

# Possible Solutions to City Financial Situation & Parking Contract Discussion

MFRAC Meeting  
May 24, 2022

# Topics for Discussion

- Possible Solutions to City Financial Situation
- Parking Contract

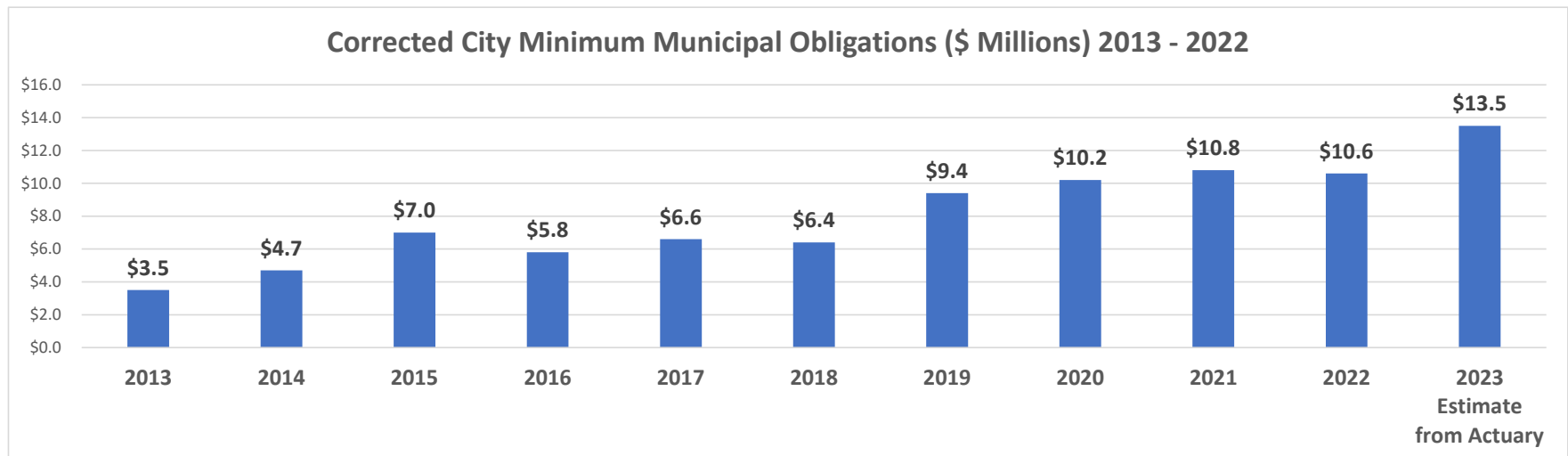
# Possible Solutions to City Financial Situation

# May 10<sup>th</sup> MFRAC Meeting Summarizing Chester's Financial Reality

- At the May 10, 2022, MFRAC meeting, we discussed Chester's updated financial reality which included:
  - Being in state financial oversight for 27 years and continuing to struggle financially
  - Inability to repay the \$36.6 million in receivables to pension funds without monetization of water system
  - Unaffordable increasing annual pension payments (MMOs)
    - May 10<sup>th</sup> underestimated expected 2023 MMO cost (see slide 5)
    - Increase for next year is approximately \$3 million
  - Police pension fund with assets equivalent to approximately 8 months of pension benefits
  - General fund budget only balanced as a result of federal rescue plan (ARPA) funding
  - Water system monetization litigation tied up in court with a decision not expected until next year

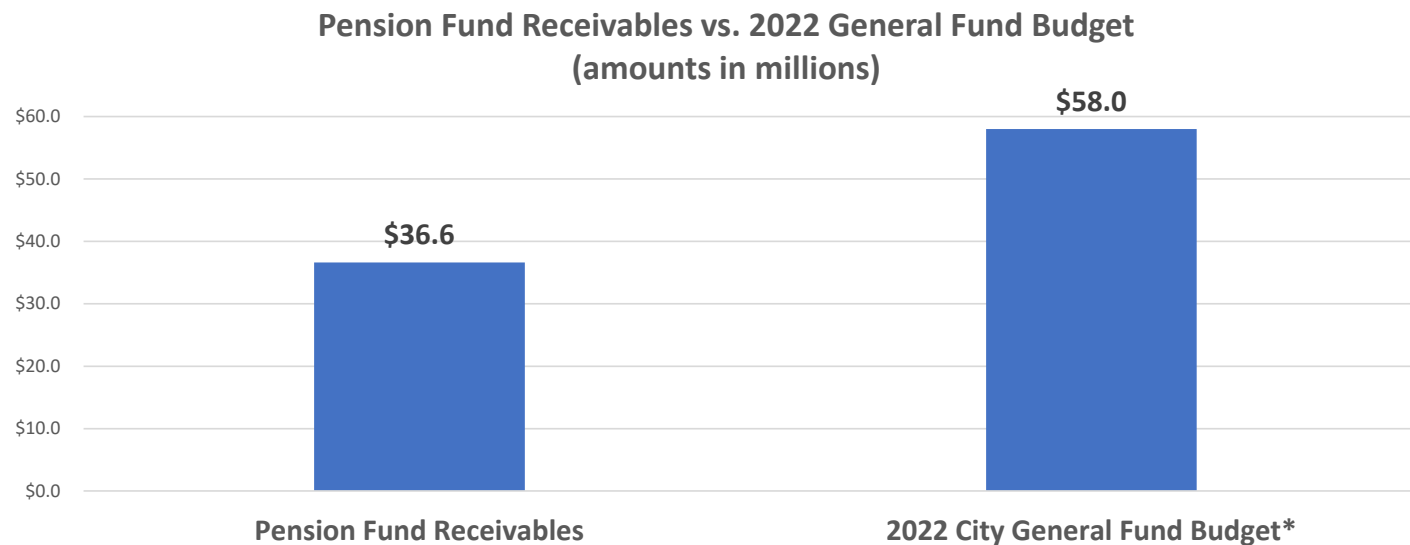
# Corrected MMO Cost Growth

- Slide 9 of the May 10th MFRAC presentation reflected an incorrect MMO estimate of \$12.5 million for 2023. The correct estimate should be \$13.5 million as reflected below. **This is an increase of approximately \$3 million over 2022 and again assumes that the City has already deposited the \$36.6 million in receivables.**



# Receivables Compared to 2022 General Fund

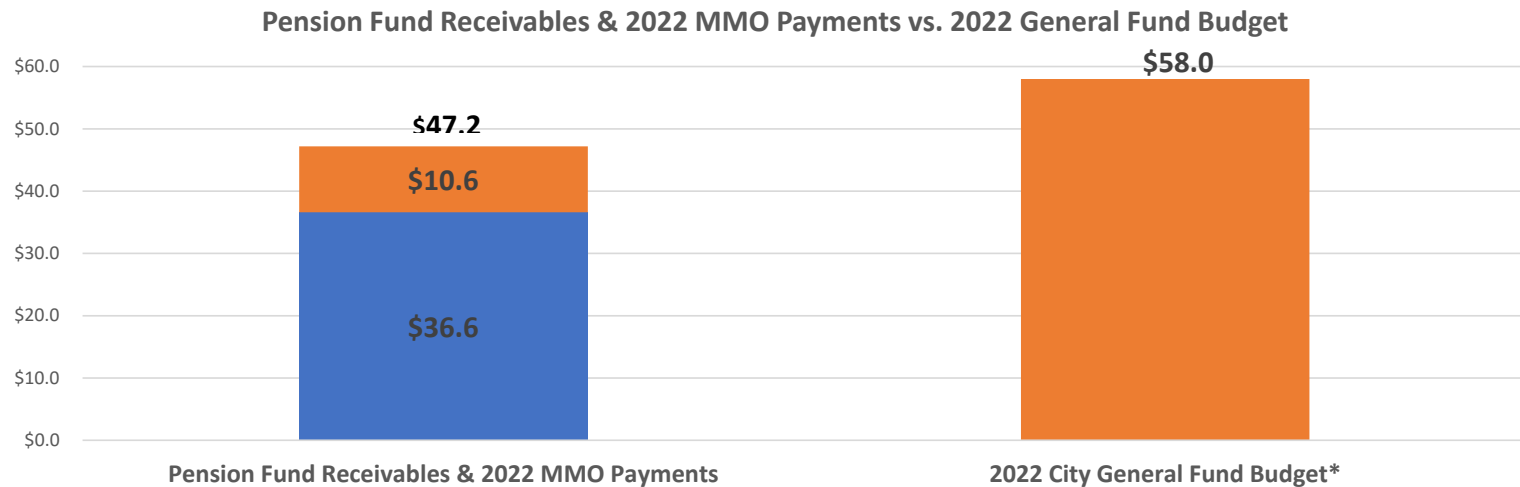
The \$36.6 million owed as receivables is equivalent to approximately 63.1% of the City entire general fund budget for 2022. Put another way, the City would need to divert nearly 2 out of every 3 general fund dollars it collected in 2022 just to pay for the receivables.



