

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 9
CITY OF CHESTER, PENNSYLVANIA,	:	Case No. 22-13032
	:	
Debtor.	:	

**DECLARATION OF VIJAY KAPOOR IN SUPPORT OF THE CITY OF CHESTER,
PENNSYLVANIA’S STATEMENT OF QUALIFICATIONS PURSUANT TO
SECTION 109(c) OF THE BANKRUPTCY CODE AND FIRST DAY PLEADINGS**

I, Vijay Kapoor, hereby declare under penalty of perjury pursuant to [28 U.S.C. § 1746](#) as follows:

1. I am the President and owner of The Kapoor Company, which was retained by the Commonwealth of Pennsylvania on August 6, 2020 to provide certain professional services to Michael Doweary in his capacity as the duly-appointed Receiver (the “Receiver”) for the City of Chester, Pennsylvania (“Chester” or the “City”).

2. In the course of this engagement, beginning on June 22, 2020, I have (i) served functionally as the Receiver’s Chief of Staff (although that is not a formal title), to help manage, coordinate and move forward initiatives necessary to help Chester, including interacting with the Receiver, other Department of Community of Economic Development (“DCED”) staff, outside consultants, internal staff, and stakeholders; (ii) lead the development and execution of initiatives and plans involving the City’s workforce and pension issues; (iii) developed case studies and other reports from the City that DCED can use as models for other Pennsylvania cities; (iv) assisted and led contract negotiations; and (v) performed other tasks at the direction of the Receiver in furtherance of the Receiver’s goals.

3. Prior to my engagement by the Commonwealth, I provided economic and strategic support services for public sector union bargaining, as well as serving as an economic expert in connection with over 100 Pennsylvania municipal public sector union interest arbitrations which generate collective bargaining agreements.

4. In my more than 2 years working with the Receiver, I have become familiar with the history, functions, assets, liabilities, operations, and financial affairs of the City. This Declaration (along with other declarations contemporaneously filed by the City, including the *Declaration of Michael Doweary in Support of the City of Chester, Pennsylvania's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code and First Day Pleadings* (the "Doweary Declaration")¹) provide the factual foundation underlying the (a) Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the "Statement of Qualifications") certifying that the City satisfies each of the criteria set forth in Section 109(c) of title 11 of the United States Code (the "Bankruptcy Code") for determining the City's eligibility to be a debtor under chapter 9 of the Bankruptcy Code, (b) the Memorandum of Law in Support of Statement of Qualifications (the "Memorandum of Law"), and (c) the First Day Pleadings (as hereinafter defined). Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge, my discussions with City personnel, discussions with the Receiver's professional advisors, my review of relevant documents and sources, and my opinion based on my professional experience and knowledge of the City's history, functions, assets, liabilities, operations, and financial affairs.²

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Doweary Declaration.

² The statements contained herein, in part, rely upon unaudited financial information that is subject to further review or potential adjustment, and reflect best efforts by me, the Receiver, and the Receiver's professionals to completely and accurately describe the City's financial history and

5. Pursuant to Section 711(e) of Act 47, the Receiver consulted with the Municipal Financial Recovery Advisory Committee (“MFRAC”)³ on September 13, 2022, about the severe and immediate financial issues facing the City, the concessions necessary from unions, retirees, and other creditor constituencies to avoid having to file a bankruptcy case, and why, ultimately, he may need to exercise his power to file a municipal debt action under chapter 9 of the Bankruptcy Code. That meeting was recorded and can be found online at: <https://www.youtube.com/channel/UCt2JjA1zsXVR9Zcg8HJUBiw/videos>. A copy of the powerpoint presentation made at the September 13 MFRAC meeting (the “MFRAC Presentation”) is attached to the Doweary Declaration as Exhibit C.

status and the City’s assets and liabilities. When the Receiver was appointed, the City’s financial and accounting records were in disarray, the City lacked accounting software and computers, the City maintained many records by hand, and the City issued hand-written checks. Further, at the time of the Receiver’s appointment, the City’s last audited financial statements were from 2017. While the Receiver and his professionals have made significant progress in modernizing the City’s financial and accounting record keeping and invested substantial time and resources to create proper financial and accounting records and projections, including recreating basic accounting and financial records and obtaining audited financial statements for 2018, work to correct the substantial deficiencies in the City’s historical financial and accounting records is ongoing. As a result, amendments, modifications, or supplements to this Declaration may become necessary and appropriate, and the City and I reserve all rights to amend, modify, or supplement this Declaration as additional information becomes available and the work of the Receiver’s professionals continues.

³ MFRAC is an advisory committee established under Act 47 to meet and consult with the Receiver. The sole function of MFRAC is to provide non-binding recommendations and feedback to the Receiver on the implementation of the Recovery Plan. The MFRAC consists of four members appointed as follows: (1) the Chief Executive Officer, if any, of the distressed municipality or a designee, (2) the president of the governing body of the distressed municipality or a designee, (3) one member appointed by the County Council of the county where the distressed municipality is located, and (4) one member appointed by the Governor.

I. The City is Insolvent

6. As described in more detail in the Doweary Declaration,⁴ the City's financial struggles have persisted for decades. The City's financial issues are deep, intertwined, and complicated. They undercut the City's ability to provide vital and necessary services to the people who live in, work in, or visit Chester. They put City government in the position where it takes actions to ensure its own fiscal survival, rather than being a proactive and creative partner in addressing the economic, social, and other broader challenges the community faces.

7. Since his appointment, the Receiver has taken steps to professionalize the City's workforce, including hiring a chief operating officer responsible for the proper and efficient administration of City government. To improve efficiency, the Receiver merged units of City government performing similar or complementary tasks that were previously overseen by different Councilmembers. The Receiver also retained consultants who conducted organizational assessments of the City's police and fire departments.

8. In 2020, the City furloughed nearly 1/3rd of the City's workforce, outside of the Police and Fire Departments, and the Receiver negotiated an agreement with the City's elected leaders on a 2021 budget that resolved the \$3.7 million deficit the Act 47 coordinator projected, which budget was 9% smaller than the City's 2020 budget. The Receiver moved over 100 retired employees from its expensive self-insured plans to a lower cost Medicare supplemental plan, which saved the City \$900,000 in 2021 and will save the City over \$1 million when annualized.

