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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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COMMONWEALTH COURT
HARRISBURG

DENNIS M. DAVIN, in his capacity :
 as Secretary for the Department : No. 569 MD 2011
 of Community and Economic :
 Development, :
 Petitioner :
 v. :
 : :
 CITY OF HARRISBURG, :
 Respondent :

RESPONSE OF PA MEDIA GROUP, WITF, INC.
AND HEARST PROPERTIES INC., d/b/a
WGAL-TV IN OPPOSITION TO THE
APPLICATION FOR DECLARATORY RELIEF OF
IMPACT HARRISBURG

AND NOW come PA MEDIA GROUP, WITF, INC. and HEARST
 PROPERTIES INC., d/b/a WGAL-TV, (“Media Parties”), by their attorneys,
 NAUMAN, SMITH, SHISSLER & HALL, LLP, and file the following Response
 in Opposition to the Application for Relief in the Nature of a Petition for
 Declaratory Judgment filed by Impact Harrisburg as follows:

Jurisdiction and Venue

1. The averments of paragraph 1 are legal conclusions to which no response is required. By way of further response, the averments speak to an Order of this Court, the contents of which speak for itself.

2. The averments of paragraph 2 speak to a prior Order of this Court dated February 25, 2014, the contents of which speak for itself.

3. The averments of paragraph 3 are legal conclusions to which no responsive pleading is required.

Factual Background

4. Admitted.

5. Admitted. By way of further response, the financial recovery plan of the City of Harrisburg (“Harrisburg Strong Plan”) is directly provided for under the provisions of the Municipalities Financial Recovery Act, 53 P.S. §1701.101 et seq. (“Act 47”) and, thus, Impact Harrisburg, as a creation of the Harrisburg Strong Plan, was created by and pursuant to Act 47.

6. Admitted. By way of further response, the Coordinator, being bound by the Harrisburg Strong Plan created under the provisions of Act 47, continued with the creation of Impact Harrisburg and the appointment of its Board of

Directors. See Harrisburg Strong Plan, as modified through November 25, 2014, p. 71.

7. Admitted in part and denied in part. It is admitted that the Harrisburg Strong Plan provided for the creation of an entity which later became known as Impact Harrisburg which was created pursuant to the express provisions of Act 47 to perform the essential government functions of funding infrastructure improvements and economic development within the City of Harrisburg. It is further admitted that eventually a non-profit corporation was formed known as Impact Harrisburg. It is denied that Impact Harrisburg was formed to perform “charitable purposes” but was created under Act 47 and the Harrisburg Strong Plan to perform the aforesaid essential government functions. It is further denied that a non-profit corporation was required by the terms of the Harrisburg Strong Plan or the Court. To the contrary, this was the eventual recommendation of the task force under the Harrisburg Strong Plan. Additionally, Impact Harrisburg oversees 12.3 million dollars of public funds created by the sale of public assets, i.e., City of Harrisburg parking garages.

8. Admitted in part and denied in part. It is admitted that the Board of Directors of Impact Harrisburg, as appointed by the Coordinator , voted to organize Impact Harrisburg on March 17, 2015. As to the remaining averments of

paragraph 8, they are denied as legal conclusions. By way of further response, the answer set forth in paragraph 7 above is herein incorporated by reference.

9. Admitted in part and denied in part. Upon information and belief, it is admitted that Articles of Incorporation for Impact Harrisburg were filed on March 17, 2015 with the Pennsylvania Department of State. As to the remaining averments of paragraph 9, they are denied as legal conclusions and as referring to a document, the contents of which speaks for itself.

10. Admitted in part and denied in part. It is admitted that Impact Harrisburg has been conducting closed meetings and has not complied with the provisions of the Pennsylvania Sunshine Act. As to the remaining averments of paragraph 10, after reasonable investigation, Media Parties are without knowledge or information sufficient to form a belief as to the truth of these averments, and proof thereof is demanded.

