedural and factual history of my original position statement. On the afternoon of July 23rd, the date the parties' original position statements were due, the Receiver's counsel, Benjamin Patchen, produced four additional

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Jordan Davis, Esquire
July 30, 2021

documents. I made a quick edit to my position statement to reflect this late-breaking development, then timely submitted it. Mr. Patchen thereafter served the Receiver's position statement and affidavit.

On Tuesday, July 27th, I requested leave to submit a reply position statement by Friday, July 30th, which you kindly granted by reply email on the 27th.

III. Legal argument

A. The Receiver has offered no argument or authority for most of the denial reasons he raised in response to my RTKL Request.

As noted in my original position statement, the Receiver denied in full or in part most of the items in my RTKL Request for a spectrum of reasons. He denied items 1 and 3 of my Request in part for alleged "lack of specificity" (*see* OOR Notice at 16). He also denied item 1 in part for allegedly seeking "information not a record" (*id.*). And he denied items 3 and 4 in part for allegedly seeking the "pre-decisional deliberations of an agency" of 65 P.S. § 67.708(b)(10)(i)(A) (*id.*).¹ Yet the Receiver's position statement contains no argument or authority to support any of these denial reasons, and his exemption log contains no related entries.

At the same time, the Receiver has failed in both his position statement and affidavit to counter the points in my original position statement: (a) that it is inconceivable, under the circumstances described therein, that the Receiver has no further responsive, non-exempt records to produce; (b) that the Receiver has not met his burden to prove that there are no further records responsive to my Request; and (c) that there is no indication the Receiver has made a good faith search for responsive items (including making inquiries of relevant third parties). Indeed, as the Receiver's affidavit makes plain, the only search he attests to having conducted was "in my office" and in "my email account" (Dowery affidavit attached to Receiver's position statement, ¶¶ 9-11).

Meanwhile, there is certainly evidence that the Receiver has an abundance of additional responsive materials in his possession, custody, or control, far more than his affidavit suggests. For example:

- In his email of July 22, 2020, 9:54 AM, the Receiver wrote to Christopher Franklin, Chairman and CEO of Essential Utilities, Inc. that "We look forward to...resolving the **myriad of open matters** as soon as possible...We'll need a little time to digest the **information provided** in addition to getting up to speed on

¹ Additional denial reasons, which the Receiver did raise in his position statement, are addressed in sections III.B and C below.

Jordan Davis, Esquire
July 30, 2021

the terms in the latest offer” (see OOR Notice at 61 and Exhibit A hereto) (emphasis added).

- In an October 26, 2020, 6:27 PM email (quoted at length in my original position statement), the Receiver wrote to Mr. Franklin: “PFM and I are very appreciative of the responsiveness and **information sharing to date**” (OOR Notice at 60 and Exhibit B hereto) (emphasis added).
- In a November 10, 2020, 4:14 PM email, Mr. Franklin wrote to the Receiver: “We appreciate the amount of **diligence, legal and financial review** that has been undertaken by the Office of the Receiver. Knowing the **extent of work that had to be completed**, we have waited patiently for a response from the city and Receiver” (OOR Notice at 55 and Exhibit C hereto) (emphasis added).
- In a July 21, 2020 6:11 PM email, Mr. Franklin wrote to the Receiver: “we will provide **an updated version of the Asset Purchase Agreement** to you and the Chester City team within the next two days” (OOR Notice at 62 and Exhibit D hereto) (emphasis added).
- In a July 23, 2020 9:48 AM email, Joel Frank of Lamb McErlane cc’d the Receiver in an email to other counsel, referencing enclosure of a “**suggested draft of the Asset Purchase Agreement**” and stating: “if we could use these next two weeks to **hammer out the final details of the deal**, any additional ‘asks’ by the City/Receiver could be presented to the board for its’ [sic] consideration and approval at that time, so we could then promptly execute the APA” (Receiver’s position statement (Exhibit D at 126) and Exhibit E hereto) (emphasis added).

All of this indicates that the Receiver, himself and/or through others, takes in, analyzes, and generates a significant volume of records, and that many of them are likely responsive to the items in my Request. This is further reinforced by the numerous status updates and other documents the Receiver has filed with the Commonwealth Court in *Davin v. City of Chester*, 336 MD 2020. See also <https://www.chesterreceivership.com/documents>.

B. The exemption of 65 P.S. § 67.708(b)(26) (for proposals and certain related information “pertaining to agency procurement or disposal of supplies, services or construction”) does not apply.

The Receiver’s argument for an exemption to items 5 and 6 of my Request under 65 P.S. § 67.708(b)(26) lacks merit and should be rejected for the reasons set forth in my original position statement, section III.E at 13-15. In summary, the claimed exemption: (a) was untimely, submitted by an unrequested amendment to his RTKL response on June 18th, which was well past the extended deadline of May 30th; (b) by its plain and unambiguous language, applies only to matters for the benefit of the **agency** (to which items 5 and 6 do not relate); and

Jordan Davis, Esquire
July 30, 2021

(c) again by its plain and unambiguous language, applies only to proposals for the procurement or disposal of supplies, services, or construction (to which items 5 and 6 do not relate). The records sought by items 5 and 6 of my Request pertain to the potential acquisition of an entire municipal authority (the Chester Water Authority) by a commercial entity (Essential Utilities, Inc. / Aqua America Inc), not the agency, and not relating to procurement or disposal of supplies, services, or construction.

C. The Receiver has failed to establish that materials sought by items 9, 10, or 11 of my Request are exempt from production under the attorney-client privilege or work product doctrine.

The Pennsylvania Supreme Court has set forth the following foundational principles when evaluating privilege claims in the context of open records requests:

[T]he determination of the applicability of the attorney-client privilege does not turn on the category of the information, such as a client's identity or address, or the category of a document, such as whether it is an invoice or fee agreement. Instead, the relevant question is whether the content of the writing will result in disclosure of information otherwise protected by the attorney-client privilege.

Levy v. Senate of Pa., 619 Pa. 586, 606, 65 A.3d 361, 373 (2013) (emphasis added) (ruling on privilege claims with respect to certain legal invoices).

Here, the Receiver's position statement offers only a general overview and cursory application of attorney-client privilege and work product doctrine principles to certain categories of documents (i.e., that certain records are privileged simply because they are (or relate to) conflict of interest waivers or joint defense agreements) – precisely the wrong focus under the *Levy* framework. The Receiver has failed to meet his burden to establish that the specific materials he has withheld are privileged or that they cannot even be produced in redacted form.

It is axiomatic that "[t]he objective of the Right to Know Law...is to empower citizens by affording them access to information concerning the activities of their government" (*SWB Yankees LLC v. Wintermantel*, 615 Pa. 640, 662, 45 A.3d 1029, 1042 (2012)) and that the RTKL is "remedial legislation designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions" (*Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. 2010), *aff'd* 621 Pa. 133, 75 A.3d 453 (2013)). It is thus all the more imperative that broad claims of privilege for categories of documents (such as conflict waivers, engagement letters, joint defense agreements, and materials related to them) not be accepted at face value.