\* Excludes \$5 million emergency loan from DCED.

# Receivables & MMO Compared to 2022 General Fund

The \$36.6 million owed as receivables and \$10.6 million for the City's 2022 MMO payment (total \$47.2 million) is equivalent to approximately 81.4% of the City's entire general fund budget for 2022.



\* Excludes \$5 million emergency loan from DCED.

# Chester's 2021 Funded Levels

- When the funding levels are reflected using the **Market Value of Assets** (i.e., excluding the receivables from the Plan's assets), the magnitude of the pension problem becomes clear
- The table below reflects pension liabilities as of January 1, 2021, from the actuarial valuations and the market value of assets as of March 31, 2022, from the PNC quarterly report. While we have made some improvement in the police plan assets, overall assets are completely inadequate to pay for the current level of benefits provided.

	Police	Fire	O&E	Total
Liabilities*	\$98,405,971	\$47,775,979	\$8,715,193	\$154,897,143
Assets ( <u>Excl</u> Receivables)	\$4,719,093	\$31,758,912	\$2,398,959	\$38,876,964
Unfunded Liability	(\$93,686,878)	(\$16,017,067)	(\$6,316,234)	(\$119,411,460)
<b>Funded %</b>	<b>4.8%</b>	<b>66.5%</b>	<b>27.5%</b>	<b>25.1%</b>

\*Note: Pension liabilities have increased since the 1/1/2021 valuation and thus the table above reflects a better funded % level than in reality.



# Other Potential 2022 Financial Concerns

- As with other Delaware County municipalities, Prospect Crozer has approached the City of Chester regarding the continued provision of ambulance services. To date, the City has not received a notification of discontinuation of service letter. However, the City expects Prospect Crozer to request a payment for continuing to provide ambulance services.
- Prospect Crozer is also seeking to enforce an amount of \$340,530.49 plus interest against the City for a property tax refund. The matter is scheduled for a hearing in court on June 16, 2022.

# What About ARPA Money?

- Through the American Rescue Plan Act (ARPA), the City received \$30,357,628 million which is helping to keep the City financially afloat.
  - In order to balance the 2022 budget, the City is relying on approximately \$2.9 million in ARPA funds
  - ARPA funds may be used to cover qualifying costs obligated between March 3, 2021 and December 31, 2024 and expended by December 31, 2026
- There are restrictions to using ARPA funds including not being able to deposit these funds into pension plans.
- In addition to using these funds to keep the City afloat financially, the Receiver and the City are almost finished developing an ARPA plan that will use these funds for critical health and safety expenses. We will be jointly presenting this plan to the public soon.

# Receiver Responsibilities Under Act 47

- Section 703(b) of Act 47 requires that the Receiver's Recovery Plan provide for all of the following:
  - (i) Continued provision of vital and necessary services which are defined as "basic and fundamental municipal services including the following:"
    - (1) Police and fire services
    - (2) Ambulance and Rescue services...
    - (5) Refuse collection and disposal...
    - (7) Payroll and pension obligations
  - (ii) Payment of the lawful financial obligations of the distressed municipality and authorities
  - (iii) Timely deposit of required payments to the pension fund in which the distressed municipality and each authority participates.
- Chester's problem is that it simply cannot afford to pay for all of these obligations.

# Chester's Reality

- Chester cannot both pay its retiree benefit costs (pension and retiree health care) and fund vital and necessary services to residents.
- For years, the City's overall expenses exceeded its revenues and the City was only able to operate by not paying its legally required minimum annual payments to its pension plans (called minimum municipal obligations or MMOs).
- The bill has come due for these pension and retiree health care costs
- Chester's current financial problems cannot be solved with incremental measures. We must take comprehensive action to truly solve Chester's problems, not just to put a bandaid on them.

# Bankruptcy Authorization

- The Receiver has requested and has received authorization from the Secretary of DCED to file for bankruptcy should the Receiver decide to do so.
  - The Receiver obtained this authorization in February 2022, and his team continues to work to try to avoid a bankruptcy filing. The City's financial situation, however, has only to deteriorated since that time.
- While the Receiver has authorization to file for bankruptcy, his team is continuing to work to avoid having to do so.
- The only real solution to Chester's situation is to reduce retiree benefit costs (among other expenditures) and to get a large influx of money to deposit into the pension funds and for other City needs

# What Chester Residents and Businesses Have Had to Endure

- High taxes and fees
  - Resident EIT rate is second highest in PA at 3.75%
    - Rate in 2021 increased from 2.75% to 3.75% to comply with distressed pension EIT law
  - Residents also must pay a stormwater fee levied by Stormwater Authority
- Certain employee pensions increased and pension spiking
- Illegal dumping sites
- School district also in receivership
- Professional fire department that provides services to neighboring municipalities without commensurate financial support from those municipalities
- Significant capital project backlog
- City without any financial reserves
- City reliant on revenue sources from host fees – casino & incinerator

# What Steps Have Already Been Taken?

- Headcount has been reduced by 35.5 positions from 280.5 in 2020 to 245 positions in 2022 – a reduction of almost 13%
- Increased health contributions for non-represented employees and elected officials
- Future reductions in elected official salaries
- Corrected distressed pension Earned Income Tax (EIT) rate for residents which resulted in the resident EIT rate increasing from 2.75% to 3.75% - the second highest in Pennsylvania.

# What Steps Have Been Taken?

## Pensions and Retiree Health Care

- In 2021, made MMO payment in full for first time since 2013
- Moved eligible retirees to Medicare supplemental plan
- Enforced recoupment of pension amounts for police officers who retired with a disability pension but got another job



# What Steps Have Been Taken?

## Public Works

- Consolidated streets and parks staff into a public works department
- Called back public works employees after only having two full-time and six part-time staff
- Outsourced bulk trash services
- In process of installing illegal dumping cameras
- Obtained operational flexibility with Teamster contract
- Secured assistance from SCI Chester
- PennDOT now plowing state roads in Chester

# What Steps Have Been Taken?

## Police and Fire

- Police
  - With Delaware County DA Office's help, obtained help from State Police to assist Chester Police Department with Operation Safe Streets
  - Completed police study
- Fire
  - Through SAFER grant, hired 8 firefighters
    - Grant will expire in early 2024
  - Completed fire study

# What Steps Have Been Taken?

## Economic Development and Codes

- Fourth Economy developed a prescriptive economic development strategy that will be used as the basis to update the City's comprehensive plan
- The City's comprehensive plan will be updated. A vendor has been selected and a contract with them will be finalized soon.
- Recast City completed an assessment for the downtown Overtown neighborhood that focused on the expansion of downtown businesses to include small-scale manufacturing and development
- A2Z Diversity solutions prepared a minimum participation level plan for the City to increase the diversity and inclusion impacts for purchasing and procurement for the City to achieve its supplier diversity goals
- Regional Property Solutions completed an operations assessment on the City's codes functions that focused on operational efficiencies and performance improvement in the department.

# What Steps Have Been Taken?

## Current Projects in Process

- Hiring a Chief Operating Officer (COO)
- Addressing Finance Department issues
  - Including outsourcing payroll function
- Addressing Codes issues

# Monetization Options

# Water System Monetization

- There is no reasonable way that Chester will remain financially viable without reducing its pension and retiree health care costs and depositing significant amounts of money into its underfunded pension plans.
- The only realistic way for Chester to deposit the amount of money needed in its pension funds to have an affordable pension payment is to monetize the Chester Water Authority

# What Would Monetization Do for Chester?

- Depositing a significant amount of money into the City's pension plans (after restructuring benefits) would have two significant benefits:
  - 1. Money in the plans would ensure that current and future retirees would continue to receive a pension
  - 2. The better a plan is funded, the lower the City's annual payment (MMO). Depositing a significant amount of money into the pension plans will reduce the MMO and allow the City to reinvest money in other needed areas including, for example, compensation for active employees

# 3 Possible Paths re Water System Monetization

- The City has three possible paths:
  - 1) No water system monetization
  - 2) Seek to sell the system to a private company (privatization)
  - 3) Monetize system, but keep it in public hands
- Every path above starts with the premise that the City cannot afford its pension and retiree health care costs and that they must be restructured. The severity of the restructuring depends upon how much money the City can place into the pension funds.