⁴ The Doweary Declaration includes a fulsome discussion of the history of the City, its demographic information, its 27 years of financial oversight by the Commonwealth, some of the steps that were taken during that period of time for the City's survival, and its outstanding debt obligations.

9. For years, the City's obligations have exceeded revenue from taxes and other sources available to it, and the City has borrowed and deferred paying certain obligations, and relied on one-time federal rescue money to survive fiscally. Contributions to the City's severely underfunded defined benefit pension plans, debt repayment, and other post-employment benefits ("OPEB") (namely retired employee medical and prescription insurance), consume a disproportionate and increasing share of the City's annual budget. These expenses will increase dramatically in 2023 and beyond absent decisive action by the City. The City's residents are already subject to a heavy tax burden and, with the exception of an adjustment to the real property tax rate that the Receiver supports to restore revenue from real property taxes to the levels that existed prior to a recent reassessment, should not be required to pay more.⁵

10. In December 2021, DCED issued a Tax Revenue Anticipation Note ("TRAN") advance to the City in the amount of \$5 million, which was critical to the City's ability to meet general fund obligations this year before bi-annual property tax revenues were collected. Without the 2022 TRAN advance, the City would have run out of cash during 2022, and the draft 2023 budget relies on receipt of a similar \$5 million TRAN advance the City expects to receive in December 2022 or early January 2023.⁶

⁵ Delaware County recently conducted its first real property reassessment since 1999, and the new assessed values took effect on January 1, 2021. In an effort to minimize the effect of the reassessment on the City's overburdened residents and businesses, the City reduced the millage rate from 32.7712 to 9.4041. The City believed such a reduction would result in the tax reassessment being revenue neutral and prevent an increased tax burden from being borne by residents and businesses as a result of increased property values under the reassessment. However, several property owners appealed from the reassessed values and prevailed, causing revenues from real property taxes to decrease by approximately \$220,000 in 2022. In order to achieve the Receiver's goal of having the reassessment be revenue neutral, the Receiver supports increasing the millage rate from 9.4041 to 9.7000.

⁶ DCED has further supported the Receiver's efforts by agreeing to pay certain of the professional costs and expenses incurred in connection with this bankruptcy case.

11. Moreover, after years of being unable to do so, the City needs to start the process of repairing and improving its infrastructure and investing in economic development. The City has not been, and currently is not, paying its debts as they come due, and the City's inability to do so will reach a tipping point in 2023 when the various and creative measures the Receiver has taken to date to barely keep the lights on will no longer prevent the City from running out of cash. Simply put, the City is insolvent. It is not paying its debts as they come due. It is unable to pay its debts as they come due. And, it is in desperate need of a restructuring in bankruptcy that can put the City on sound financial footing and allow it to focus on reversing the long-standing trends that have harmed its residents and led to decades of financial supervision.

12. In addition to the City's other outstanding debt obligations as more fully set forth in the Doweary Declaration, the City's pension plans remain severely underfunded. The City lacks any viable path for addressing its severe financial issues while maintaining a basic level of services outside of bankruptcy. The City further remains at perpetual risk of running out of cash.

A. The City's Defined Benefit Pension Plans Are Severely Underfunded

13. The collective bargaining agreements⁷ either need to be renegotiated or, to the extent such agreements did not terminate prepetition, rejected to free the City from numerous ambiguities and provisions preventing it from taking decisive action with respect to employees, to make the changes that already apply to police officers hired after 2017 applicable to all employees (including the elimination of retiree health care), and to reduce the overall costs to the City

⁷ The City's police officers are unionized and represented by Lodge No. 19 of the Fraternal Order of Police ("FOP"), whose collective bargaining agreement with the City expired at the end of 2021. The City's firefighters are unionized and represented by the Local 1400 of the International Association of Firefighters ("IAFF"), whose collective bargaining agreement with the City also expired at the end of 2021. Certain of the City's non-uniform employees are unionized and represented by the Teamsters, whose collective bargaining agreement with the City expires at the end of 2022.

resulting from certain practices by current employees that spike pension liabilities, deepening the underfunding of the City's pension plans and contributing to the City's persistent budget deficits.

14. The most severe deferred obligations the City has not been paying relate to the City's three defined benefit pension plans established for the City's employees: the Police Pension Plan ("PPP"), the Paid Firemen's Pension Plan ("FPP"), and the Officers and Employees Pension Plan ("OEP,"") (collectively, the "Pension Plans"), which covers eligible employees not in the PPP or FPP. Under Pennsylvania law, each year the City is required to pay by December 31 at least the minimum amount to cover the cost of benefits for current and future retirees as determined by actuarial analysis, which amount is called the minimum municipal obligation ("MMO"). Until 2021, the City had not made the full MMO contribution to the Pension Plans since 2013. From 2014 to 2016, the City only transferred pension aid received from the Commonwealth into the Pension Plans, and that aid covered a third or less of the total due. The City made additional contributions beginning in 2017, but those contributions did not meet the actuary's annual MMO calculation between 2014 and 2020.

15. As a result, as of July 31, 2020, the PPP (which is the most severely underfunded of the City's three Pension Plans) had only \$1.75 million in assets, an amount sufficient to pay a mere three months' worth of benefits to current retirees. The PPP spends approximately \$500,000-\$550,000 per month, mostly on retiree benefits.

16. Because of the Receiver's actions, including collecting revenue from a new 1% distressed pension tax that was expanded, as required by law, to be applied to City residents (in addition to commuters), the City was able to pay the 2021 MMO in full, and the PPP finished 2021 with \$4.6 million in assets (or approximately nine months' worth of benefits required to be paid to current retirees), and is projected to have \$6.7 million in assets as of December 31, 2022

(approximately thirteen months' worth of benefits required to be paid to current retirees), including full payment of the 2022 MMO. The distressed pension tax is in addition to the 2.75% earned income tax City residents already paid and, as a result, City residents are paying a 3.75% earned income tax, the second highest resident earned income tax rate in Pennsylvania, behind only Philadelphia.