Jordan Davis, Esquire
July 30, 2021

But even if a categorical analysis were appropriate, items such as engagement letters between an agency and a law firm are administrative and contractual in nature, and have routinely been requested and provided in the RTKL context. *See, e.g., Brzozowski v. Pa. Turnpike Comm'n*, OOR Dkt. AP 2019-1278, 2019 PA O.O.R.D. LEXIS 985 at *13-14; *James v. Upper St. Clair School Dist.*, OOR Dkt. AP 2019-2190, 2020 PA O.O.R.D. LEXIS 1976 at *6, *9-10. Indeed, the Receiver has produced one “appointment” letter and a “contract for legal services” in the present matter despite his privilege claims (although no other such documents, nor any materials about them as my Request also seeks). Conflict of interest waivers, joint defense and other joint agreements are similar in nature to engagement letters (i.e., administrative and contractual) and should likewise be produced absent proof of specific privilege components therein.

The Receiver, having failed to provide information sufficient to establish that specific content within the withheld materials is subject to the attorney-client privilege and/or work product doctrine, should be ordered to produce those materials. Alternatively, should the OOR determine that a basis for privilege exists, I request that the Receiver be ordered to produce the materials in redacted form pursuant to 65 P.S. § 67.706. And should the OOR require further information to grant my appeal, I respectfully request an *in camera* review of any records the OOR deems necessary to do so.

IV. Conclusion

For all the foregoing reasons, together with those set forth in my original position statement, I respectfully request that my appeal in this matter be granted.

V. Attestation/verification

I verify that the facts set forth in the foregoing reply position statement are true and correct to the best of my knowledge, information, and belief. I make this verification subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,



Alfred Anthony Brown

cc: Benjamin R. Patchen, Esquire (via email)
John P. McLaughlin, Esquire (via email)

EXHIBIT A

EXHIBIT A

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:43 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up

From: Doweary, Michael
Sent: Wednesday, July 22, 2020 9:54 AM
To: Franklin, Christopher H <CHFranklin@essential.co>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: RE: [External] Follow up

Good morning Chris,

It was a pleasure to meet you and Joel as well. We look forward to continued discussions and resolving the myriad of open matters as soon as possible.

Thank you for taking the time to meet and for providing the additional information. Despite the added complication of coordination with the Receiver's office, Kevin will continue to run point. We'll need a little time to digest the information provided in addition to getting up to speed on the terms in the latest offer. In the meantime, we appreciate your continued patience and look forward to connecting soon.

Best regards,

Mike

Michael T. Doweary | Receiver
Office of The Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
www.visitPA.com



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EXHIBIT B

EXHIBIT B

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:43 PM
To: Benjamin Patchen
Subject: FW: Thank you

From: Doweary, Michael
Sent: Monday, October 26, 2020 6:27 PM
To: Franklin, Christopher H <CHFranklin@essential.co>
Subject: Thank you

Good afternoon Chris,

Thank you for reaching out last week. I have been concerned with returning your call so I decided to put my response in writing.

With all that is going on, it would probably be best for us to limit our interactions outside of the prescribed channels. PFM and I are very appreciative of the responsiveness and information sharing to date. From a financial perspective, they will continue to be my intermediary. However, if needed, I can introduce our legal counsel as well but I would hate to involve lawyers on every communication.

I hope this is not offensive in any way. In the end, my intention is to protect both of us.

Kind regards,

Michael

Michael T. Doweary | Receiver
Receiver for The City of Chester
Commonwealth Keystone Building
400 North Street | Harrisburg, PA 17120-0225
Phone: 717-979-7768 | mdoweary@pa.gov
www.visitPA.com



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EXHIBIT C

EXHIBIT C

Benjamin Patchen

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Monday, May 24, 2021 12:42 PM
To: Benjamin Patchen
Subject: FW: [External] Follow up

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, November 10, 2020 4:14 PM
To: Doweary, Michael <mdoweary@pa.gov>
Subject: RE: [External] Follow up

Michael,

Thank you for your note a couple of weeks ago. I appreciate the sentiment and agree that all interactions should remain in prescribed channels.

The purpose of my note directly to you today is to acknowledge the legal argument put forth before Commonwealth Court today, which in our opinion, was compelling regarding the City's right to unilaterally repossess CWA's assets. I am hopeful that we will receive the court's decision by the end of the calendar year.

The second reason for my note is to request an update on the RFP process that the city initiated and in which Aqua participated. It is unusual that we would allow an offer of \$410 million including a \$12 million upfront payment to remain outstanding for an undefined period. Our last offer of \$410 million was made in June of this year so I'm sure you understand that the Essential board of directors is anxious for some feedback.

We appreciate the amount of diligence, legal and financial review that has been undertaken by the Office of the Receiver. Knowing the extent of work that had to be completed, we have waited patiently for a response from the city and Receiver. However, now that that Commonwealth Court argument has been completed, it is important that we receive some guidance on your timeline for a decision on the RFP.

Any direction you are willing to provide would be most appreciated.

Best Regards,
Chris



Christopher Franklin
Chairman & CEO
O: 610.645.1081
C: 610.324.1079

From: Doweary, Michael <mdoweary@pa.gov>
Sent: Wednesday, July 22, 2020 9:54 AM

EXHIBIT D

EXHIBIT D

From: Franklin, Christopher H <CHFranklin@essential.co>
Sent: Tuesday, July 21, 2020 6:11 PM
To: Doweary, Michael <mdoweary@pa.gov>
Cc: Joel Frank Esq. (jfrank@lambmcerlane.com) <jfrank@lambmcerlane.com>; ken@schusterlaw.com; greenbergk@gtlaw.com; tkirkland@chestercity.com
Subject: [External] Follow up

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Michael,

Thanks again for taking the time to meet with us last week. I felt it was a great discussion and we look forward to taking the next steps with the City of Chester regarding the Chester Water Authority. As a follow up, I want to provide you with answers and supporting data for three questions you asked in the meeting.

1. **Expected Capital Expenditures in the City of Chester:** In the event we are the winner bidder for the Chester Water Authority, we estimate capital spending of at least \$10M-\$13M over the next 5 years. This would largely consist of pipe replacement given CWA's water treatment plant is located outside the City, and this level of spending will likely increase once we conduct further due diligence. You will recall that due to the unusual circumstances, we do not have access to CWA records or internal capital plans. Through the acquisition of DELCORA, we expect to spend significantly more in the City - approximately \$150M over the next 10-15 years. This capital is needed to address the EPA's Long Term Control Plan related to the City's combined storm and sewer system.
2. **Diversity at Essential/Aqua:** As an organization we are committed to supporting racial and gender diversity within our organization at all levels, making meaningful progress since 2016. Additionally, over that same time period, we have made great progress in enhancing diversity within our vendor network. Although we acknowledge that our work to promote racial and gender diversity is far from finished, we are proud of the progress we have made and are well ahead of our peers in this effort.
3. **Overlap between Aqua (and DELCORA's) Operations and the CWA:** We already serve water to most of Delaware county and will also serve wastewater to much of the county once we acquire DELCORA. Because of this, there is significant geographic proximity and overlap with CWA's operations, and Aqua has four current interconnections. We are already a big part of the communities in and around the City of Chester, making Aqua the logical buyer of the asset. We are committed to SE Pennsylvania given we were founded here 130 years ago, and if we were to own CWA, we would be able to make a real difference in the City going forward.