11. Denied as stated. It is admitted that Impact Harrisburg has released minutes of its meetings on a sporadic basis. It is denied that Impact Harrisburg has promoted in any fashion the “interests of transparency in advancement of public dialogue regarding its purposes.” To the contrary, Impact Harrisburg has and continues to conduct its meetings in private and has deprived the public of notice

of meetings, the ability to attend those meetings and to have input and to observe any deliberations, official action and/or voting of the Board.

12. Admitted. By way of further response, the media was concerned that the Impact Harrisburg Board continued to meet in private and deprive the public of notice of its meetings, the opportunity to attend their meetings and have input and to view any deliberations, official action and/or voting of the Board.

13. Admitted.

14. Admitted.

15. The averments of paragraph 15 refer to a portion of statutory language contained within the Pennsylvania Sunshine Act and, thus, are denied as they purport to assert a legal conclusion and they refer to the contents of the statute which speaks for itself. To the extent the averments of paragraph 15 attempt to assert Impact Harrisburg is not an “agency” under the statute, they are denied.

16. Admitted.

17. (a)–(d). The averments of paragraph 17 are denied as legal conclusions. By way of further denial, the form of the entity under consideration is irrelevant to the consideration of whether the entity is or is not an agency under the Sunshine Act. To the contrary, it is the manner in which the entity is formed, either created by or pursuant to statute, and the fact that it performs essential

government functions like infrastructure improvement and economic development that determines its status as an agency. Impact Harrisburg meets both these tests and thus is an agency under the Act.

**Request for Declaratory Relief Regarding Applicability
of the Sunshine Act**

18. The averments of paragraph 18 are denied as legal conclusions.

19. The averments of paragraph 19 are denied as legal conclusions.

20. Admitted in part and denied in part. It is admitted that this Court may

issue declaratory judgments. The Media Parties herein incorporate by reference their Cross-Application in the Nature of a Petition for Declaratory Relief filed simultaneously herewith. The remaining averments of paragraph 20 are denied as there is no uncertainty as to the fact that Impact Harrisburg is an “agency” subject to the Pennsylvania Sunshine Act as it meets both portions of the required test under the definition set forth in §703.

21. Admitted in part and denied in part. It is admitted that this Court may issue declaratory judgments. The Media Parties herein incorporate by reference their Cross-Application in the Nature of a Petition for Declaratory Relief filed simultaneously herewith. The remaining averments of paragraph 21 are denied as there is no uncertainty as to the fact that Impact Harrisburg is an “agency” subject

to the Pennsylvania Sunshine Act as it meets both portions of the required test under the definition set forth in §703.

22. The averments of paragraph 22 are denied, as after reasonable investigation, the Media Parties are without knowledge or information sufficient to form a belief as to the truth of these averments, and proof thereof is demanded.

23. Denied. It is denied that Impact Harrisburg is a “private, non-profit corporation” that receives “public grant money for distribution.” To the contrary, Impact Harrisburg is an agency created pursuant to the provisions of Act 47, which oversees 12.3 million dollars of public funds arising from the sale of public assets to be used solely for City infrastructure improvements and economic development, essential government functions.

24. The averments of paragraph 24 are denied, as after reasonable investigation, the Media Parties are without knowledge or information sufficient to form a belief as to the truth of these averments, and proof thereof is demanded. By way of further response, it is denied that Impact Harrisburg has no “staff to run Impact’s daily operations” as it hired an Executive Director at an annual salary of \$100,000 which has been in place since December, 2015.

25. Denied as stated. As an “agency” Impact Harrisburg must comply with all requirements of the Sunshine Act which the Legislature has stated is a fundamental right of the citizens of Pennsylvania and that public bodies conducting their meetings in public is “vital to the enhancement and proper functioning of the democratic process and secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” It is further denied that such noble purposes of the Sunshine Act are in any way “mundane.”

26. Denied as stated. The Sunshine Act requires that public agencies conduct their meetings in public so that the public may be present when deliberation and/or official action is taken, 65 Pa. C.S. §704, votes must be made publicly, §705 and minutes must be kept as public records of those meetings, §706. It is further denied that the oversight of 12.3 million dollars is mere “housekeeping.”