17. Even with the Receiver's actions and substantial tax burden imposed on City residents, the aggregate unpaid MMO owed to the Pension Plans totaled \$39.8 million as of December 31, 2021, and interest accrues on this amount at the rate of the assumed return on investments by the PPP (approximately 7.5% per annum). The \$39.8 million in prior year MMO represents approximately 69% of the City's entire 2022 general fund budget. Further, fully funding the Pension Plans will require an additional \$87.4 million, on top of the past outstanding MMO's of \$39.8 million. Thus, the total contribution required to fund the City's three Pension Plans in full is at least \$127,200,000.

B. OPEB

18. The City's OPEB obligations (primarily medical and prescription drug coverage for retired employees) are less visible in the City's financial reports but still cost the City over \$5.5 million per year. According to valuations from the City's actuary, the City's total OPEB liability for all retirees at the end of 2018 was \$232.9 million. Some retired employees are covered through a Medicare supplemental plan for which the City allocated \$1,124,000 in 2022. With the exception of the Medicare supplemental plan, the City is self-insured for active and retiree health care costs.

19. Retirees covered by the City's self-insured arrangement are covered by one of four plans. Most police retirees fall into the Select Point of Service Plan ("Select POS") which has 90 retirees enrolled in it as of June 1, 2022. Most fire retirees are covered by the Select Exclusive

Provider Plan (“Select EPO”) which has 34 retirees enrolled in it as of June 1, 2022. The Exclusive Provider Buy-up Plan (“EPO Buy-up”) and Point of Service Plan (“POS”) have 24 and 3 retirees respectively enrolled in them as of June 1, 2022.

20. Retiree contributions toward the cost of their insurance coverage are minimal or non-existent. Like other Pennsylvania municipalities, Chester does not pre-fund its OPEB liability. The City does not set aside money to cover future cost of retiree health insurance. Instead, the City covers these costs on a pay-as-you-go basis with money flowing out of the City’s general fund to cover claims as they are received. The City lacks the resources to continue to pay OPEB at the level it has done to date.

21. The OPEB benefits that City retirees receive are extremely costly. The Select POS and Select EPO plans, which most City retirees receive, have no deductible, very low out of pocket maximums (\$500/\$1,000) and extremely low primary care/specialist co-pays of \$5, \$1 co-pays for generic drugs, and \$3 co-pays for all other drugs including specialty. The 2022 premium equivalents for a retiree and spouse for the Select POS and the Select EPO plans were \$35,246.52 and \$34,046.76 respectively. For reference, in 2020, the median household income in Chester was \$32,867.00.⁸

22. The City spends more for retiree health care than it does for active employee health care. In 2021, the City spent \$4,012,392 for medical and prescription costs for the Select POS and Select EPO plans, which are only offered to retirees. Over that same period, it spent \$3,628,817 for the other two plans, which also included some retirees. Thus, in 2021, the City spent at least \$383,575 or 10.6% more on retiree health care than active health care. This amount does not

⁸ This statistic can be found in the U.S. Census Bureau Quick Facts available at: <https://www.census.gov/quickfacts/chestercitypennsylvania>.

include the premium costs for the Medicare supplemental plan, which would only add to the total retiree health care costs.

23. The trend of paying more for retiree health care than for active health care has continued in 2022. Again, excluding any premium costs for the Medicare supplemental plan, retiree medical and pharmacy claims totaled \$2,175,201 from January – June 2022 and active medical and pharmacy claims totaled \$2,161,949 over that same period.

24. In 2017, the City restructured its collective bargaining agreements with the FOP and the IAFF to eliminate retiree health insurance for all police officers hired on or after February 1, 2017 and all firefighters hired after January 1, 2017. Given the size of the City's OPEB obligations, it is critical to the City that retiree healthcare be eliminated for all employees and substantially modified or eliminated for existing retirees.

25. The City simply lacks the resources to continue paying OPEB at the historical level, cannot meet its obligations to retirees or current employees, and must make dramatic changes. Failure to control or eliminate OPEB obligations is sufficient, alone, to prevent the City from fiscally surviving, but controlling or eliminating OPEB alone is not sufficient for the City to survive fiscally.

26. The City was able to make it through 2021 and 2022 without running out of cash only as a result of approximately \$30.4 million in funding provided by the federal government under the American Rescue Plan Act ("ARPA"), and the actions taken by the Receiver to reduce headcount, remove operational inefficiencies, lower the current OPEB obligation by moving certain retirees to a Medicare supplement plan, and paying only the current year MMO, rather than the accrued unpaid MMO. Moreover, the funding under ARPA is restricted and can only be used to pay certain of the City's expenditures. Further, the City's 2021 budget also relied on \$5 million

of emergency funding from DCED to bridge a cash shortfall early in the year before real property tax revenue was collected. Without the ARPA funding, decisive action by the Receiver, and the DCED emergency bridge loan, the City would have run out of cash during 2021.

27. Throughout much of 2022, the City remained perilously close to running out of cash and the City's current cash projections and draft 2023 budget, attached hereto as Exhibit A, show that if the City does not receive the 2023 TRAN advance before the end of the year, the City will only have \$2,851,000 in cash on hand on December 31, 2022, which is approximately 19 days of operating expenses. General purpose governments, regardless of size, are recommended to maintain a minimum unrestricted budgetary fund balance in their general fund of no less than regular general fund operating expenses, or \$9,151,841.⁹ The City's unrestricted budgetary fund balance in 2018, the last year for which audited financial information is currently available, was deeply negative, at -\$21,005,368.

28. The City's five-year baseline general fund projections, developed by the Receiver as of September 13, 2022, and attached hereto as Exhibit B, show a deficit of at least \$46.5 million in 2023, followed by a \$3.6 million deficit in 2024, a \$12.4 million deficit in 2025, a \$14.4 million deficit in 2026, and a \$16.3 million deficit in 2027. The \$46.5 million deficit in 2023 shown in the City's five-year baseline projections includes \$39.8 million for the City's past due legally required pension payments. However, even without that contribution, the City's five year baseline general fund projections still reflect a \$6.7 million (or approximately 10%) deficit in 2023.¹⁰

⁹ Based upon the Fund Balance Guidelines for the General Fund published by the Government Finance Officers Association, available at: <https://www.gfoa.org/materials/fund-balance-guidelines-for-the-general-fund>.