# No Monetization Path

- No realistic way of paying for pensions (\$36.6 million in receiveables), City capital needs, or other financial needs such as reserves
- MMO will continue to increase, crowding out funding for vital operations
- Next year, choice will become whether to make MMO payments or fund operations (MMO increasing by approximately \$3 million)
  - Significant and immediate impact to City operations
- Would need to seek to severely cut pensions and retiree health care benefits in bankruptcy
- Outcome that Receiver's team is working very hard to avoid (worst case scenario)

# Privatization Path

- Would fund pensions and other City financial needs
- Would raise water rates on residents
- Water system would be in private hands
- Significant litigation risk (see next slide).
- Because court decision is uncertain, would need to seek to significantly reduce pension and retiree health care benefit liabilities in bankruptcy process because City could be in the “no monetization” scenario if it loses the court case
- “High risk/High reward” situation for City and CWA

# Water System Monetization Litigation

- Whether the City has the ability to repossess the water system to monetize the water system remains in litigation
- Although the City won at the Commonwealth Court level, the Pennsylvania Supreme Court agreed to hear the case
- Briefs for Chester Water Authority were due on May 23, 2022. The Court gave CWA an extension to June 22, 2022. Responses from the City are due 30 days after CWA's briefs are filed. There will likely be oral argument some time in the Fall
- We do not expect a decision in the case to occur until some time next year. Even after that decision, we expect some litigation to continue.

# Keep in Public Hands Path

- In September 2021, the Receiver stated that he was open to keeping the system in public hands if the City could receive a fair price for the system. He also noted that he directed his team to do its due diligence to see whether the City could receive a fair price for the water system while at the same time keeping it in public hands.
- Since that time, the Receiver's team has considered other options and is bringing a potential concept to MFRAC for discussion.
- The concept would address the City's pension and other financial needs, but would also seek to minimize the impact on water system ratepayers (which include City residents).
  - The City still would need to restructure its retiree benefit costs; however, the impact would be lessened.

# Keep in Public Hands Path (Continued)

- The concept consists of two parts:
  - 1. Significant up-front lump sum sufficient to: a) be deposited into the pension funds resulting in an affordable MMO amount and b) address City's other financial needs including but not limited to funding capital projects and establishing appropriate reserves
    - Money that is saved from reducing the MMO payment can be reinvested in operations
  - 2. Smaller on-going annual payment that would allow the City not to be financially reliant on host fees from third parties (for example, from incinerator).
- The system would stay in CWA's hands and it would be up to CWA to decide how to fund these payments
- Clearly, the impact will depend on how much these payments would be and how they would be structured.

# Keep in Public Hands Path

## *(Continued)*

- If done correctly, this concept could:
  - Address the retiree benefit cost issues plaguing Chester and allow it to reinvest in critical areas such as active employee compensation
  - Minimize cuts to retiree pensions and health care
  - Keep the water system in public hands
  - Minimize rate increases to ratepayers
    - No profit consideration
  - Free the City from having to be financially reliant on third party host fees, such as those from the incinerator
  - Avoid needing to have the Pennsylvania Supreme Court make a decision in the litigation which reduces risk for City and CWA

# Conclusion

- Chester has a once in a generation opportunity to truly address the issues that have kept it in financial oversight for 27 years. Despite all of its challenges, Chester has a path forward, but it will only succeed if we do what needs to be done.
- The Receiver is committed to trying to actually solve Chester's financial problems, not simply to put a bandaid on them.

# Parking Contract



# Parking Contract

- The City's parking contract has been discussed at the following MFRAC meetings:
  - December 28, 2021
  - January 11, 2022
  - February 8, 2022
- The Receiver consulted with the Committee regarding whether to modify the agreement to remove the liquidated damages penalty. The Receiver acted to do so on February 4, 2022
- Since that time, the Receiver's team has continued to review the contract and to consider options
- The Receiver is now bringing this matter before MFRAC to discuss possible further actions, including whether to terminate the contract

# Overview

- Given time constraints, this presentation will not repeat information outlined in previous presentations, however we are happy to discuss any of issues raised in them. Nothing has come to light since those presentations/discussions that has caused us to feel that we need to revisit any facts that have already been presented.
- In this presentation, we will provide you with our concerns regarding how this contract appeared to come to be. In particular, in some documents, it was represented that the contract came as a result of a competitive bidding process; however, other documents and information raise questions about whether that actually occurred.

# How The Process Appeared To Begin

- On June 28, 2017, Chester City Council approves resolution 4-0 which authorized request for proposals (“RFP”) for advertisement of a Parking Meter Management Services for Chester and authorized the City Clerk to advertise for the RFP.

COUNCIL CHAMBERS  
JUNE 28, 2017

MEETING OF THE  
COUNCIL OF THE CITY OF CHESTER

A regular meeting of the Council of the City of Chester was held on the above date at 7:10pm with Mayor Thaddeus Kirkland presiding. A prayer was said followed by the Pledge of Allegiance. The roll was called and the following were present:

Elizabeth Williams  
William Morgan  
Portia West  
Mayor Thaddeus Kirkland  
William "M" Jacobs (absent)

On motion of Councilor West, seconded by Councilor Morgan, the minutes of the previous meeting were approved as submitted. The following vote was taken: Yeas: Williams, Morgan, West, and Mayor Kirkland. Nays: 0.

Mayor Kirkland asked if anyone in the audience had any comments on Agenda items only.

The City Clerk proceeded with the reading of the Resolutions.

**RESOLUTION**

WHEREAS, the following individual has requested a handicapped parking zone:

1. Earl Anthony Brooks, Sr., 2421 West 3<sup>rd</sup> Street, Chester, PA 19013

WHEREAS, after a thorough investigation by the Department of Streets and Public Improvements, it has been determined that the aforementioned individual has met all of the required criteria and have a need for said handicapped parking zone.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That it does hereby authorize the proper City officials to install a handicapped parking zone in the 2400 Block of West 3<sup>rd</sup> Street, in the City of Chester.

On motion of Councilor West, seconded by Councilor Morgan, the above Resolution was adopted. The following vote was taken: Yeas: Williams, Morgan, West, Mayor Kirkland. Nays: 0.

**RESOLUTION**

**THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That it does hereby ratify the appointment of Desean Wyatt, to the position of Nuisance Inspector, Bureau of Health, Department of Public Safety, effective June 24, 2017, at the salary as provided in the Annual Appropriation Ordinance. Said employee has successfully completed his Sixty (60) day probationary period.

On motion of Councilor West, seconded by Councilor Morgan, the above Resolution was adopted. The following vote was taken: Yeas: Williams, Morgan, West, Mayor Kirkland. Nays: 0.

**RESOLUTION**

**THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

**THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That it does authorize the proper City official to prepare Request for Proposals for the advertisement for Parking Meter Management Services for the City of Chester.

**FURTHER,** that it does authorize the City Clerk to advertise for the aforementioned notice.

On motion of Councilor West, seconded by Councilor Morgan, the above Resolution was adopted. The following vote was taken: Yeas: Williams, Morgan, West, Mayor Kirkland. Nays: 0.

**RESOLUTION**

**THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That in accordance with recommendations of the Chester City Planning Commission dated May 10, 2017 and reviewed by the Delaware County Planning Commission on June 15, 2017 it does hereby grant final approval for DELCORA to Reverse Subdivide two parcels of 23.91 acres and 10.38 acres into 1 parcel of 34.29 acres, construct access drives for truck and employee access, an equalizer tank and a six foot high chain link fence located at 3201 West Front Street, Chester, PA 19013, as shown on a plan prepared by Catania Engineering Associates Inc., 520 West MacDade Boulevard, Mifflint Park, PA 19033, dated May 18, 2016.

On motion of Councilor West, seconded by Councilor Morgan, the above Resolution was adopted. The following vote was taken: Yeas: Williams, Morgan, West, Mayor Kirkland. Nays: 0.