Please reach out with any questions you have and I look forward to continuing our dialogue. In the meantime, we will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days.

Best Regards,

Chris
Christopher Franklin
Chairman & CEO
Essential, Inc.
O: 610.645.1081
C: 610.324.1079

EXHIBIT E

EXHIBIT E

Benjamin Patchen

Subject: FW: [External] APA
Attachments: Asset Purchase Agreement - City of Chester - Aqua Pennsylvania Inc 2020 07 23.docx

From: Joel Frank <jfrank@lambmcerlane.com>
Sent: Thursday, July 23, 2020 9:48 AM
To: 'greenbergk@gtlaw.com' <greenbergk@gtlaw.com>; 'ken@schusterlaw.com' <ken@schusterlaw.com>
Cc: Doweary, Michael <mdoweary@pa.gov>
Subject: [External] APA

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Good morning. In an effort to keep this process moving along, we thought it prudent to provide you with Aqua's suggested draft of the Asset Purchase Agreement. It should be helpful in crystallizing the exact and comprehensive terms of what Aqua is proposing. We ask that you treat it and the terms thereof as confidential. Further, while we're not being presumptuous, hopefully if/when Aqua is formally soon selected as the winning bidder, having this document now will allow for a quicker negotiation and execution thereof which in turn will result in the City sooner receiving and being able to utilize the committed deposit monies. Aqua's next board meeting is on August 5th so if we could use these next two weeks to hammer out the final details of the deal, any additional "asks" by the City/Receiver could be presented to the board for its' consideration and approval at that time, so we could then promptly execute the APA. Lastly, you'll note that I copied Michael directly as I'm unsure of the current status of the City's/Receiver's legal representation. We look forward to your timely response and appreciate your consideration of this submission.

Joel L. Frank
Chairman / Managing Partner

L A M B | M c E R L A N E ^{PC}
ATTORNEYS AT LAW

Main: 610.430.8000
Direct: 610.701.4409
Fax: 610.692.0877
24 E. Market St. PO Box 565
West Chester, PA 19381

West Chester | Philadelphia | Newtown Square

www.lambmcerlane.com

[vCard](#) [Bio](#)

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OOR Exhibit 8

From: [Benjamin Patchen](#)
To: [Davis, Jordan](#)
Cc: [John McLaughlin](#); [Alfred Anthony Brown](#)
Subject: [External] RE: Inquiry - Brown v. Receiver of the City of Chester (OOR Dkt. AP 2021-1218)
Date: Friday, August 13, 2021 8:09:49 AM
Attachments: [image003.png](#)

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Appeals Officer Davis,

We are also agreeable to the *in camera* review and extension.

Ben Patchen



Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

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From: Alfred Anthony Brown <abrown@daileyllp.com>
Sent: Thursday, August 12, 2021 3:37 PM
To: Davis, Jordan <jordddavis@pa.gov>; Benjamin Patchen <bpatchen@cdblaw.com>
Cc: John McLaughlin <jmclaughlin@cdblaw.com>
Subject: RE: Inquiry - Brown v. Receiver of the City of Chester (OOR Dkt. AP 2021-1218)

Dear Appeals Officer Davis: I am agreeable to both your proposed *in camera* review and the three-week extension you proposed for the Final Determination.

Respectfully,

Alfred Anthony Brown

Attorney



1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

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From: Davis, Jordan <jorddavis@pa.gov>

Sent: Thursday, August 12, 2021 8:26 AM

To: Alfred Anthony Brown <abrown@daileyllp.com>; Benjamin Patchen <bpatchen@cdblawn.com>

Cc: John McLaughlin <jmclaughlin@cdblawn.com>

Subject: Inquiry - Brown v. Receiver of the City of Chester (OOR Dkt. AP 2021-1218)

Dear Parties,

Thank you for your submissions in this matter. I have reviewed the position statements and exhibits provided, and I believe that this appeal would benefit from a limited *in camera* review, specifically of the four records the Receiver withheld under the attorney-client and attorney-work product privileges. The Commonwealth Court has repeatedly found that review *in camera* is appropriate in cases involving privilege, as it permits the OOR to evaluate the agency's claims without requiring additional public description of the responsive records during the appeal process. I do not believe a review of the withheld offer is necessary because the OOR has sufficient evidence to evaluate whether an exemption applies. You can find more information about the OOR's *in camera* procedures at <https://www.openrecords.pa.gov/Appeals/InCamera.cfm>.

If this suggestion is agreeable to the parties, I must request a short extension of three weeks to file the Final Determination in this matter from Attorney Brown; one for provision of the records from the Receiver, one to review the records and finish the draft of the Final Determination, and one for the OOR's editing and review process. Although this case involves only a small number of records, the OOR is presently experiencing an extremely high volume of appeals, which is resulting in delays.

If you have any questions, or if you object to the process outlined here, please let me know as soon as possible.

Sincerely,



Jordan Davis

Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
[\(717\) 346-9903](tel:(717)346-9903) | <http://openrecords.pa.gov>
jorddavis@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

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From: [Alfred Anthony Brown](#)
To: [Davis, Jordan](#); [Benjamin Patchen](#)
Cc: [John McLaughlin](#)
Subject: [External] RE: Inquiry - Brown v. Receiver of the City of Chester (OOR Dkt. AP 2021-1218)
Date: Thursday, August 12, 2021 3:38:44 PM
Attachments: [image002.png](#)

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Dear Appeals Officer Davis: I am agreeable to both your proposed *in camera* review and the three-week extension you proposed for the Final Determination.

Respectfully,

Alfred Anthony Brown

Attorney

Dailey^{LLP}

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

Philadelphia / Media / New York / Wilmington

From: Davis, Jordan <jorddavis@pa.gov>
Sent: Thursday, August 12, 2021 8:26 AM
To: Alfred Anthony Brown <abrown@daileyllp.com>; Benjamin Patchen <bpatchen@cdblawn.com>
Cc: John McLaughlin <jmclaughlin@cdblawn.com>
Subject: Inquiry - Brown v. Receiver of the City of Chester (OOR Dkt. AP 2021-1218)

Dear Parties,

Thank you for your submissions in this matter. I have reviewed the position statements and exhibits provided, and I believe that this appeal would benefit from a limited *in camera* review, specifically of the four records the Receiver withheld under the attorney-client and attorney-work product privileges. The Commonwealth Court has repeatedly found that review *in camera* is appropriate in cases involving privilege, as it permits the OOR to evaluate the agency's claims without requiring additional public description of the responsive records during the appeal process. I do not believe a review of the withheld offer is necessary because the OOR has sufficient evidence to evaluate whether an exemption applies. You can find more information about the OOR's *in camera* procedures at <https://www.openrecords.pa.gov/Appeals/InCamera.cfm>.