27. Denied. The answers set forth in paragraphs 25 and 26 above are herein incorporated by reference. By way of further response, the Board of Impact Harrisburg has been meeting since March, 2015, thus for almost a year, and upon information and belief, no grants or loans have been made pursuant to its mandate, thus, it is specifically denied that the “swift implementation” of its missions under

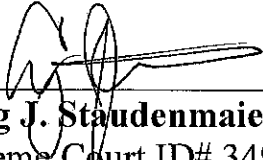
the Harrisburg Strong Plan would be impeded in any manner by compliance with the mandates of the Sunshine Act.

28. Denied that Impact Harrisburg may obtain a judgment that it is not an “agency” as defined under 65 Pa. C.S. §703. To the contrary, it is an “agency” under the Sunshine Act and must notify the public of its meetings, conduct its meetings in public, allow for public comment and maintain minutes and public records of its meetings all as required under the Act. By way of further response, the Cross-Applcation of the Media Parties in the Nature of a Petition for Declaratory Relief filed simultaneously herewith, is herein incorporated by reference.

WHEREFORE, Pa Media Group, WITF, Inc. and Hearst Properties Inc.,
d/b/a WGAL-TV, respectfully request that the Court deny Impact Harrisburg's
Petition for Declaratory Judgment that is not an "agency" under the requirements
of the Sunshine Act, 65 Pa. C.S. § 701 et seq.

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: _____


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Counsel for PA MEDIA GROUP, WITF,
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VERIFICATION

I, CATE BARRON, Vice President of Content/PA Media Group, am authorized to make this verification on behalf of Pa Media Group, and do make the following statement subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsifications to authority, and do state that as Vice President of Content/PA Media Group, the facts set forth in the foregoing Response in Opposition to the Application for Relief of Impact Harrisburg are true and correct to the best of my knowledge, information and belief.

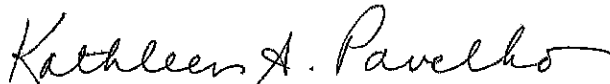


Cate Barron, Vice President of Content/PA Media Group

Date: March 9, 2016

VERIFICATION

I, KATHLEEN A. PAVELKO, President and CEO of WITF, INC., am authorized to make this verification on behalf of WITF, INC., and do make the following statement subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsifications to authority, and do state that as President and CEO of WITF, Inc., the facts set forth in the foregoing Response in Opposition to the Application for Relief of Impact Harrisburg are true and correct to the best of my knowledge, information and belief.



Kathleen A. Pavelko, President and CEO of WITF, INC.

Date: March 10, 2016

VERIFICATION

I, **Craig J. Staudenmaier, Esquire**, a member of the firm of Nauman, Smith, Shissler & Hall, LLP, attorneys for HEARST PROPERTIES INC., D/B/A WGAL-TV, in the foregoing proceeding, make this verification in behalf of HEARST PROPERTIES INC., d/b/a WGAL-TV as its verification cannot be obtained within the time allowed for the filing of this pleading and making the following statement subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities, and do state that as an attorney for HEARST PROPERTIES INC., D/B/A WGAL-TV, I am authorized to make this Verification on behalf of HEARST PROPERTIES INC., D/B/A WGAL-TV, and do state that the facts set forth in the foregoing Response in Opposition to the Application for Relief of Impact Harrisburg are true and correct to the best of my knowledge, information and belief.



Craig J. Staudenmaier, Esquire
Supreme Court ID# 34996

Date: March 10, 2016

PROOF OF SERVICE

I, CRAIG J. STAUDENMAIER, hereby certify that I am this day serving the foregoing document upon the persons below via first class mail, which service satisfies the requirements of Pa. R.A.P. 121:

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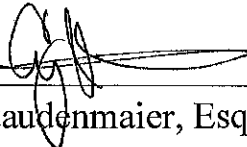
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Date: March 10, 2016



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