¹⁰ The draft 2023 budget reflects a budget deficit of \$48,754,425, which is approximately \$2.2 million more than the deficit projected in the five-year baseline projections. The current draft 2023 budget reflects an update from the five-year baseline projections (which were made as of September 13, 2022) resulting from a new assumption that a portion of tax revenues will have to

29. Even if the City were somehow able to address the 2023 and 2024 deficits, it would face another nearly insurmountable \$12.4 million deficit in 2025 due to the expiration of federal rescue plan funding and another federal grant which funded 8 of the City's firefighters.

30. As a practical matter, the City cannot meaningfully increase revenues by raising taxes. Citizens of Chester already pay significantly higher taxes than citizens in other communities in Delaware County and the City's earned income tax is the second highest in the Commonwealth, lower only than Philadelphia's earned income taxes. Moreover, even if the City could raise taxes, aside from the millage adjustment necessary to make the property reassessment revenue neutral to the City, its residents lack the financial wherewithal to bear them. Nor can the City materially reduce expenditures at this time by further reducing employee head count, wages, or services to residents beyond the level currently provided. The City's long-standing financial troubles have already left it unable to pay competitive wages to attract non-fire employees. Additional cuts would only further jeopardize health, safety, and welfare.

31. Recent developments highlight the substantial risk associated with the City continuing to teeter on the edge of running out of cash. For example, if Prospect Crozer decides to stop providing ambulance services, City residents will either be left without ambulance and paramedic service at all or the City will have to take funds from other budget line items to cover the cost of replacing that service. Another recent example is that, on May 20, 2022, the Chester-Upland School District ("CUSD") informed the Receiver that it was seeking to obtain its share of the resident earned income tax ("EIT") revenues that the City currently receives in full. If CUSD is able to obtain these EIT revenues beginning in January 2023, as is its stated intent, the City will

be shared with the Chester-Upland School District beginning in January 2023. The draft 2023 budget remains subject to change and, as a result and to be conservative, this Declaration has relied on the five-year baseline projections.

lose approximately \$1.6 million annually. Real events often intrude on budgets and continuing to cut it close on cash flow increases the risk that the City will run out of cash or unexpected events will occur that require additional cash resources the City lacks.

C. The City Lacks Sufficient Resources to Pay Its Obligations

32. Further, with the exception of the City's potential right to monetize the assets of the Chester Water Authority ("CWA"), which is the subject of significant litigation, and the City's parking revenue potential, the City's assets are limited in number, suffer from years of deferred maintenance, and have little market value.¹¹ These assets include land, City Hall, two fire stations, and a police station. Even if the City could sell some or all of them and continue to provide essential services to its citizens (which it cannot), the proceeds of the sales would be insufficient to solve the City's severe and growing financial problems. Using one-time revenues to pay for recurring costs does not solve the City's fundamental problem of recurring costs exceeding recurring revenues.

1. The Water Assets Litigation

33. The City incorporated the CWA in 1939 to undertake projects permitted by the Pennsylvania Municipality Authorities Act (the "MMA") and purchase the property owned by the Chester Water Service Company. Initially, the CWA provided water services only to residents of the City, but later expanded its service area into Delaware and Chester Counties. The CWA uses certain water system currently maintained by CWA, including, but not limited to, the Octoraro water reservoir located in southeastern Lancaster County, water treatment plants, transportation

¹¹ A description of revenues received by the City in connection with Harrah's Philadelphia Casino and Racetrack ("Harrah's Casino") and Covanta Delaware Valley, L.P. ("Covanta") can be found in the Doweary Declaration.

and distribution facilities, pipes, pumping stations, storage tanks, and related authorizations, permits and licenses (the “Water Assets”) to deliver services to its customers.

34. Historically, the CWA governing board was comprised of five directors, all of whom the City appointed. In 2012, following an amendment of the MMA by the Pennsylvania General Assembly that altered the manner in which directors of multi-jurisdictional entities are appointed (the “2012 Amendment”), the composition of the CWA’s board increased to nine members, with three directors appointed by each of the City, Chester County, and Delaware County.

35. As the City investigated options to improve its financial state, it considered a potential sale of the Water Assets. In May 2017, Aqua Pennsylvania, Inc. (“Aqua”) presented CWA an unsolicited offer to purchase the Water Assets for \$320 million, which would have enabled the City to emerge from Act 47. The offer was rejected.

36. The City informed the CWA that it was still considering monetization of the Water Assets as a means to exit Act 47, asserting that the City had the ability to repossess the Water Assets and dissolve the CWA pursuant to the MMA. The CWA disputed the City’s assertions, arguing that the 2012 Amendment abrogated the City’s ability to do so. In March 2018, the City and CWA entered into a standstill agreement as they attempted to reach a consensual resolution regarding the Water Assets.

37. Before expiration of the standstill agreement in January 2019, the CWA proposed a settlement offer. The offer was to pay the City \$60 million (facilitated through a bond issuance and implementation of an increase in water rates, not to exceed 10%), and transfer the Water Assets into an express trust for 40 years, during which they could not be sold. The City rejected the proposed settlement and ultimately, the parties were unable to reach a resolution.

38. Despite the City's rejection of the settlement offer, in March 2019, the CWA filed a petition in the Court of Common Pleas for Delaware County, Pennsylvania (the "CCP Court") seeking the approval of a transfer of virtually all of the Water Assets to a trust for 40 years (the "Trust Litigation"). The City opposed the petition, arguing that only the City possessed the statutory authority to transfer the Water Assets under the MMA. Shortly after CWA filed, in April 2019, Aqua filed a complaint in the CCP Court seeking to enjoin the CWA's settlement proposal (the "Settlement Injunction").

39. While the Trust Litigation and Settlement Injunction proceeded, the City authorized a request for proposals for acquisition of the Water Assets (the "RFP"), seeking to reach an outcome that would provide the City with maximum value and ensure that a quality operator would manage Water Assets while protecting customers. The RFP process resulted in three proposals from Aqua America, Pennsylvania American Water, and the CWA itself. According to the initial bids, the Water Assets could generate gross proceeds between \$60 million and \$410 million if permitted to reclaim and then sell the Water Assets. Upon information and belief, the Water Assets are encumbered by liens granted by the CWA to secure approximately \$200 million in bonds issued by the CWA. This debt would have to be satisfied in any sale of the Water Assets, and the City would only receive the net proceeds after satisfaction of the debt presently secured by the Water Assets.