**RESOLUTION**

WHEREAS, the City of Chester anticipates the receipt of Community Development Block Grant (CDBG) program income in the amount of \$638,000.00; and

WHEREAS, the City of Chester desires to amend the F.Y. 2016 Action Plan to allocate such Program Income toward the purchase of a new 100 Rear Mount Viper Aerial Fire Truck for use by the Chester Fire Department; and

WHEREAS, a Public Hearing to discuss such Amendment was duly advertised and held on June 15, 2017; and

WHEREAS, the appropriate period for public review and acceptance of comments has been provided, and City Council has reviewed all comments received on the proposed Amendment.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That the anticipated Program Income in the amount of \$638,000.00 shall be used toward the purchase of a new 100 Rear Mount Viper Aerial Fire Truck. The City will provide additional funds toward the cost of the Truck from prior year unprogrammed CDBG funds or from other City funds, if available.

On motion of Councilor West, seconded by Councilor Morgan, the above Resolution was adopted. The following vote was taken: Yeas: Williams, Morgan, West, Mayor Kirkland. Nays: 0.

**RESOLUTION**

**THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That it does hereby grant permission and authorize the issuance of a permit to PECO to allow for the installation of 900 feet of 2"Y" MP Main in the City of Chester on East 18<sup>th</sup> Street.

**FURTHER,** said permit is contingent upon the following: (1) PECO performs a half width mill and overlay of the roadway upon completion of the work; (2) PECO's contractor provides traffic control flaggers to ensure a continuance operation of City streets; (3) that the work is coordinated with Widener University to ensure no negative impacts to the school's operation;

# Bidding/Contracting Timeline

- June 28, 2017: Chester City Council approves resolution 4-0 which authorized request for proposals (“RFP”) for advertisement of a Parking Meter Management Services for Chester and authorized the City Clerk to advertise for the RFP (see Council Minutes from June 28, 2017)
- July 24, 2017: PFS appeared to submit a bid (see PFS bid cover letter).
- September 13, 2017: Chester City Council approves resolution 5-0 noting that RFP was not properly advertised, that bids were to be returned unopened, and that reauthorized advertisement of an RFP “in accordance with the advertising requirements of the City Home Rule Charter and the Third Class City Code.” (see Council Minutes from September 13, 2017)
  - Note: We have not found any evidence that the RFP was readvertised.
- September 20, 2017: Letter from Mayor to Gatso/PFS informing them that they had been awarded the parking contract

# Threshold Questions

- The September 13, 2017 Council resolution stated that all bids were rejected and to be returned unopened. But on September 20, 2017, the City sent a letter to a group whose bid was dated July 24, 2017, telling them that they were being awarded the contract. If all the bids were rejected and to be returned unopened, as directed in the September 13<sup>th</sup> Council resolution, how could a bid be awarded to a company whose RFP response was dated July 24, 2017?
- Did other companies bid on the RFP?

# Relevant Documents

- To try to better understand what occurred, we searched for information that addressed the bidding process. We found it in the following:
  - Discovery Response dated February 21, 2019, from the PFS and City attorneys to Widener University addressing questions about the bidding process
  - Transcript from the January 9, 2019, court hearing before Judge Dozor regarding Widener's request for an injunction
  - Brief (court filing) dated December 15, 2019, filed by the PFS and City attorneys in response to a January 9, 2019, order by Judge Dozor
  - City Council minutes and resolutions dated June 28, 2017; September 13, 2017; and October 10, 2018

# Attempts to Get Additional Information

- In addition to the documents and information that we provided here, the Receiver's attorney requested information from the City Solicitor via email on May 9<sup>th</sup> and followed up again on May 13<sup>th</sup> where the Receiver's attorney provided greater detail for why he was seeking this information and asked for this information prior to the MFRAC meeting.
- On May 20<sup>th</sup>, the City Solicitor responded that he was looking for the information requested and had not found anything responsive in the Solicitor's office and file.

Discovery Response dated February 21, 2019, from the PFS and City attorneys to Widener University addressing questions about the bidding process



# February 21, 2019, Discovery Response

- As part of the litigation between Widener and PFS and the City, Widener made a discovery request to PFS and the City in early 2019 that requested admissions and documents from PFS and the City regarding the bidding process.
- PFS' and the City's attorneys (Greenberg Traurig) answered by contending there was a competitive bidding process and/or advertising for the contract and providing the following documents:
  - City of Chester Request for Proposals
  - Gatso USA/PFS VII, Inc. proposal 'Management Services for City Parking System'
  - September 20, 2017 award letter from Mayor Thaddeus Kirkland to Gatso USA/PFS VII, Inc.

# February 21, 2019, Discovery Response (Continued)

GREENBERG TRAUIG	:	Attorneys for Defendants PFS VII,
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2001 Market Street	:	
Philadelphia, PA 19103	:	
(215) 988-7800	:	

WIDENER UNIVERSITY, INC.,	:	IN THE COURT OF COMMON PLEAS
Plaintiff,	:	DELAWARE COUNTY
	:	CIVIL ACTION
v.	:	
THADDEUS KIRKLAND, CITY OF	:	
CHESTER, PFS VII, LLC, and	:	NO.: CV-2019-000011
UNNAMED CONTRACTORS 1 & 2,	:	
Defendants.	:	

**DEFENDANT'S RESPONSES TO PLAINTIFF'S SECOND REQUEST FOR ADMISSIONS AND PRODUCTION OF DOCUMENTS**

Defendant PFS VII, Inc. ("PFS"), by and through its attorneys, Greenberg Traurig, LLP, hereby responds to Plaintiff Widener University, Inc.'s ("Widener") Second Requests for Admissions and Requests for Documents.

**GENERAL OBJECTIONS**

To the extent that any discovery request relates to any issue other than Plaintiff's Complaint, PFS objects. Furthermore, PFS has not yet completed its investigation of the facts pertaining to this action, its discovery or its preparation for trial. PFS's answers and objections as set forth herein are made without prejudice to PFS's rights to assert any additional or supplemental

K. PFS objects to each request to the extent that it requires PFS to investigate and/or provide information in the possession, custody or control of an independent party or entity.

L. If any of these requests require supplementation, pursuant to the Pennsylvania Rules of Civil Procedure, PFS reserves the right to raise additional objections to the provision of that information.

**Answers to Request for Admissions**

1. There was no competitive bidding and/or advertising for the contract with PFS VII, LLC and the City of Chester.  
Denied.

2. There was no competitive bidding and/or advertising for the contract with Pango USA, LLC and the City of Chester.  
Objection. This request is not appropriately directed to PFS and seeks information not in the possession, custody or control of PFS.

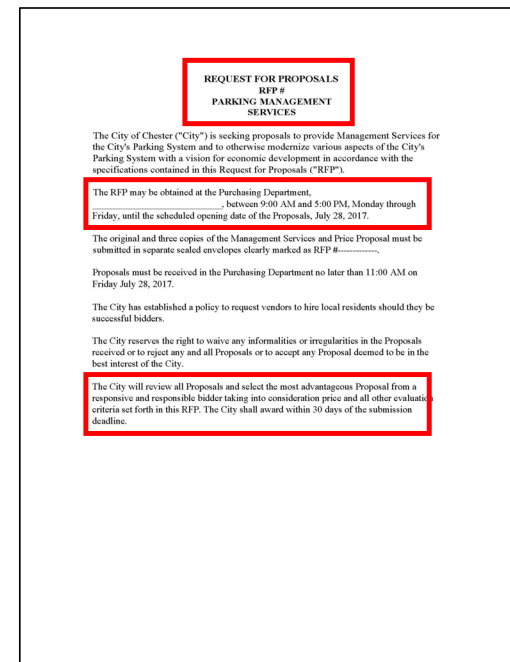
**Answer to Request for Production of Documents**

1. If your answer to Request for Admissions No. 1 above is anything other than an admission produce copies of all documents relating to the competitive bidding and/or advertising of the contract between PFS VII, LLC and the City of Chester.  
In response, see the following attached documents:  
- City of Chester Request for Proposals  
- Gatso USA/PFS VII, Inc. proposal "Management Services for City Parking System"  
- September 20, 2017 award letter from Mayor Thaddeus Kirkland to Gatso USA/PFS VII, Inc.

2. If your answer to Request for Admissions No. 2 above is anything other than an admission produce copies of all documents relating to the competitive bidding and/or advertising of the contract between Pango USA, LLC and the City of Chester.