If this suggestion is agreeable to the parties, I must request a short extension of three weeks to file the Final Determination in this matter from Attorney Brown; one for provision of the records from the Receiver, one to review the records and finish the draft of the Final Determination, and one for the OOR's editing and review process. Although this case involves only a small number of records, the OOR is presently experiencing an extremely high volume of appeals, which is resulting in delays.

If you have any questions, or if you object to the process outlined here, please let me know as soon as possible.

Sincerely,



Jordan Davis

Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
[\(717\) 346-9903](tel:(717)346-9903) | <http://openrecords.pa.gov>
jorddavis@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

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From: [Davis, Jordan](#)
To: [Alfred Anthony Brown](#); [Benjamin Patchen](#)
Cc: [John McLaughlin](#)
Subject: Inquiry - Brown v. Receiver of the City of Chester (OOR Dkt. AP 2021-1218)
Date: Thursday, August 12, 2021 8:25:00 AM

Dear Parties,

Thank you for your submissions in this matter. I have reviewed the position statements and exhibits provided, and I believe that this appeal would benefit from a limited *in camera* review, specifically of the four records the Receiver withheld under the attorney-client and attorney-work product privileges. The Commonwealth Court has repeatedly found that review *in camera* is appropriate in cases involving privilege, as it permits the OOR to evaluate the agency's claims without requiring additional public description of the responsive records during the appeal process. I do not believe a review of the withheld offer is necessary because the OOR has sufficient evidence to evaluate whether an exemption applies. You can find more information about the OOR's *in camera* procedures at <https://www.openrecords.pa.gov/Appeals/InCamera.cfm>.

If this suggestion is agreeable to the parties, I must request a short extension of three weeks to file the Final Determination in this matter from Attorney Brown; one for provision of the records from the Receiver, one to review the records and finish the draft of the Final Determination, and one for the OOR's editing and review process. Although this case involves only a small number of records, the OOR is presently experiencing an extremely high volume of appeals, which is resulting in delays.

If you have any questions, or if you object to the process outlined here, please let me know as soon as possible.

Sincerely,



Jordan Davis

Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
[\(717\) 346-9903](tel:(717)346-9903) | <http://openrecords.pa.gov>
jorddavis@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

OOR Exhibit 9

From: [Davis, Jordan](#)
To: [Benjamin Patchen](#)
Cc: [John McLaughlin](#); [Alfred Anthony Brown](#)
Subject: In Camera Order - Brown v. Receiver for the City of Chester (OOR Dkt. AP 2021-1218)
Date: Monday, August 16, 2021 11:30:00 AM
Attachments: [In Camera Order 08.16.21.pdf](#)

Dear Parties,

Attached, please find the OOR's *in camera* order in this matter. If you have any questions or require any changes to the dates within the order, please let me know as soon as possible. Thank you!

Sincerely,



Jordan Davis

Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
[\(717\) 346-9903](tel:(717)346-9903) | <http://openrecords.pa.gov>
jorddavis@pa.gov | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

August 16, 2021

Mr. Alfred Brown
Dailey LLP
1650 Market Street
Suite 3600
Philadelphia, PA 19103
cmiller9521@comcast.net

Benjamin Patchen, Esq.
Campbell Durrant, PC
One Belmont Ave
Bala Cynwyd, PA 19004
bpatchen@cdblawn.com

RE: *Brown v. Receiver for the City of Chester*, OOR Dkt. AP 2021-1218

Dear Parties:

Pursuant to Section V(E) of the OOR Procedural Guidelines, the OOR directs the Receiver for the City of Chester (“Receiver”) to provide unredacted copies of the documents responsive to Mr. Brown’s (“Requester”) April 23, 2021 Right-to-Know Law request which were withheld under the attorney-client or attorney-work product privileges for *in camera* inspection to the OOR no later than the close of business on **August 20, 2021**.

Neither the records submitted for an *in camera* inspection, nor their contents, shall be disclosed to any unauthorized person, except as provided by court order or within Section V(E) of the OOR Procedural Guidelines.

The OOR’s Procedural Guidelines may be found on its website: <http://openrecords.state.pa.us>. Please contact me with any questions regarding the above. Thank you for your cooperation in this process.

Sincerely,

/s/Jordan Davis

Appeals Officer
Jordan C. Davis, Esq.



IN THE MATTER OF

ALFRED BROWN,
Requester

v.

RECEIVER FOR THE CITY
OF CHESTER
Respondents

:
:
:
:
:
:
:
:
:

Docket No: AP 2021-1218

ORDER

AND NOW, this 16th day of August 2021, pursuant to 65 P.S. § 67.1310(a)(5) and the OOR Procedural Guidelines, the Office of Open Records (“OOR”) orders the Receiver for the City of Chester (“Receiver”) to produce to the OOR, for *in camera* inspection, unredacted copies of any withheld records responsive to the Request underlying the appeal in AP 2021-1218 which were withheld pursuant to the attorney-client and attorney-work product privileges. The records shall be provided to the OOR in accordance with the OOR Procedural Guidelines. The records shall be marked “CONFIDENTIAL.” Do not provide the Requester with a copy of the unredacted records submitted for *in camera* review. The records must be received by the OOR no later than **August 20, 2021**.

Pursuant to Section V(E) of the OOR Procedural Guidelines, the records submitted under seal for *in camera* review will be stored in a secured location and the contents will not be disclosed to any person other than the appeals officer, the Executive Director or OOR staff counsel. This Order

shall not be deemed a Final Determination for purposes of Section 1101 and 1102 of the Right-to-Know Law, 65 P.S. §§ 67.1101-.1102.

ORDER ISSUED AND MAILED: August 16, 2021

/s/Jordan Davis

APPEALS OFFICER
JORDAN C. DAVIS, ESQ.

Sent to: Alfred Brown, Esq. (via email only);
Benjamin Patchen, Esq. (via email only)

OOB Exhibit 10

From: [Alfred Anthony Brown](#)
To: [Davis, Jordan](#)
Cc: [Benjamin Patchen](#); [John McLaughlin](#)
Subject: [External] RE: Inquiry - Brown v. Receiver of the City of Chester (2021-1218)
Date: Tuesday, September 7, 2021 5:13:45 PM
Attachments: [image001.png](#)

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Dear Appeals Officer Davis: I have no objection, either.