40. In June 2019, the CWA filed a complaint in the CCP Court seeking to preclude the City from pursuing the RFP (the "RFP Injunction"). In July 2019, the City commenced an action against the CWA seeking a declaratory judgment that the City is authorized to reclaim and sell the Water Assets, and to enjoin the CWA from interfering with any sale of the Water Assets (the "Sale Litigation") (collectively the "Water Assets Litigation").

41. On April 24, 2020, the CCP Court issued orders in both the Trust Litigation and Sale Litigation, essentially holding that the City could not repossess and sell the Water Assets without the agreement of Chester and Delaware Counties, and requiring a factual hearing to determine whether the CWA could place the Water Assets into a trust. The CCP Court also certified the following question for immediate appeal to the Commonwealth Court: Whether the 2012 amendments to the MMA, establishing the City of Chester, Chester County and Delaware County as the governing body of the (Authority), require that any conveyance of the Authority's assets pursuant to the MMA be conducted and authorized by the governing body rather than solely by the City of Chester? Both the City and Aqua appealed to the Commonwealth Court.

42. On September 16, 2021, the Commonwealth Court issued its decision on the appeals, ruling in favor of the City and Aqua and reversing the orders issued by the CCP Court. Specifically, the Commonwealth Court held that the 2012 Amendment did not abrogate the City's power to reclaim the Water Assets pursuant to the MMA, and remanded the matter for further proceedings.

43. Shortly after the Commonwealth Court issued its opinion, both the CWA and Chester County petitioned for appeal of the decision to the Pennsylvania Supreme Court (the "PA Supreme Court"). On April 11, 2022, the PA Supreme Court granted the CWA's and Chester County's petitions, consolidating the appeals for the purposes of argument and disposition.

44. On June 22, 2022, the CWA and Chester County each filed briefs arguing that the Commonwealth Court's interpretation of the MMA constituted reversible error and that the City lacks the authority to reclaim and sell the Water Assets. On August 19, 2022, the City filed its responsive briefs. Oral argument is scheduled for November 30, 2022. In the interim, the Water

Assets Litigation is stayed, and the City is precluded from closing on any transaction for the sale of the Water Assets.

45. It is clear that the Water Assets represent hundreds of millions of dollars of contingent and potential value to the City that, if realized, would permit it to address the underfunded Pension Plans and invest in much needed improvements for the City. However, the outcome of the pending appeal to the PA Supreme Court is uncertain and, if the City prevails, the City will still have to repossess the Water Assets and then engage in a sale process. There almost certainly would be further litigation in the CCP Court (and, potentially, further appeals) before the Water Assets could finally be monetized. Furthermore, although one-time proceeds from a Water Asset monetization are necessary to address the City's pension issues, they do not solve the City's other significant problem that its recurring revenues do not cover its recurring expenses.

2. Parking

46. On April 25, 2018, prior to receivership, the City and PFS VII LLC (the "Parking Manager") entered into a contract by which the Parking Manager agreed to finance, construct and install equipment and improvements to manage the City's parking assets (as amended on September 5, 2018, the "Parking Agreement"). The agreement called for 1,500 parking meters concentrated in three geographic areas including approximately 500 on the campus of Widener University. The Parking Agreement provided the Parking Manager would finance, install, and operate the parking assets for 10 years after which the City would permanently own the parking assets. The City would receive an advance of \$1 million once the 1,500 meters were installed, \$300,000 payable initially, and an additional \$350,000 payable at 1,000 and 1,500 meters installed,

respectively. Additionally, once the 1,500 meters were installed, the City would receive a percentage of parking revenues annually.

47. To date, the City has only received the initial advance payment of \$300,000 plus some rental payments for the Parking Manager's use of an office in City Hall.

48. On January 2, 2019, Widener University filed a complaint in the CCP Court seeking a temporary and permanent injunction to prohibit the installation of parking meters on and around its campus, which injunction the court granted. The Receiver evaluated the Parking Agreement and Widener University's objections thereto and believes the Parking Agreement is below market and unlikely to ever result in payment to the City (thereby wasting the City's parking assets and precluding revenue therefrom).

49. Following notification by the Receiver's counsel on February 4, 2022 of the Receiver's intent to modify the Parking Agreement, pursuant to Section 706(a)(6) of Act 47 to remove a one-sided and unacceptable liquidated damages clause, on February 28, 2022, the Parking Manager filed an application for leave to file a First Amended Petition in the Receivership Action seeking to preclude modification or termination of the Parking Agreement.

50. On May 27, 2022, Receiver's counsel further notified the Parking Manager of the Receiver's intention to terminate the Parking Agreement, effective as of August 1, 2022, pursuant to his authority under Section 706(a)(6) of Act 47 and consistent with Initiative ASM02 of the Amended Recovery Plan.

51. On September 19, 2022, the Commonwealth Court issued a Memorandum and Order in the Receivership Action denying the Parking Manager's application for relief, finding that the Parking Agreement is void for failure to comply with the advertising and competitive

bidding requirements of the Third Class City Code, and upholding the Receiver's authority to terminate the Parking Agreement pursuant his authority under Section 706(a)(6) of Act 47.

52. Based on the Commonwealth Court's ruling, on September 28, 2022, the Receiver's counsel sent a letter to the Parking Manager advising that the Parking Agreement would terminate at 12:00 a.m. on October 1, 2022.

53. On October 14, 2022, the Parking Manager notified the City that PFS believes it is owed a \$12 million "buyout" pursuant to the Parking Agreement, which the Receiver disputes. The Parking Manager also continues to assert a lien on the parking assets.

54. While the Parking Agreement dispute was ongoing, the Receiver negotiated an agreement with Widener University, pursuant to which Widener University will pay the City \$325,000 per year for the next ten years in exchange for the City's agreement not to install parking meters on Widener University's campus.

55. Now that it has commenced this bankruptcy case, the City intends to file a motion seeking to reject the Parking Agreement. Further, the Receiver believes a more favorable agreement can be reached after a bidding process and that the Parking Manager will only have an unsecured rejection damages claim, to the extent the Parking Agreement is a valid and binding obligation of the City (which the Receiver disputes).