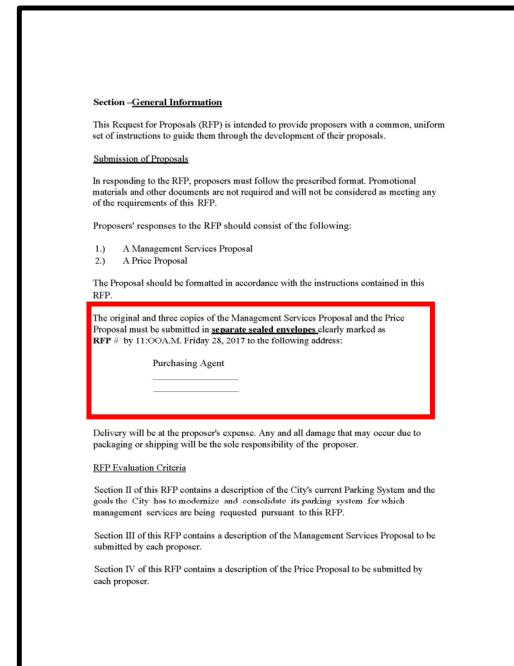
# February 21, 2019, Discovery Response *Deficiencies with RFP Document Itself*

- Assuming that the document attached to the discovery request is the RFP document, it has several significant deficiencies\*:
  - Overall, it does not appear to be a final document
    - No RFP #
    - Address for Purchasing Department is left blank and no contact is provided
  - Document also says that it will award the contract within 30 days of the submission deadline (which did not occur).
  - Moreover, it does not list a specific date and place for the bids to be opened.



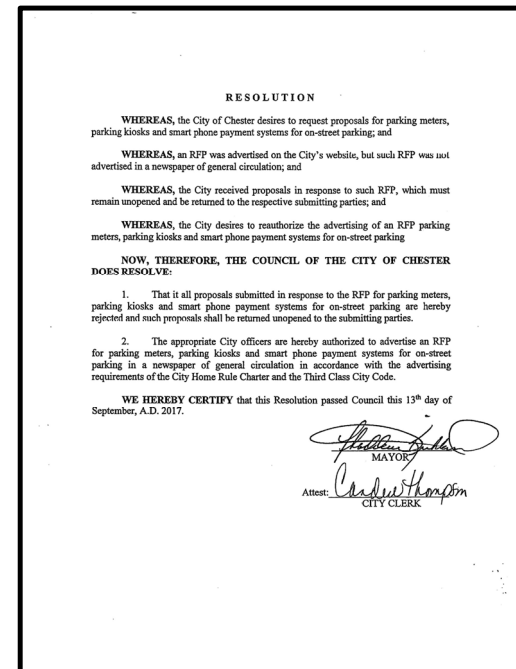
# February 21, 2019, Discovery Response *Deficiencies with RFP Document Itself (continued)*

- Issues with RFP document:
  - No address for bid response
  - No identification of who the purchasing agent is or how to get in contact with them
  - RFP does not list a specific date and place for the bids to be opened.

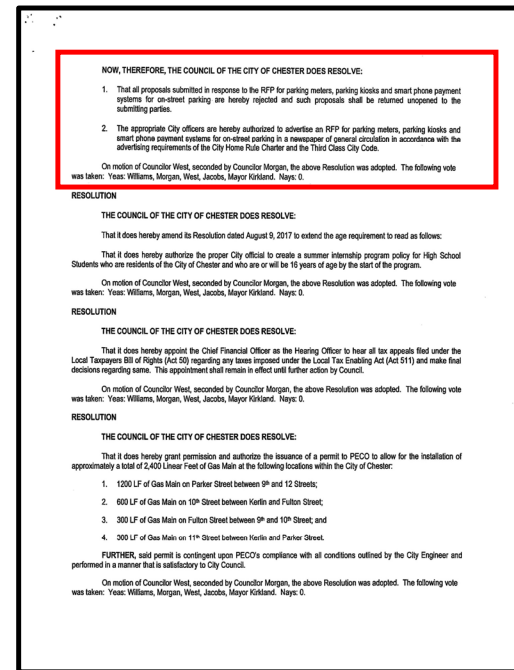
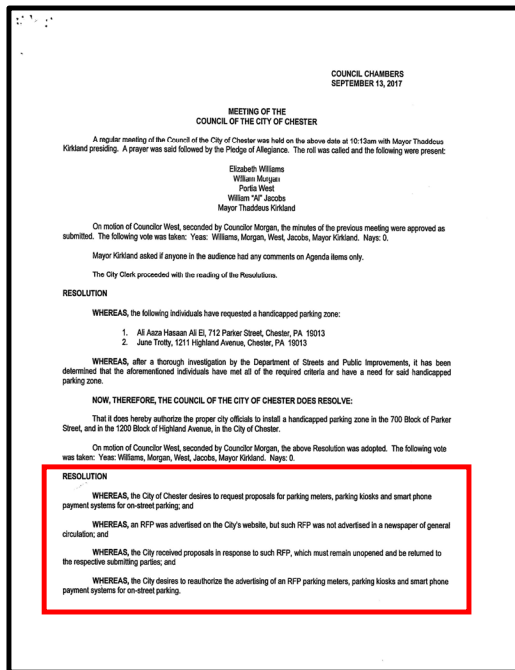


# Council Resolution Rejecting All Bids on September 13, 2017

- Putting aside the deficiencies with the RFP document itself, City Council appeared to reject all bids via resolution on September 13, 2017, **directed that all bids be returned “unopened,”** and reauthorized an advertisement in accordance with the City Home Rule Charter and Third Class City Code.
- That resolution also stated that the RFP authorized by Council in June 2017 had not been advertised in a newspaper of general circulation (we do not know whether the RFP was advertised).



# Council Resolution Rejecting All Bids on September 13, 2017

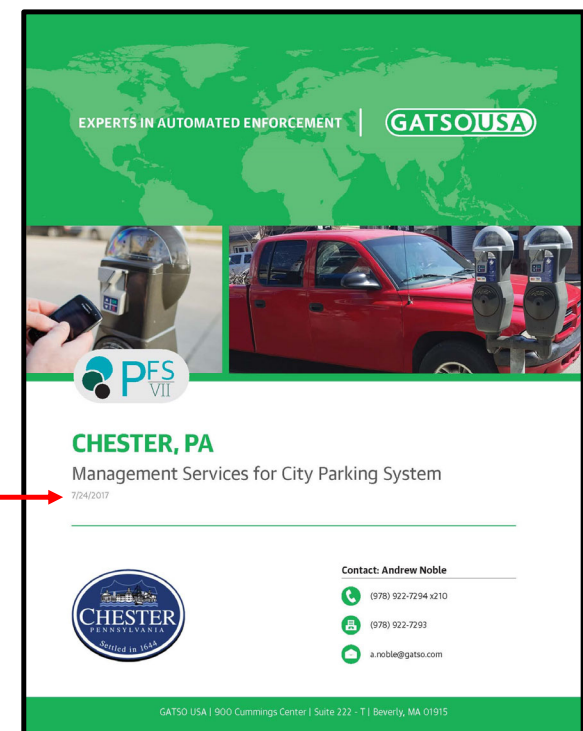


# February 21, 2019, Discovery Response

## *PFS' Bid Dated July 24, 2017*

- As part of the discovery request, PFS included a document that it claims to be a bid submitted on July 24, 2017.
- If all the bids were rejected and returned unopened after the September 13, 2017 Council resolution, why is an apparent bid to the original RFP dated July 24, 2017 evidence for a competitive bidding process? According to the resolution, it never should have been opened.
- Furthermore, how can this bid serve as the basis to be awarded a contract since the bids, including this one, should have all been rejected?