Respectfully,

Alfred Anthony Brown

Attorney

Dailey_{LLP}

1650 Market Street, 36th Floor
Philadelphia, PA 19103

Direct: (215) 282-5180

Email: abrown@DaileyLLP.com

www.DaileyLLP.com

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From: Benjamin Patchen <bpatchen@cdblav.com>
Sent: Tuesday, September 7, 2021 2:41 PM
To: Davis, Jordan <jorddavis@pa.gov>; Alfred Anthony Brown <abrown@daileyllp.com>
Cc: John McLaughlin <jmclaughlin@cdblav.com>
Subject: RE: Inquiry - Brown v. Receiver of the City of Chester (2021-1218)

No objection.

Ben Patchen

CD CAMPBELL DURRANT, P.C.
PUBLIC SECTOR, LABOR AND EMPLOYMENT LAW

Benjamin R. Patchen

Attorney at Law
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
610-227-2594
610-227-2599- FAX
bpatchen@cdblaw.com

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From: Davis, Jordan <jorddavis@pa.gov>
Sent: Tuesday, September 7, 2021 2:29 PM
To: Benjamin Patchen <bpatchen@cdblaw.com>; Alfred Anthony Brown <abrown@daileyllp.com>
Cc: John McLaughlin <jmclaughlin@cdblaw.com>
Subject: Inquiry - Brown v. Receiver of the City of Chester (2021-1218)

Good afternoon,

Thank you all for your attention to this case. I am writing today to respectfully request one additional one-week extension of time in this matter. Although I have reviewed the *in camera* records and prepared a draft determination, there are several legal issues in this case which the OOR has not previously examined, and I would like to give the OOR's editing and legal review staff an opportunity to meet and discuss this case prior to issuing a Final Determination.

I appreciate that this case has already been extended to allow for the *in camera* review, but I believe this short extension would improve the Final Determination and save time if an appeal is undertaken.

Thank you for your consideration of this request, and please have a good day.

Sincerely,



Jordan Davis
Attorney
Office of Open Records
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OOB Exhibit 11



FINAL DETERMINATION

IN THE MATTER OF

**ALFRED BROWN,
Requester**

v.

**RECEIVER FOR THE
CITY OF CHESTER,
Respondent**

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Docket No.: AP 2021-1218

INTRODUCTION

Alfred Brown, Esq. ("Requester") submitted a request ("Request") to the Receiver for the City of Chester ("Receiver") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking records related to COVID-19 loans, communications, assessments and comments related to the proposed sale of the Chester Water Authority ("Authority") and letters related to representation. The Receiver denied the Request in part, and the Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part** and **dismissed as moot in part**, and the Receiver is required to take further action as directed.

FACTUAL BACKGROUND

On April 23, 2021, the Request was filed, seeking:

1. Requests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the City of Chester ["City"].
2. Comments from members of the public regarding any proposal to sell the [Authority], including but not limited to any such comments received at, or referenced during, the Municipal Financial Recovery Advisory Committee Meetings from September 29, 2020 to the Present[.]
3. Records and documents relating to recommendations in the November 3, 2020 presentation (hereafter, the "Presentation") that is attached to the Status Update and is entitled "Receiver's Assessment of the City of Chester's Financial and Operational Condition" that the [Authority] be "monetized" as part of a "grand bargain" (see, e.g., Presentation pages 2, 8, and 21-23)[.]
4. The "independent assessment of a potential sale or other monetization of the CWA using experts from Public Financial Management" conducted or being conducted by the Receiver's team, as referenced on page 22 of the Presentation.
5. Any communications from January 1, 2020 to the present to or from Aqua America, Inc.
6. Any communications from January 1, 2020 to the present to or from Essential Utilities, Inc.
7. Any communications from January 1, 2020 to the present to or from Aqua Pennsylvania.
8. Any communications from January 1, 2020 to the present to or from Aqua Wastewater Management Inc.
9. Any written waiver of conflict received from any lawyer, law firm, or other entity that you have relied upon for legal representation since your appointment as Receiver.
10. Engagement letters with every law firm providing you, or your staff, legal advice in connection with your appointment as Receiver and fulfillment of your duties as Receiver.
11. Any joint representation, joint prosecution, joint defense, or common interest letters or agreements you have with any party, lawyer or law firm.
12. Any documents where you have exercised your power to compromise claims, whether against the City of Chester or asserted by the City of Chester.

On June 18, 2021, following a thirty-day extension, 65 P.S. § 67.901, the Receiver granted the Request in part, but denied other parts as insufficiently specific, 65 P.S. § 67.703, as seeking information which is not a “record” under the RTKL, as seeking records which do not exist, as seeking records of internal, predecisional deliberations, 65 P.S. § 67.708(b)(10)(i)(A), as seeking information which is exempt under the attorney-client privilege and attorney-work product doctrine, and as seeking exempt proposals under 65 P.S. § 67.708(b)(26). Specifically, the Receiver granted the records responsive to Item 2; granted and denied in part records responsive to Items 1, 3, 4, 5, 6, and 10; and denied Items 7, 8, 9, 11, and 12 in full.¹

On June 21, 2021, the Requester appealed to the OOR, arguing that the denials are invalid in general, and specifically that additional records should exist. The OOR invited the parties to supplement the record and directed the Receiver to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 23, 2021, the Requester submitted a position statement arguing that evidence exists to show that additional responsive records must exist, that the Receiver had not conducted a good faith search, that the records withheld as privileged were not categorically privileged as the Receiver had claimed, that the two cited exemptions are not applicable to the case, and that no part of the Request was insufficiently specific. Finally, the Requester sought an *in camera* review to the extent that the OOR found that any records might be exempt.

The same day, the Receiver submitted a position statement arguing that all records responsive to several items of the Request had been produced, that the bid submitted by Aqua Pennsylvania in response to the City’s RFP is exempt, that written waivers of conflict from the

¹ The Receiver also denied being categorized as “the Commonwealth” or “a Commonwealth official.” To the extent that this statement, which was not explored on appeal, is a challenge to the determination of the Receiver’s status as a Commonwealth agency, the RTKL defines “Commonwealth agency” as including “[a]n organization established by [...] a statute [...] which performs or is intended to perform an essential government function.” 65 P.S. § 67.102.

Receiver's solicitor are privileged, and that the Joint Defense Agreement is privileged. The Receiver also submitted the verification of Michael Doweary, the Receiver of the City of Chester, who attests that bids for sale of the Chester Water Authority had been submitted to the City and forwarded to his attention, that he had conducted an examination of all files in his possession, and that the attached privilege log is accurate. Finally, the Receiver provided a short privilege log listing the records which had been withheld, consisting of the Joint Privilege Agreement, two potential conflict of interest waivers, email correspondence involving the waivers, and the asset purchase proposal submitted by Aqua Pennsylvania, Inc.²

On July 30, 2021, the Requester submitted a supplemental statement, arguing that the Receiver had not substantiated several of the bases for denial, that additional records must exist, that no good faith search had been conducted and that none of the cited exemptions or privileges could apply.