3. DELCORA

56. Prior to 1973, the City owned and operated facilities used for collecting, transporting and treating sewage (the "Sewage Assets") in the City, in certain municipal systems in Delaware County and for certain private users in adjoining areas. On February 12, 1973, the City entered into an Agreement of Sale and Service (as amended on January 21, 1986, the "Sewer

Sale Agreement”) with the Delaware County Regional Water Quality Control Authority (“DELCORA”), pursuant to which DELCORA purchased the Sewage Assets.

57. Pursuant to the Sewer Sale Agreement, DELCORA is obligated to accept the City’s wastewater flow, subject to compliance with DELCORA’s quality standards, and to maintain the facilities in accordance with applicable regulations. Additionally, the Sewer Sale Agreement provides the City with rights of reversion to the Sewage Assets. Specifically, if DELCORA ceases to operate the Sewage Assets, then certain fixed assets and real property included in the Sewage Assets revert back to the City’s ownership. The Sewer Sale Agreement prohibits DELCORA from assigning its obligations thereunder without the consent of both DELCORA and the City.

58. The City and DELCORA also entered into a Facilities Easement Agreement dated November 26, 2014 (the “Easement Agreement”), which entitled the City to ten percent (10%) of any proceeds received by DELCORA from the sale or lease of the easement to a third party.

59. In 2019, DELCORA entered into an Asset Purchase Agreement dated September 17, 2019 (as amended on February 24, 2020, the “APA”) with Aqua Pennsylvania Wastewater, Inc. (“Aqua Waste”). The APA purports to assign the Sewer Sale Agreement and Easement Agreement to Aqua Waste and transfer the Sewage Assets to the DELCORA Trust.

60. Because the City did not consent to the assignment of the Sewer Sale Agreement and Easement Agreement, on August 17, 2022, the Receiver filed a complaint against DELCORA in the CCP Court. The complaint seeks a declaratory judgment that in the event the Sewage Assets are sold to a third-party, ownership of the City’s sewer system will revert back to the City unless DELCORA properly compensates the City for those assets and provides payment required under the Easement Agreement. This litigation is pending before the CCP Court.

4. The City's Infrastructure Suffers From Years of Deferred Maintenance

61. After years of neglect and deferred maintenance, the City's infrastructure and assets are in desperate need of repair. All of the City's buildings fail to meet the applicable building codes. The City's public works building needs repairs to its fire suppression systems, roof, and bathrooms. City Hall similarly is in disrepair and has a hole in its roof which is in the process of finally being repaired. The two fire department buildings and the police building are old and have outlived their useful life.

62. The City's roads have not been paved in many years and show the wear and tear of years of neglect. Similarly, the pedestrian bridges that connect the main part of the City with its northwestern section are unsafe and, as a result, closed. The City has an aging fleet of vehicles and faces the need to either replace the vehicles or pay high maintenance costs for the vehicle.

II. The City Has Engaged in Good Faith Efforts to Negotiate with Its Creditors

63. The Receiver and I have been in discussions with the City's major creditor constituencies, which I have been spearheading at the Receiver's direction, in an effort to address the City's financial condition and resolve its growing liquidity crisis without recourse to the protections and powers of chapter 9 of the Bankruptcy Code. Despite these good faith efforts, however, these discussions did not result in any indication the City could negotiate the necessary reductions of its obligations to creditors absent a chapter 9 proceeding.

64. Since the Receiver's appointment, I have had ongoing contact with representatives of the IAFF and FOP. During this time, we have discussed the City's financial condition, pension underfunding, changes necessary to the collective bargaining agreements, changes to the benefits provided to active employees and retirees, the Receiver's efforts to address the City's severe financial issues outside of bankruptcy, and the Receiver's efforts to monetize the Water Assets. I

have been transparent during these communications about the difficulties the Receiver has encountered and the severity of changes that might be necessary.

65. On September 16, 2022, shortly after making the September 13, 2022 presentation to MFRAC, the Receiver presented term sheets to the IAFF and Teamsters, and on September 21, 2022, the Receiver presented a term sheet to the FOP. The term sheets proposed terms on which the City would be willing to enter into new collective bargaining agreements or amend existing collective bargaining agreements, detailing the proposed treatment of retirees' OPEB claims, and asking each union to confirm whether they are representing their respective retirees in connection with the City's restructuring. A copy of the MFRAC Presentation was submitted with each term sheet. The Receiver and I met with representatives of the FOP on September 21, 2022, the IAFF on September 16, 2022, and the Teamsters on September 16, 2022. Each meeting lasted approximately 60 minutes. During each meeting, we invited questions and stressed that we welcomed the unions' views. Each of the IAFF, FOP, and Teamsters took the position that they do not or could not represent their former members who are current retirees and would not negotiate on their behalf. As to the terms for current employees, each of the IAFF, FOP, and Teamsters were, understandably, unenthusiastic, but each stated that they would consider the proposals and did not yet have counterproposals.

66. Despite weekly follow-up inquiries by me as to the status of a response, no counterproposals have been received from any union. Specifically, I e-mailed the president of the IAFF on September 29, 2022, October 6, 2022, October 17, 2022, and October 28, 2022. On November 7, 2022, the IAFF responded and declined to counter the Receiver's proposal. I e-mailed the Teamsters' representative on October 6, 2022, October 17, 2022, October 28, 2022, and November 4, 2022, and have received no counterproposal. On October 28, October 30, and

November 2, 2022, I provided significant additional information related to historic healthcare costs to the FOP in response to their request, in addition to the publicly-available information already included in the MFRAC presentation. On November 3, 2022, the FOP asked to schedule a follow-up meeting, which has not yet been scheduled. No counterproposal has been received from the FOP.

67. The unions' position that they do not represent their former members (now retirees) left the Receiver without any centralized representatives to negotiate on the retirees' behalf. On November 9, 2022, the Receiver and I conducted a meeting with approximately 150 of the City's retirees in person at City Hall. All of the City's retirees were notified of the meeting via a letter mailed by the Receiver on October 14, 2022. The purpose of this meeting was to inform retirees of the City's financial issues and explain the City's concept to address its financial problems, including the adjustment of OPEB for retirees.