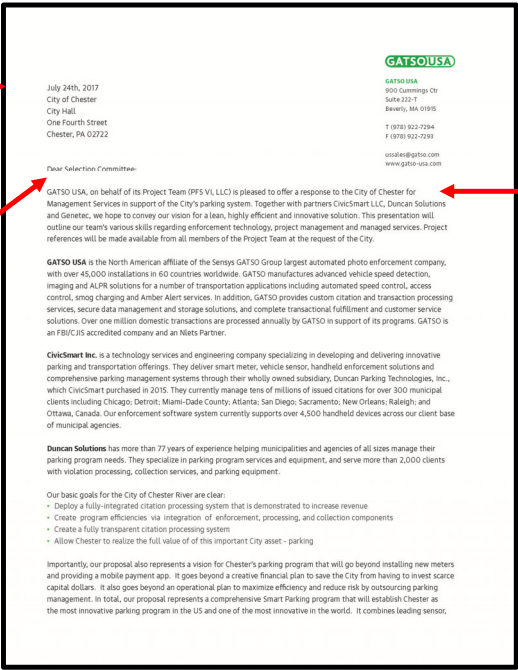
Dated  
"7/24/2017"



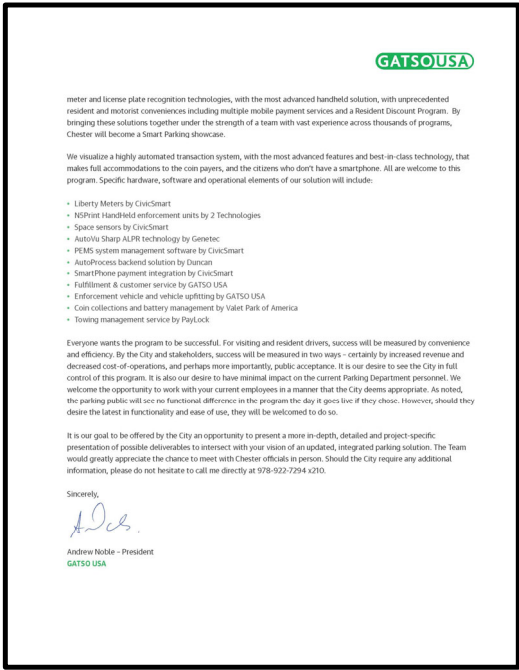
# February 21, 2019, Discovery Response PFS' Bid Dated July 24, 2017 (continued)

Dated  
"7/24/2017"

Referencing  
a "Selection  
Committee"



"...pleased to offer a response to the City of Chester for Management Services in support of the City's parking system."



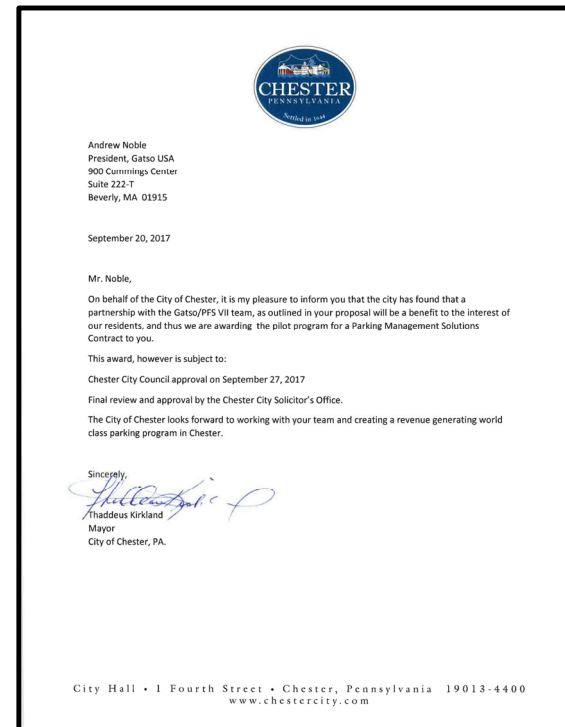
This cover letter from the GATSO USA President to the "Selection Committee" was part of the document submitted in discovery.



# February 21, 2019, Discovery Response

## *Award Letter Dated Sept. 20, 2017*

- On September 20, 2017, one week after City Council rejected all the bids and reauthorized a new advertisement, Mayor Kirkland sent a letter to Gatso/PFS “awarding the pilot program for a Parking Management Solutions Contract to you.”
- The letter says that the award is subject to “Chester City Council approval on September 27, 2017.” We have asked for any information relating to the September 27, 2017, purported Council approval but nothing has been provided.



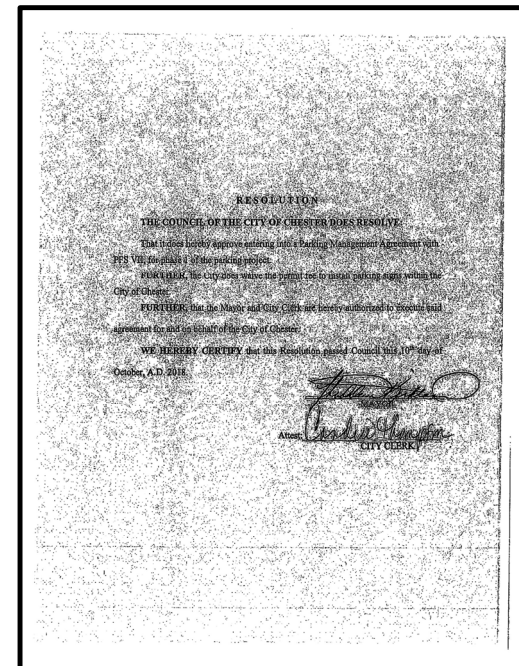
# February 21, 2019, Discovery Response

## *Questions Raised by Bidding Process*

- How could Gatso/PFS be notified that they had been “awarded” anything on September 20, 2017, when a week earlier City Council via unanimously rejected all the bids, directed that they all be returned unopened, and reauthorized advertising in compliance with the City’s Home Rule Charter and Third Class City Code?
- Assuming there was no RFP process, what is the legal basis for PFS being awarded the contract?

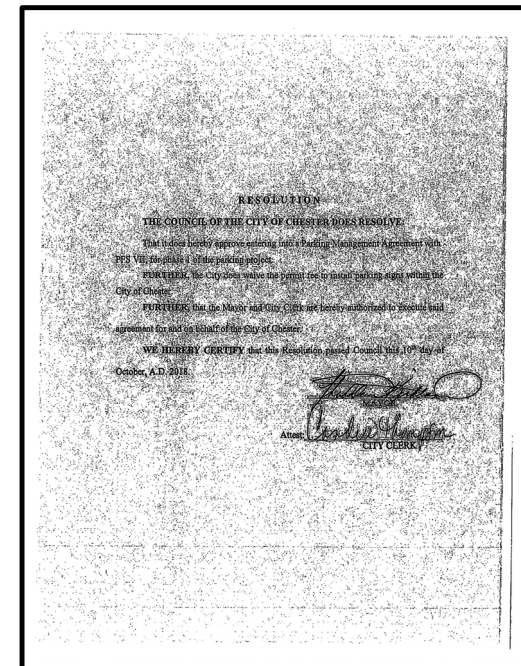
# Council Approval of Contract

- Despite the “award letter” stating that it was subject to Council approval on September 27, 2017, the only document we have found that has Council approving entering into a contract with PFS is a resolution passed on October 10, 2018 – over a year later.



# Council Approval of Contract

- The Council of City of Chester Does Resolve:
  - That it does hereby approve entering into a Parking Management Agreement with PFS VII for phase 1 of the parking project.
  - FURTHER, the City does waive the permit fee to install parking signs within the City of Chester
  - FURTHER, that the Mayor and City Clerk are hereby authorized to execute said agreement for and on behalf of the City of Chester.
  - WE HEREBY CERTIFY that this Resolution passed Council this **10<sup>th</sup> day of October, A.D. 2018**
  - [Signed by Mayor. Attested by City Clerk]



# February 21, 2019, Discovery Response

## *Summary*

- Before moving on to other documents we reviewed, the following is a summary of the information that, if true, was provided in the February 21, 2019 discovery request and City Council minutes:
  - On June 28, 2017, City Council authorized the advertising for an RFP for parking services
  - Gatso/PFS appears to have responded with a bid on July 24, 2017
  - On September 13, 2017, before the contract was awarded, City Council rejected all bids, directed that the bids were to be returned unopened, and reauthorized a new advertisement process
  - One week later, PFS is notified that the City is awarding them the contract

# February 21, 2019, Discovery Response

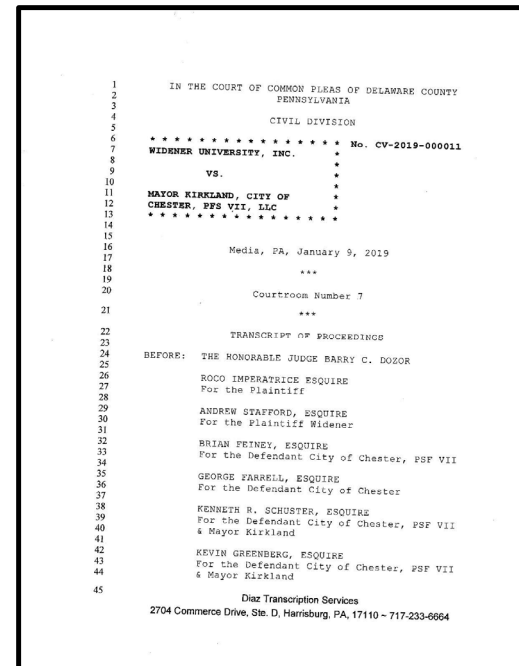
## *Outstanding Questions Summary*

- How can PFS both respond to an RFP on July 24, 2017, and all bids to that same RFP be returned unopened as directed by City Council on September 13, 2017?
- How can a bid response be awarded a contract if all the bids for that same RFP were rejected as directed by City Council on September 13, 2017?