On August 16, 2021, the OOR issued an Order directing the Receiver to produce the privileged records for a review *in camera*. On August 20, 2021, the OOR received the records, and subsequently conducted an *in camera* review.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their

² The Receiver also produced four additional documents.

actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing. The Requester sought an *in camera* review of any records which the OOR determines to be privileged or exempt, and the OOR conducted such a review of the records withheld as privileged.

The Receiver is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its

nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). The burden of proof in claiming a privilege is on the party asserting that privilege. *Levy v. Senate of Pa.*, 34 A.3d 243, 249 (Pa. Commw. Ct. 2011). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The Receiver provided certain records on appeal

On appeal, the Receiver provided four additional documents to the Requester. Because those records are responsive to the Request, the appeal is dismissed as moot as to the specific records or parts of records provided. *See Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, *6 (holding that an appeal is properly dismissed as moot where no controversy remains).

2. Item 1 of the Request is sufficiently specific, but Item 3 does not seek records

The Receiver denied the Request in part because it was insufficiently specific. In the final response, the Receiver argued that “many of [the items in the Request] have not identified a transaction or activity, a discrete group of documents, or a finite period of time for which the records are sought[.]” The Receiver specifically identified Items 1 and 3 of the Request as insufficiently specific, though some records responsive to both items were provided.³

In determining whether a particular request under the RTKL is sufficiently specific, the OOR applies a three-part balancing test set forth by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). The OOR examines to what extent the request

³ Because the Receiver identifies only those two items of the Request as insufficiently specific, the OOR will not analyze the other items under Section 703 of the RTKL.

identifies (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep't of Educ.*, 119 A.3d at 1125.

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep't of Educ.*, 119 A.3d at 1125. The subject matter should provide a context to narrow the search. *Id.* (citing *Montgomery County. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (en banc)). Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *Id.*

Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126. “The timeframe prong is ... the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope.” *Id.* Failure to identify a finite timeframe will not render an otherwise sufficiently specific request overbroad. *See Pa. Hous. Fin. Agency v. Ali*, 43 A.3d 532, 536 (Pa. Commw. 2012) (concluding request for proposals and sales agreements relating to two specific projects that did not specify timeframe was sufficiently specific). Similarly, an extremely short timeframe will not rescue an otherwise overbroad request. *Cf. Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. 2011) (finding request for all emails sent or received by any school board member in thirty-day period to be sufficiently specific because of short timeframe), *appeal denied*, 54 A.3d 350 (Pa. 2012).

Item 1 of the Request seeks “[r]equests, applications, or inquiries made to federal, state, county or other governmental bodies, for funds, grants, or loans related to the impact COVID-19 has had on the [City].” Here, the Request is seeking records related to applications and fund inquiries intended to mitigate the impact of COVID-19, giving Item 1 of the Request a straightforward and easily understood subject matter. This item of the Request also has a well-

defined scope, as it is seeking only requests for specific types of funds and inquiries related to such requests for grants and loans. Finally, while the Requester argues that the Request specified that it sought records from 2016 onward, COVID-19 was not identified as a matter of concern until the end of 2019;⁴ as a practical matter, Item 1 of the Request has an implicit timeframe of just over a year. *Mitchell v. Phila. Police Dep't*, OOR Dkt. AP 2015-2335, 2015 PA O.O.R.D. LEXIS 1944 (finding a request interpreted to seek current agency policies to have an implied timeframe); *Barry v. Bensalem Twp. Police Dep't*, OOR Dkt. AP 2013-1151, 2013 PA O.O.R.D. LEXIS 690 (timeframe may be implied from the context of the records requested). Therefore, because Item 1 of the Request has a specific subject matter, narrow scope and moderate timeframe, it is sufficiently specific under Section 703 of the RTKL.

Item 3 of the Request seeks “[r]ecords and documents relating to recommendations in the [Presentation] [...] that the [Authority] be [monetized].” This item has an even smaller timeframe than Item 1, as the presentation in question was submitted on November 3, 2020, and the Receiver was appointed only a few months prior to that. Unlike Item 1, however, Item 3 has no scope, seeking any records which relate to the recommendations in question. The lack of a scope is not a fatal flaw in an RTKL request if there is enough specificity in the timeframe and subject matter to guide a search for records. *See, e.g., Moriarty v. Plum Borough Sch. Dist.*, OOR Dkt. AP 2020-0118, 2020 O.O.R.D. LEXIS 2128.

Beyond the lack of a scope, however, the subject matter of Item 3 does not narrow the universe of records for the Receiver to provide, but instead asks the agency to determine which

⁴ Specifically, COVID-19 was identified in China in December of 2019, but the World Health Organization did not declare a pandemic event until March 11, 2020. “CDC’s Global Resources Pivot to Address COVID-19”, Centers for Disease Control and Prevention Center For Global Health, <https://www.cdc.gov/globalhealth/resources/reports/annual/2021/global-resources-pivot.html> (last accessed September 8, 2021).

records support a specific conclusion and provide those. The OOR has repeatedly held that requests which require an agency to make judgments as to whether each potential record is properly “related to” a request is insufficiently specific, and this additionally requires the Receiver to identify records which support the specific recommendations in the Presentation. *See, e.g., Brown v. Office of the Governor*, OOR Dkt. AP 2017-1118, 2017 PA O.O.R.D. LEXIS 996. Therefore, although Item 3 of the Request has a finite timeframe, the lack of a useful subject matter or limiting scope render it insufficiently specific under Section 703 of the RCTL.⁵

3. The Receiver has demonstrated that certain records are privileged

The Receiver withheld four records as exempt under both the attorney-client privilege and attorney-work product doctrines. The RCTL defines “privilege” as “[t]he attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.” 65 P.S. § 67.102.

For the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019) (internal

⁵ The Requester notes that the Receiver did provide one record, the “Water System Bid Analysis” presentation prepared by the Receiver’s financial advisor, which analyzes the benefits of sale of the water system to various offerors and argues that this belies the Receiver’s specificity argument. However, it is not clear that this record is responsive to Item 3 of the Request at all; the document was prepared on December 1, 2020, almost a month after the Receiver submitted the presentation in question.

citations omitted). An agency may not rely on a bald assertion that the attorney-client privilege applies. *See Clement v. Berks County*, OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 (“Simply invoking the phrase ‘attorney-client privilege’ or ‘legal advice’ does not excuse the agency from the burden it must meet to withhold records”). The attorney-client privilege protects only those disclosures necessary to obtain informed legal advice, where the disclosure might not have occurred absent the privilege, and where the client’s goal is to obtain legal advice. *Joe v. Prison Health Services, Inc.*, 782 A.2d 24 (Pa. Commw. Ct. 2001). The Commonwealth Court has confirmed that, after an agency establishes the privilege was properly invoked under the first three prongs outlined above, the party challenging invocation of the privilege must prove waiver under the fourth prong. *Bagwell v. Pa. Dep’t of Educ.*, 103 A.3d 409, 420 (Pa. Commw. Ct. 2014).