68. Shortly after the Receiver's appointment, Preston Hollow Community Capital ("Preston Hollow") communicated proposals to the City and Receiver to restructure the Series 2017 Bonds in a way that would have modestly improved the economic terms while also correcting deficiencies in Preston Hollow's security interests. The Receiver ultimately declined to agree to Preston Hollow's proposals. In June 2022, Preston Hollow submitted a proposal to the Receiver that would have resulted in Preston Hollow being paid early (and in full) on account of the Series 2017 Bonds. After careful analysis, on October 11, 2022, the Receiver sent letters to Preston Hollow, Delaware County, and U.S. Bank explaining the City's basis for asserting that their claims are unsecured and proposing dates and times for a meeting to discuss.

69. On October 17, 2022, the Receiver and I participated in a video conference with representatives from Preston Hollow to discuss the Receiver's letter and ways a potential plan of

adjustment could modify the Series 2017 Bonds and the City's other obligations. On November 4, 2022, Preston Hollow rejected the Receiver's position and did not make a counteroffer.

70. On October 24, 2022, the Receiver and I also met with representatives of Delaware County regarding the treatment of their claims against the City and, based on that meeting, the Receiver believes that a resolution with Delaware County might be achievable but only in bankruptcy. Notwithstanding my impression, I continued to attempt to engage with Delaware County, sending a follow-up email to Delaware County on November 1, 2022. On November 2, 2022, I received a telephone call from the Delaware County Solicitor indicating that Delaware County was not willing to acquiesce to the Receiver's proposal and providing no counterproposal.

71. Although the City believes that (a) its discussion with its various creditor constituencies were constructive, (b) significant data was conveyed to creditors, and (c) the negotiations were conducted in good faith on the City's part, the City ultimately has not been able to reach a comprehensive agreement for the restructuring of its outstanding obligations. Moreover, the feedback received from creditors to date has led the City to determine that such a comprehensive agreement is unlikely in the near term or without this filing. Further negotiation with all of the City's various stakeholders is impracticable in light of the City's cash crisis and urgent need to move forward with its restructuring. The City requires a centralized forum within which parties may negotiate and ultimately be bound. At this point, the City cannot practicably negotiate a consensual restructuring with any of its key constituencies in an out-of-court setting.

72. If left unchecked, the City's deteriorating financial condition will only get worse. The time to stop the downward spiral is now. Unfortunately, despite good faith efforts by the City to negotiate with its creditors (where such negotiations could be had), no reasonable alternative for the restructuring of the City's operations and obligations exists other than through this chapter

9 case. This bankruptcy provides an opportunity to effect real and lasting change to benefit the residents of Chester.

III. Stay Clarification Motion

73. On June 1, 2020, the DCED filed with the Commonwealth Court a *Petition for Appointment of Receiver for the City of Chester and Related Relief Pursuant to Subsection 702 of Pennsylvania Municipalities Financial Recovery Act, Act of 1987* (the “Receiver Petition”). The City Council did not respond or otherwise oppose the Receiver Petition. On June 15, 2020, the Commonwealth Court held a hearing on the Receiver Petition at which the parties, including the City Council, stipulated that the conditions precedent to the appointment of the Receiver under Act 47 had been met. The City Council further stipulated that it had no objections to the relief sought in the Petition and that the Receiver was qualified under Act 47.

74. On June 22, 2020, the Commonwealth Court entered an order (the “Receiver Order”) finding, among other things, that the City Council failed to adopt a consent agreement pursuant to Section 607 of Act 47 and that a fiscal emergency under Section 602(a) of Act 47 continued to exist in the City. The Receiver Order granted the Receiver Petition, declaring the City to be in receivership pursuant to Section 702(e)(2) of Act 47 and appointed the Receiver.

75. The Receiver Order directed the Receiver to develop a recovery plan for submission to the Commonwealth Court, the Secretary for the DCED, the City Council and the Mayor. The Receiver Order also required and empowered the Receiver to implement the EAP until he developed a recovery plan. The Receiver Order also provided that during the fiscal emergency, the City Council and Mayor shall continue to carry out their duties, subject to and consistent with the provisions of the EAP and any recovery plan. On December 28, 2021, the Commonwealth

Court entered an order extending the City's receivership and the Receiver's appointment for up to two years.

76. In August 2020, the Receiver submitted an initial Recovery Plan (the "Recovery Plan"). The Recovery Plan represented the City's first steps towards an exit from financial distress and the stable provision of critical services to the City's residents, based on the information then available to the Receiver. Further, the Recovery Plan set forth certain initiatives that the Receiver would implement to address the City's financial circumstances. On October 19, 2020, the Commonwealth Court issued a Memorandum & Order approving the Recovery Plan (the "Recovery Plan Order"). A copy of the Recovery Plan Order is attached hereto as Exhibit C. The Recovery Plan Order noted that the Recovery Plan contemplated further amendment and the Commonwealth Court's assurance that the City Council would make efforts to obtain current financial information for use in modifying the Recovery Plan.

77. The Receiver worked diligently to formulate and implement the Recovery Plan and improve the City's financial position and provide vital and necessary services to its residents by taking steps to reduce its expenditures, including, making a significant reduction of its workforce, restricting overtime, implementing a hiring freeze and limiting discretionary purchases. The Receiver made great efforts to work with the City Council to implement the Recovery Plan and obtain the information necessary to amend the Recovery Plan. Despite the Receiver's efforts to implement the Recovery Plan cooperatively, it became necessary for the Receiver to seek the assistance of the Commonwealth Court.

78. Soon after his appointment, the Receiver learned that the City's circumstances were more dire than he anticipated. To facilitate the implementation of the Recovery Plan, the Receiver sought to hire a chief operating officer (the "COO") and discussed the same with the Mayor.

Approximately three weeks after the COO began her position, the Mayor, without consulting the Receiver, terminated the COO and refused to reinstate her. The City Council also opposed the Receiver's organizational changes to the City's departments. The Receiver brought these issues before the Commonwealth Court for resolution, in particular the issue of whether Act 47 gave the Receiver the authority to require the City Council to take action to implement the Recovery Plan, including the hiring of the COO. Attached hereto as [Exhibit D](#) is a copy of the Stipulation of Fact Filed Pursuant to Court's December 16, 2020 Order (the "[Stipulation](#)") filed on behalf of the Receiver and the City relating to the issues presented to the Commonwealth Court.

79. On December 23, 2020, the Commonwealth Court entered a Memorandum & Order (the "[COO Order](#)"), finding that the Recovery Plan did not define the role of the COO. The Commonwealth Court encouraged the Receiver and the City Council to collaborate to resolve the COO duties and create a proposed budget that incorporated the Recovery Plan, pending modifications to the Recovery Plan. A copy of the COO Order is attached hereto as [Exhibit E](#).