Transcript from the January 9, 2019, court hearing  
before Judge Dozor regarding Widener's request  
for an injunction

# Transcript from January 9, 2019 Hearing

- Soon after learning about the parking contract, Widener University sued for an injunction in the Delaware County Court of Common Pleas. The matter was assigned to Judge Dozor.
- Judge Dozor held a hearing in the matter on January 9, 2019 at which the Mayor testified.





# Transcript from January 9, 2019 Hearing *PFS and City Attorney Answer*

- During the hearing, Judge Dozor asked questions about whether there was a public process or an RFP. Counsel for PFS and the City did not know.
- *The Court: And the selection of the vendor, I'm assuming that was done in a public process? Was there a request for -- was there--*
- *Counsel for PFS and City response: I honestly don't know, Your Honor.*
- *The Court: -- a bidding requirement? Was there RFP prepared, were there other proposals?*

40	41
1 MR. GREENBERG: And the stadium area and	1 the pros and cons as opposed to a public process and
2 other places where we've had crisis.	2 have an ordinance?
3 THE COURT: And the cost of the meter per	3 MR. GREENBERG: Well, there's an ordinance
4 hour is the same everywhere in Chester?	4 approving the contract, Your Honor -- or resolution
5 MR. GREENBERG: The plan as I understand it	5 ordinance --
6 is going to be \$2 an hour everywhere. The half-day	6 MR. FERNEY: Resolution.
7 and full-day discounts are only currently intended I	7 MR. GREENBERG: A resolution or ordinance?
8 believe to be at Widener because the Widener	8 A resolution approving the contract. City Council
9 community asked for them. I'm not sure if we intend	9 has ratified the contract.
10 to extend them elsewhere. I think -- I'm not sure	10 THE COURT: Resolutions don't require
11 if that decision's been made. I don't know if	11 public notice and don't require any advertising.
12 anybody knows that. But the \$2 an hour is going to	12 They're just done during the course of a meeting.
13 be every place at the meters.	13 You advertise the meeting but you don't advertise
14 THE COURT: And the selection of the	14 the resolution --
15 vendor, I'm assuming that was done in a public	15 MR. GREENBERG: That's correct.
16 process? Was there a request for -- was there --	16 THE COURT: -- in advance. So the
17 MR. GREENBERG: I honestly don't know, Your	17 resolution was passed not as -- you know the
18 Honor.	18 residents didn't get any prior notice nor did
19 THE COURT: -- a bidding requirement? Was	19 Widener get any prior notice.
20 there RFP prepared, were there other proposals? I	20 MR. GREENBERG: I don't think that Widener
21 mean or did you leave it up to the Mayor to make	21 or the residents are complaining about the selection
22 that choice? Because it says here be on the Mayor	22 of the vendor. It's the parking plan itself.
23 acting through the police department or other	23 THE COURT: And I'm not complaining either.
24 designated enforcement programs. Did you leave it	24 I'm assuming it's an excellent vendor.
25 up to the Mayor to select this company and to weigh	25 MR. GREENBERG: Okay.
Diaz Transcription Services 2704 Commerce Drive, Ste. D, Harrisburg, PA, 17110 ~ 717-233-6664	

# Transcript from January 9, 2019 Hearing

## *Mayor Testimony*

- During the hearing, the Mayor also testified regarding the contract process.
- *Widener Attorney: You heard the Judge ask your counsel whether there was a request for proposals process for companies such as Pango. Was there?*
- *Mayor: What we did in our process was we sat with a number of companies that have managed various parking authorities throughout the Commonwealth.*

145

1 question. He can indicate -- he's executed this  
2 contract. He effectuated the terms and conditions  
3 by executing it. So I think what he intended to do  
4 and what he meant to do and what he agreed he was  
5 doing is relevant material.

6 MR. KIRKLAND: Counsel, what I've done with  
7 this and as was stated before there are a number of  
8 legal terms that are addressed in this document that  
9 I rely on my counsel and Solicitor to look through  
10 and give me counsel on that. Do I -- you've just  
11 given me about 100 pages of documents. Have I  
12 looked through each and every last one of these  
13 pages, do I understand every 100 pages of these  
14 documents? No, I don't. So that's why I have  
15 counsel. That's why we hire counsel so that we  
16 might rely heavily upon them. And so to answer your  
17 question it is to me a legal term or legal  
18 definition or legal explanation that needs to be  
19 given to you, which I cannot give because I'm not a  
20 lawyer.

21 Q Very good. You heard the Judge ask your counsel  
22 whether there was a request for proposal process for  
23 companies such as Pango. Was there?

24 A What we did in our process was we met with a  
25 number of companies that have managed various

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# Transcript from January 9, 2019 Hearing *Mayor Testimony (continued)*

- *Widener Attorney: I'm sorry, did you issue – did you or counsel issue requests for proposals to companies such as Pango for the services Pango is going to provide to the City?*
- *Mayor: We have had meeting with all of them, different entities.*

146

1 parking authorities throughout the Commonwealth.  
2 \*\*\*  
3 THE COURT: Mayor, excuse me. You said we,  
4 who's we?  
5 MR. KIRKLAND: Myself and counsel, Your  
6 Honor.  
7 \*\*\*  
8 BY MR. IMPERATRICE:  
9 Q I'm sorry, did you issue -- did you or counsel  
10 issue requests for proposals to companies such as  
11 Pango for the services Pango is going to provide to  
12 the City?  
13 A We have had meetings with all of them, different  
14 entities.  
15 \*\*\*  
16 THE COURT: Did you prepare a -- was there  
17 a prepare maybe by your engineer or by your  
18 Solicitor --  
19 MR. KIRKLAND: No.  
20 THE COURT: -- a request for formal  
21 proposals?  
22 MR. KIRKLAND: No.  
23 THE COURT: Okay. Did you advertise bids  
24 or anything of that nature?  
25 MR. KIRKLAND: We had not advertised bids,  
  
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147

1 no.  
2 THE COURT: Okay. And then who -- did you  
3 individually make the selection. Your attorneys  
4 have suggested to me that the Ordinance delegates  
5 this responsibility to the mayor. And you are the  
6 mayor, right?  
7 MR. KIRKLAND: Yes, I am.  
8 THE COURT: So did you alone make this  
9 decision?  
10 MR. KIRKLAND: No, I did not.  
11 THE COURT: In fact there was a resolution  
12 that was passed to actually identify the selection,  
13 correct?  
14 MR. KIRKLAND: Correct, Your Honor.  
15 THE COURT: Okay.  
16 MR. KIRKLAND: Myself and counsel.  
17 \*\*\*  
18 BY MR. IMPERATRICE:  
19 Q P-8. In fact, mayor, I'm going to show you a  
20 document that's been marked P-8 for identification  
21 purposes. I'm going to ask you if that's a copy of  
22 the resolution you just referred to.  
23 A Yes, it is.  
24 Q Are you aware that Pango charged the City of  
25 Philadelphia only one cent per transaction and  
  
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# Transcript from January 9, 2019 Hearing *Mayor Testimony (continued)*

- *Court: Did you prepare a -- was there a prepare maybe by your engineer or by your Solicitor --*
- *Mayor: No.*
- *Court: -- a request for formal proposals?*
- *Mayor: No.*
- *Court: Okay. Did you advertise bids or anything of that nature?*
- *Mayor: We had not advertised bids, no.*