The attorney-work product doctrine, in turn, prohibits disclosure “of the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa.R.C.P. 4003.3. The Pennsylvania Supreme Court has explained that the attorney-work product doctrine “manifests a particular concern with matters arising in anticipation of litigation.” *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 59 n.16 (Pa. 2011) (citing *Nat’l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Commw. Ct. 2001) and stating that “[t]he ‘work product rule’ is closely related to the attorney-client privilege but is broader because it protects any material, regardless of whether it is confidential, prepared by the attorney in anticipation of litigation”); *see also Heavens v. Pa. Dep’t of Env’tl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) (“[U]nder the RTKL the work-product doctrine protects a record from the presumption that the record is accessible by the public if an agency sets forth facts demonstrating that the privilege has been properly invoked”).

Here, the Receiver withheld one “Joint Privilege Agreement”, two conflict waivers from the Receiver’s solicitor, and email correspondence with the Receiver’s solicitor regarding the conflict waivers. In order to determine the validity of this claim, the OOR reviewed each of these records *in camera*.

As described in the exemption log, two of the documents are letters from the Receiver’s solicitor confirming the lack of a conflict of interest for the purposes of representation. These letters discuss the law firm’s representation of the Receiver, their relationship with other clients, and constitute legal advice regarding the practical and legal considerations of representation; they are manifestly privileged documents. Furthermore, the letters cannot be usefully redacted of non-factual information, as they consist entirely of analysis.

Next, the email correspondence consists of a three-email chain relating to the attached letters, confirming their receipt and the client’s response. One email consists of an attorney’s provision of legal advice on the ethics and practical effect of continued representation, while another constitutes the client’s directive for representation. The final email is purely archival, committing the chain to a file. The first two emails are privileged documents, and unable to be usefully redacted; however, the third email contains no privileged material outside of the subject line. Therefore, the single email sent on March 1, 2021, at 8:06 A.M. should be provided with the subject line redacted.

Finally, the joint privilege agreement is a contract to share legal interests, executed between the Receiver and a third party. This agreement begins with a statement of mutual interests, explains the legal actions the parties intend to take in a lawsuit, and sets forth the restrictions on the other party’s use of privileged materials.

The joint privilege agreement was communicated between two different parties to one litigation; therefore, ordinarily, the attorney-client privilege would be waived. Here, however, the Receiver is asserting continued privilege through the common interest doctrine. To demonstrate that the common interest doctrine applies, four elements must be shown:

(1) the parties' agreement to same; (2) a common-interest in the litigation or a jointly shared litigation strategy; (3) the communications were made pursuant to such agreement, and (4) the continued confidentiality of the communications, i.e., the communications were not disclosed to other third parties such that the privileges were waived.

Rosser Int'l, Inc. v. Walter P. Moore & Assocs., Inc., No. 2:11-CV-1028, 2013 U.S. Dist. LEXIS 108561, 2013 WL 3989437, at *19 (W.D. Pa. Aug. 2, 2013). However, a prerequisite requirement exists; the communications at issue must be subject to the attorney-client privilege outside of waiver. *Pa. Public. Utility C'mmn. v. Sunrise Energy, LLC.*, 177 A.3d 438 (Pa. Commw. Ct. 2018) (remanding to the OOR to determine which emails were privileged prior to application of the common interest doctrine).

In this case, the joint defense agreement does not actually contain any legal advice, memorandums, or legal strategy communicated between the parties. The purpose of the document, as set forth by the agreement itself, is to memorialize the agreement for the purpose of facilitating future litigation efforts, not to actually transmit legal advice to either party. The Receiver argues, however, that the very fact that an agreement as to legal strategy was executed between two parties suffices to demonstrate privilege. Although the Receiver does not cite any authority under Pennsylvania law, it does note that courts throughout the United States have upheld this argument. *See, e.g., United States v. Bicoastal Corp.*, 1992 U.S. Dist. LEXIS 21445, 92-C R-261, 1992 WL 693384 at *6 (N.D.N.Y. Sept. 28, 1992) ("This court does find that the disclosure of the existence of such an [joint defense] agreement would be an improper intrusion into the preparation of the

defendants' case. Thus, this court will deny any motion by the Government to be provided with any joint defense agreement should one exist.”).

However, the document is plainly one which was prepared by the attorneys who signed the joint privilege agreement in anticipation of litigation, and contains the mental impressions, opinions, and proposed joint strategy of the attorneys involved. Because the Receiver has invoked the attorney-work product privilege and the document reflects the mental impressions, opinions and strategies of attorneys in preparation for litigation, the agreement is privileged unless it was waived. Unlike the attorney-client privilege, waiver of the attorney-work product privilege occurs only when the material is either shared with an adversary or disclosed in a manner likely to cause an adversary to acquire it. *Bousamra*, 210 A.3d at 978. Here, where the document was shared only with two parties intending to act as co-parties in litigation, the OOR cannot find that the disclosure was shared with an adversary or in a way which would increase an adversary's likelihood of receipt. Therefore, the joint privilege agreement is exempt from disclosure under the RTKL pursuant to the attorney-work product privilege.

4. The responsive bid is exempt under Section 708(b)(26)

The Receiver withheld a copy of the “Asset Purchase Management Contract,” a proposal by Aqua Pennsylvania, Inc. for the purchase of the Authority, as relating to a procurement proposal. Section 708(b)(26) of the RTKL exempts “[a] proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids....” *See* 65 P.S. § 67.708(b)(26). In support of this argument, the Receiver submitted the verification of Receiver Doweary, who attests that:

1. I was appointed to be the [Receiver] for the City of Chester on June 22, 2020.
2. The City of Chester is a distressed municipality under Act 47.

3. As Receiver for the City of Chester, I am responsible for developing a recovery plan to continue the provision of vital and necessary services, provide for the payment of lawful obligations of the City and its authorities and provide for timely deposits of required payments to the pension funds.

4. Based on my duties as Receiver, I am aware that the City of Chester has issued a Request for Proposals for the Acquisition of Assets of the Chester Water Authority.

5. One of the bids in response to the RFP was submitted by Aqua Pennsylvania, Inc.

6. Aqua Pennsylvania, Inc.'s bid was forwarded to me in a July 23, 2020 email correspondence by their counsel.

7. To date, no contract has been executed, and the City of Chester is still considering its options with respect to the potential acquisition of the Chester Water Authority.

Under the RTKL, a sworn affidavit may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the District acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (*citing Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

The Requester argues that two issues preclude application of this exemption - first, that Section 708(b)(26) applies only to the agency selling or procuring supplies and services; second, that the Authority does not constitute “supplies, services or construction”, and the exemption cannot be read to cover the sale of a subsidiary legal entity.