80. In April 2021, the Receiver submitted an Amended Recovery Plan (the "[Amended Recovery Plan](#)") and together with the Recovery Plan, the "[Recovery Plans](#)"), which the Commonwealth Court approved on June 7, 2021. Although the City Council did not object to the Commonwealth Court's approval of the Amended Recovery Plan, challenges in implementing the Recovery Plans persisted.

81. On March 4, 2022, the Receiver filed a Petition for Mandamus (the "[Mandamus Petition](#)") requesting that the Commonwealth Court issue a writ of mandamus upon the Mayor and the City Council mandating that they comply with the terms of the Amended Recovery Plan and orders issued by the Receiver pursuant to the Recovery Plans. A copy of the Mandamus Petition and corresponding Memorandum of Law without exhibits are attached hereto as [Exhibit F](#). In

formulating the Amended Recovery Plan, the Receiver negotiated salary reductions with the City Council members as one of the terms of an agreement to pass the 2021 budget for the City. The City Council did not object to this provision prior to the Commonwealth Court's approval of the Amended Recovery Plan. Accordingly, pursuant to the Amended Recovery Plan, the City Council was required to change City ordinances to reflect the salary reductions. However, following the approval of the Amended Recovery Plan, the Mayor and City Council passed a budget that did not reflect the agreed salary reductions.

82. Additionally, the Mandamus Petition sought to prevent the City Council from continuing to take actions that impeded the Receiver's ability to implement the Amended Recovery Plan. For example, the City Council authorized payments that were not included in the budget or formally authorized without informing the Receiver. Additionally, the interim chief financial officer (the "Interim CFO"), appointed pursuant to an order issued by the Receiver in connection with the Amended Recovery Plan, was denied access to the buildings, financial system and meetings, impeding her ability to perform her duties. The City Council also informed the Receiver that it would not comply with all of the provisions of the Receiver's orders.

83. On March 22, 2022, the Commonwealth Court issued a Memorandum and Order granting the Mandamus Petition, in part (the "Mandamus Order"). A copy of the Mandamus Order is attached hereto as Exhibit G. The Commonwealth Court concluded that certain City Council members and City employees had engaged in conduct that impeded the Receiver's ability to implement the Amended Recovery Plan. Accordingly, the Mandamus Order, in relevant part, requires the City Council to refrain from interfering with the Interim CFO's performance of her duties and to comply with all programs, policies, procedures, audit recommendations, and monetary and financial controls implemented by the Interim CFO. Further, the Mandamus Order

requires the City Council to immediately share information relating to the City's finances with the Receiver and the Interim CFO.

84. Following the entry of the Mandamus Order, the challenges that the Receiver faced in working with the City Council continued. In general, there remains confusion among City employees regarding to whom they report and what direction to follow when faced with conflicting directions. Unfortunately, Act 47, the Recovery Plans, and orders of the Commonwealth Court do not always provide clear guidance regarding such conflicting directions.

85. Further, on October 21, 2022, a member of the City Council informed the Receiver of an alleged "phishing" incident in which the councilmember caused a wire in the approximate amount of \$400,000 to be transferred to someone posing as the City's insurance broker. Although the councilmember informed the Receiver of the phishing incident in October 2022, the councilmember discovered the incident in July 2022—more than three months prior. Despite the direction of the Mandamus Order to immediately share financial information with the Receiver, the councilmember delayed disclosure, without providing a reason for doing so. Further, it is unclear what steps, if any, were taken to remedy the incident.

86. In response to these challenges, among others, on November 8, 2022, the Receiver filed the Modification of Amended Recovery Plan (the "Modification") with the Commonwealth Court, seeking to further amend the Amended Recovery Plan. A true and correct copy of the Modification is attached hereto as Exhibit H. Through the Modification, the Receiver seeks to add or amend initiatives in the Amended Recovery Plan to address the challenges he continues to face. These initiatives are more fully described in the Modification and, among other things, purport to provide clearer guidance to all parties as to the implementation of the Amended Recovery Plan to ensure the provision of vital and necessary services to the City's residents.

87. Given the preexisting lack of clarity relating to the operations of the City, the Receiver is concerned that the persisting issues may be further exacerbated by the bankruptcy filing. Accordingly, a ruling by the Commonwealth Court on the Modification is necessary to facilitate a bankruptcy process that enables the City to propose and implement a Plan to allow a successful exit from chapter 9 and to provide vital and necessary services to the residents of the City.

88. Section 362(a) of the Bankruptcy Code imposes an automatic stay of, among other things “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title” [11 U.S.C. § 362\(a\)\(1\)](#).

89. The City does not believe that the automatic stay pursuant to Section 362 of the Bankruptcy Code applies to the relief sought in the Modification. Nonetheless, by the Stay Clarification Motion, the City seeks the entry of an order confirming that the automatic stay does not apply to the Modification and allow the Commonwealth Court to exercise its jurisdiction to consider and approve the Modification, without any concern of violating the automatic stay.

90. The focus of the Modification is on issues that affect the day-to-day operations of the City and circumstances that have impeded the Receiver’s ability to do his job and implement the Recovery Plans, issues over which this Court may lack jurisdiction absent consent of the City. Moreover, the automatic stay does not apply to the Modification and it will not prejudice parties that may be affected by the relief sought by the Receiver in the Commonwealth Court. The automatic stay only prohibits claims against the City and does not restrict affected parties from filing pleadings in response to the Modification.

91. Alternatively, in the event that the automatic stay applies to the relief sought by the Modification, the City requests that the Court grant limited relief from the automatic stay for cause pursuant to Section 362(d)(1) of the Bankruptcy Code. Granting relief from the automatic stay (1) will not prejudice the interests of affected parties, (2) will permit the Receiver to obtain the clarity needed to navigate the City through the chapter 9 proceedings with minimal complications and ensure the provision of vital and necessary services to the City's residents, and (3) promotes judicial economy, as the Commonwealth Court has presided over the receivership proceedings for over two years and is deeply familiar with the Receiver's arguments as presented in the Mandamus Petition and the Modification.

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I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

Dated: November 10, 2022



Vijay Kapoor