146

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2 \*\*\*  
3 THE COURT: Mayor, excuse me. You said we,  
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19 MR. KIRKLAND: No.  
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2704 Commerce Drive, Ste. D, Harrisburg, PA, 17110 - 717-233-6664

# Transcript from January 9, 2019 Hearing

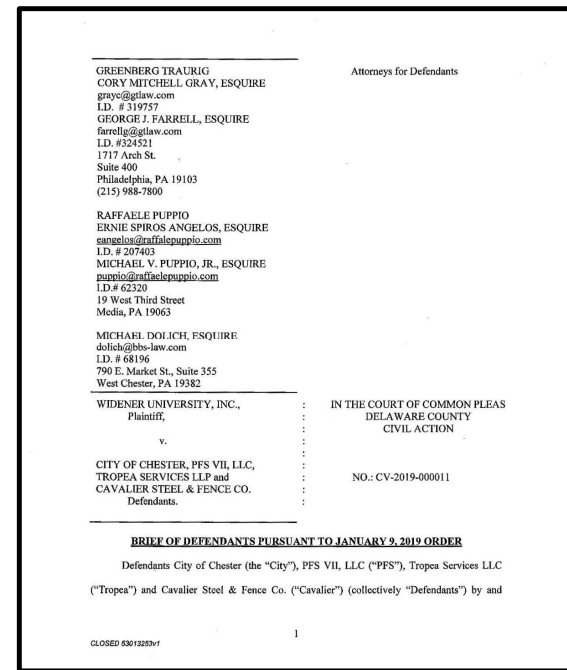
## *Summary*

- At the January 9, 2019 injunction hearing:
  - Counsel for PFS and the City stated that he did not know whether an RFP process occurred
  - Mayor testified that there was not a formal request for proposals and that the City did not advertise for bids
    - This testimony appears to be in conflict with the February 21, 2019, response to Widener’s discovery request by the attorney for PFS and the City where the response denied that “There was no competitive bidding and/or advertising for the contract with PFS VII, LLC and the City of Chester”

Brief (court filing) dated December 15, 2019,  
filed by the PFS and City attorneys in response to a  
January 9, 2019, order by Judge Dozor

# PFS and City Brief Dated Dec. 15, 2019

- The attorneys for PFS and the City filed a brief on December 15, 2019, in response to an order by Judge Dozor on January 9, 2019
- As will be seen in the next set of slides, this brief represented that an RFP took place that complied with bidding requirements.
- Additionally, the brief stated that the contract was awarded to the “lowest responsible bidder” which is language that refers to an RFP process.



# PFS and City Brief Dated Dec. 15, 2019

## (Continued)

- From PFS and City brief dated 12-16-19: “In accordance with bidding requirements, the City publicly issued a Request for Proposals for Parking Management Services, responses to which were due on July 28, 2018. See Chester RFP at Exhibit B. On July 24, 2017, PFS submitted a proposal and was later awarded the contract as the lowest responsible bidder.”
  - Note that the RFP document attached as Exhibit B is the same document discussed earlier.

III. FACTUAL BACKGROUND

A. The Parking Plan

Residents of the Sun Hill neighborhood and other neighborhoods surrounding Widener have long complained to their elected officials about the better-skelter traffic conditions on their streets which is occasioned by the proximity of Widener University and the large number of Widener students who seek to avoid paying for parking by finding parking in the surrounding residential neighborhood. Transcript of Preliminary Injunction Hearing at 153:17-25, *Widener v. Kirkland, et al.*, No. CV-2019-000011 (Jan. 9, 2019) (hereinafter “Transcript”) attached as Exhibit A. Every day, thousands of Widener students and faculty, and local residents compete for parking around campus: Widener personnel because it is free and they choose not to pay the University’s own fee for parking; the residents, because they seek to park on the streets where they live. And Widener students interfere with the City’s Residential Parking Program by parking illegally, for days at a time and sometimes, by tearing down parking signs. Transcript at 154:15-20. This situation exacerbates an already challenging traffic environment by causing drivers to circle the area, idle in residential neighborhoods, and double park while waiting for a parking spot.

At the same time, other areas of Chester require improvements to their parking infrastructure. The City’s Central Business District is experiencing growth and increased patronage which would benefit from increased turnover of parking that would come as a result of parking meters and increased enforcement. Transcript at 161:22-162:5. The City’s Old Sears parking garage which neighbors the SEPTA Transportation Center has fallen into disrepair and requires paving, lighting and new technology.

In response, the City explored methods to deliver effective and economic services to its

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constituents. The City chose, after extensive debate and planning, to collect parking fees from those who use its roads and parking assets in order to partially fund the road and lot construction, maintenance, and policing costs that come from the necessary changes and improvements to the City’s parking infrastructure. However, an initial up-front investment is cost-prohibitive for the City which has a well-documented history of financial distress. Accordingly, the City explored a public-private partnership - which cities throughout Pennsylvania and the Country have done for a multitude of services and for a multitude of years. In accordance with bidding requirements, the City publicly issued a Request for Proposals for Parking Management Services, responses to which were due on July 28, 2017. See Chester RFP at Exhibit B. On July 24, 2017, PFS submitted a proposal and was later awarded the contract as the lowest responsible bidder.

To implement the plan, the City Council of Chester passed three ordinances in early 2018. These publicly and duly enacted ordinances set fines, created a Parking Code Enforcement Division and delegated certain administrative powers to a Manager. See Ordinances No. 1, 2 & 3 of 2018 (“the 2018 Ordinances”) at Exhibit C. Moreover, Ordinance No. 2 mentions the Manager on numerous occasions and clearly delegates specific responsibilities and direction to the Manager.

The City and PFS then entered into a Master Asset Management Agreement on April 25, 2018, and an Amended and Restated Assignment and Funding and Management Agreement on September 5, 2018 (“Agreements”). See SAC Exhibits A and B. The Agreements are signed by Chester Mayor Thaddeus Kirkland, who is also the Director of the Department of Public Affairs (the department under which the parking plan falls), City Clerk Candice Thompson, and Ken Schuster, City Solicitor. *Id.* Attached to the Agreements is an opinion letter issued under the seal of the City of Chester by the City Solicitor confirming that the Agreements and authorizations

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# PFS and City Brief Dated Dec. 15, 2019

## (Continued)

- The brief:
  - States that an RFP was issued, that its due date was July 28, 2017, that PFS responded on July 24, 2017 and that PFS was “awarded the contract as the lowest responsible bidder.” [But how could you know this if the bids were returned unopened?]
  - Appears to conflict with the Mayor’s testimony at the January 9, 2019 hearing that there was no advertising or formal RFP process
  - **Is inconsistent with the fact that on September 13, 2017, City Council rejected all bids and voted to reauthorize advertising for it. The July 24, 2017, bid would have been rejected.**

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5

# PFS and City Brief Dated Dec. 15, 2019

*(Summary)*

- The brief submitted by attorneys for PFS and the City on December 15, 2019 to Judge Dozor asserted:
  - An RFP process took place
  - The RFP process was in compliance with bidding requirements
  - PFS submitted a bid on July 24, 2017
  - PFS was later awarded the contract as the lowest responsible bidder
- The above claims in this brief appear to be in conflict with the Mayor's testimony on January 9, 2019 and also appear to conflict with City Council's action on September 13, 2017, rejecting all the bids and directing that they be returned unopened.

# Conclusion

- The apparent timeline of the bidding process and the information that we reviewed raises concerns about how this contract was procured.
  - June 28, 2017: Chester City Council approves resolution 4-0 which authorized request for proposals (“RFP”) for advertisement of a Parking Meter Management Services for Chester and authorized the City Clerk to advertise for the RFP (see Council Minutes from June 28, 2017)
  - July 24, 2017: PFS appeared to submit a bid (see PFS bid cover letter).
  - September 13, 2017: Chester City Council approves resolution 5-0 noting that RFP was not properly advertised, that bids were to be returned unopened, and that reauthorized advertisement of an RFP “in accordance with the advertising requirements of the City Home Rule Charter and the Third Class City Code.” (see Council Minutes from September 13, 2017)
    - Note: We have not found any evidence that the RFP was readvertised.
  - September 20, 2017: Letter from Mayor to Gatso/PFS informing them that they had been awarded the parking contract

# Next Steps

- The Receiver would appreciate input from the MFRAC committee regarding taking further action, including whether to terminate the contract between the City and PFS
- The Receiver will consider this input in coming to a decision