Section 708(b)(26) of the RTKL provides that the proposal in question must “pertain[] to agency procurement or disposal[,]” and the use of the word “agency” in the RTKL indicates the agency from which records are sought. 65 P.S. § 67.708(b)(26); *see, e.g., Belko v. City of Pittsburgh*, OOR Dkt. AP 2018-0022, 2018 PA O.O.R.D. LEXIS 281 (bids filed by a municipality

with a third party are not protected under Section 708(b)(26)). The bid at issue in this case was presented to the City of Chester, not the Receiver, and therefore, the Requester argues that, as a separate agency which incidentally is privy to the City's finances, the Receiver has no basis to withhold the bids.

This argument ignores the fact that the Receiver is an office established to monitor, plan, and restructure the assets of the City. Under the Municipalities Financial Recovery Act, the Receiver has the power:

- (1) To require the distressed municipality or authority to take actions necessary to implement the recovery plan under section 703.
- (5) To require the distressed municipality or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed municipality's or authority's assets in accordance with section 707.
- (6) To approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements with the distressed municipality or authority, except to the extent prohibited by the Constitutions of the United States and Pennsylvania.
- (7) To direct the distressed municipality or authority to take any other action to implement the recovery plan.

Act of 1987, P.L. 246, No 47; 53 P.S. § 706. As such, the Receiver has the authority to accept, reject or modify the City's potential acceptance of the submitted bid. Because the Receiver is operating in a managerial capacity in overseeing the City's acceptance of bids regarding potential purchase of the Authority, it appears that the bids in question have been submitted to both the City and the Receiver. Therefore, the OOR cannot conclude that the Receiver constitutes an agency separated from the affairs of the City for the purposes of Section 708(b)(26).

The Requester's second argument is that this bid does not constitute a bid for the procurement or disposal of "supplies, services, or construction." There is no doubt that the Requester is correct that this bid is not for supplies or construction, so the only question is whether

the sale of the Authority would constitute the disposal of “services”. The RTKL does not define the term “services”, and the common definition of the word “service” is self-referential. *See Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/services> (last accessed September 7, 2021) (“the work performed by one that serves”).⁶ The Requester argues that what is being disposed of in this case is a separate legal entity, and not a service.

The Authority, however, is a legal, property-holding entity which provides utility service to the City. The sale being contemplated is the transfer of the service territory of the Authority, and presumably related assets and obligations, to a private utility provider who will then be required to provide water utility services to the City and its population. As such, the bid submitted by Aqua is not only a bid to purchase a service which the City currently provides through the Authority, but also to provide similar service to the City. Therefore, the Receiver has demonstrated that the bid is a proposal pertaining to both agency procurement and disposal of a service, and Item 7 of the Request must be denied under Section 708(b)(26) of the RTKL.

5. The Receiver has not demonstrated that no additional records exist

The Receiver argues that no additional records responsive to the Request exist. In support of this argument, the Receiver submitted the verification of Receiver Doweary, who attests that:

8. I have reviewed the Right to Know request filed by Dailey LLP.

9. In my capacity as Receiver for the City of Chester, I am familiar with the records contained in my office.

10. Upon receipt of the [R]equest, I conducted a thorough examination of files in the possession, custody and control of my office, and searched my email account for all responsive documentation.

11. After conducting a good faith search of [] my office’s files and email account, I have identified all of the records within the Agency’s possession, custody and control that are responsive to the [R]equest and not subject to any exemptions and

⁶ Similarly, the definition of “serve” is self-referential.

provided those documents to the [R]equester through my attorney via electronic mail on May 28, 2021, June 18, 2021 and July 21, 2021.

12. Other than documents that were withheld subject to exemption under the Right to Know Law and identified in the attached privilege log, I have produced all responsive documents in my possession.

A verification may serve as sufficient evidence to demonstrate that responsive records do not exist under the RTKL. *Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909. In this instance, the Requester argues both that the small number of records identified as responsive is unbelievable and that the Receiver has not demonstrated that a good faith search for responsive records was conducted.

The OOR must presume that public officials act in good faith when responding to RTKL requests unless there is evidence otherwise. *Commonwealth v. Donahue*, 59 A.3d 1165 (Pa. Commw. Ct. 2013). However, the OOR has occasionally found that an affidavit's conclusions are mistaken because they contradict other facts in evidence. *See, e.g., Rittenhouse v. Hempfield Sch. Dist.*, OOR Dkt. AP 2014-0809, 2014 PA O.O.R.D. LEXIS 661 (rejecting an agency affidavit that it does not possess line-item budget information when it regularly submits reports with such information in them); *Luning v. Scranton Sewer Auth.*, OOR Dkt. AP 2016-0184, 2016 PA O.O.R.D. LEXIS 588 (rejecting the argument that the authority must have records of discussions of its potential sale outside of public meeting minutes). Here, the OOR takes note of the fact that the Receiver is an agency consisting of a single person, his support staff, and any contractors he may have retained. Because the Requester has submitted no evidence showing that more records must exist, and the Receiver is a single-person agency, Requester has not demonstrated that the Receiver's verification must be false.

The Requester also argues that the Receiver has not demonstrated that he conducted a good faith search for responsive records. In response to a request for records, "an agency shall make a

good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort” as used in Section 901 of the RTKL, in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *appeal granted in part by* 218 A.3d 375, 2019 Pa. LEXIS 5410 (Pa. 2019); *see also* *Rowles v. Rice Twp.*, OOR Dkt. AP 2014-0729, 2014 PA O.O.R.D. LEXIS 602 (*citing* *Judicial Watch, Inc. v. United States Dep’t of Homeland Sec.*, 857 F. Supp. 2d 129, 138-139 (D.D.C. 2012)) (citations omitted). Furthermore, a good faith search may require an Agency Open Records Officer to consult with other agency officials to determine if they possess responsive records. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011); *see also* *In re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer's duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access). Finally, an agency must also demonstrate that records of deleted emails no longer exist on the agency’s servers. *Pa. Dep’t of Labor and Indus. v. Earley*, 126 A.3d 355, 358 (Pa. Commw. 2015).

In this matter, the Receiver has submitted a verification showing that he searched the files in his office and email account for responsive records. However, the Receiver did not provide any evidence demonstrating that it conducted a search of the Receiver’s email server, to determine if any responsive, deleted emails remain on the server, as required by *Earley*. *Id.* Therefore, the

Receiver is directed to undertake a search of the Receiver's email server to determine whether any other responsive records exist on the server, even if they were deleted from the Receiver's own account. In the event that no other responsive records exist, the Receiver should provide the Requester with an attestation demonstrating that the search was completed and no additional responsive records were located.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part, denied in part** and **dismissed as moot in part**, and the Receiver is required to provide the Requester with the single March 1, 2021 email, with subject line redacted, and any additional responsive emails discovered on the Receiver's email server, within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 17, 2021

/s/ Jordan C. Davis

Jordan C. Davis, Esq.
Appeals Officer

Sent to: Alfred Brown, Esq. (via email);
Benjamin Patchen, Esq. (via email)

⁷ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).