

# **Exhibit M**

# BakerHostetler

## Baker&Hostetler LLP

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October 15, 2014

### VIA OVERNIGHT DELIVERY

Ron Bolt, Esq.  
Town Attorney  
Town of Chevy Chase  
4301 Willow Lane  
Chevy Chase, MD 20815

*Re: Maryland Public Information Act Request on behalf of Action Committee for Transit*

Dear Mr. Bolt:

This Firm represents the Action Committee for Transit (“ACT”) and submits this request for public records under the Maryland Public Information Act on ACT’s behalf. If you are not the custodian of the requested records, please forward this information request to the proper custodian.

### SUMMARY OF REQUEST

ACT requests copies of public records relating to contracts, agreements, and communications between the Town of Chevy Chase (“Town”) and four firms that the Town retained to provide services in relation the Purple Line public transit project. ACT also seeks full minutes of closed sessions held by the Town Council, pursuant to the Town’s Charter, which provides that minutes of Town Council proceedings “shall be open to public inspection.” Charter of the Town of Chevy Chase § 207. ACT makes this request in order to promote the public’s understanding of the Town and the conduct of its public officials in conducting public business relating a major public infrastructure project. ACT intends to contribute significantly to the public’s understanding by making public the requested records and the information the records contain.

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The Maryland Public Information Act (“MPIA”) states that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code Gen. Provisions § 4-103(a). In reviewing this request, the Town should recognize that the MPIA mandates that the Act “shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person . . . that requests the inspection.” *Id.* § 4-103(b).

### **SPECIFIC RECORDS REQUESTED**

ACT respectfully requests copies of – or an opportunity to inspect – the following records:

#### **Agreements and contracts**

1. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Buchanan Ingersoll & Rooney, from February 8, 2014 to present.
2. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Chambers Conlon & Hartwell, from February 8, 2014 to present.
3. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Alexander & Cleaver, from February 8, 2014 to present.
4. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Sam Schwartz Engineering, from February 8, 2014 to present.

#### **Invoices and bills**

1. All invoices or bills (paid or unpaid) from the firm of Buchanan Ingersoll & Rooney to the Town of Chevy Chase, from January 16, 2014 to present.
2. All invoices or bills (paid or unpaid) from the firm of Chambers Conlon & Hartwell to the Town of Chevy Chase, from January 16, 2014 to present.

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3. All invoices or bills (paid or unpaid) from the firm of Alexander & Cleaver to the Town of Chevy Chase, from January 16, 2014 to present.
4. All invoices or bills (paid or unpaid) from the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All invoices or bills (paid or unpaid) from the firm of Sam Schwartz Engineering to the Town of Chevy Chase, from January 16, 2014 to present.

### **Correspondence**

1. All correspondence between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
2. All correspondence between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
3. All correspondence between or among the firm of Alexander & Cleaver (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
4. All correspondence between or among the Town of Chevy Chase, the Town Council, or individual Town Council members about or related to the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All correspondence between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin and the Town of Chevy Chase, the Town Council, or individual Town Council members, from November 1, 2013 to present.

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6. All correspondence between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present.

### **Meeting Records**

1. All meeting minutes – including minutes not previously disclosed to the public – from all closed sessions held by the Town Council from November 1, 2013 to present.
2. All minutes and notes of all meetings between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members, from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
3. All minutes and notes of all meetings between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members, from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
4. All minutes and notes of all meetings between or among the firm of Alexander & Cleaver or its representatives and the Town of Chevy Chase, the Town Council, or individual Town Council members, from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
5. All minutes and notes of all meetings between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, and the Town of Chevy Chase, the Town Council, or individual Town Council members, from November 1, 2013 to present.
6. All minutes and notes of all meetings between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 present.

### **REQUEST FOR WAIVER OF ALL FEES**

ACT requests, and is entitled to, a waiver of all fees for this MPIA request. A fee waiver is warranted because the information requested will serve the public interest and contribute significantly to the public's understanding of the business, activities, and public-money expenditures of a government body related to a major public infrastructure project. ACT is not seeking this information for any commercial purpose.

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The Town may waive the fees associated with this request if “(1) the applicant asks for a waiver; and (2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” Md. Code Gen. Provisions § 4-206(e). ACT asks for a waiver.

As to the second factor, ACT’s inability to pay favors it receiving a fee waiver. ACT is a non-profit entity run by volunteers, and its charter requires any assets to be donated to a 501(c)(3) charitable organization upon dissolution. As a grassroots, public interest organization, ACT lacks resources to pay the costs associated with an information request. This Firm is representing ACT on a *pro bono* basis, due to ACT’s limited financial resources and the public interest nature of the information sought.

While the “other relevant factors” are not set forth in the MPIA, Maryland case law indicates they include the importance of the topic to the well-being of the public, as well as the chilling effect setting prohibitively high fees would have on the public dissemination of information through the press. *See Mayor & City Council of Baltimore v. Burke*, 506 A.2d 683 (Md. Ct. Spec. App. 1986). In addition, the Maryland Attorney General’s Public Information Act Manual<sup>1</sup> notes that a fee waiver is appropriate where information is sought “for a public purpose,” as opposed to a “narrow personal or commercial interest.”<sup>2</sup>

ACT does not seek the information for a commercial purpose. Instead, ACT’s purpose is to make public the requested records and the information they contain. The requested information is related to an ongoing public debate regarding the expenditure of significant amounts of public funds relating to a major public transportation project – a project that will impact residents’ lives and well-being by providing faster, more reliable transportation to homes, businesses, and recreational spaces – and to the Town’s conduct in opposing the same.<sup>3</sup> Indeed, when the Town recently requested documents from the Maryland Transportation Authority regarding its contacts with ACT and other groups advocating for the Purple Line, the Town requested a fee waiver on the grounds that it would contribute to the public’s understanding surrounding this project and that the information was not sought for a commercial purpose. ACT, similarly, is entitled to a fee waiver.

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<sup>1</sup> Office of the Attorney General (Maryland), *Maryland Public Information Act Manual*, at 7-1 (12th Ed. 2011).

<sup>2</sup> Federal case law interpreting FOIA’s fee waiver provision similarly has pointed to several factors that indicate when a request is in the “public interest,” including: “the request must concern the operations or activities of government,” “the disclosure must be ‘likely to contribute’ to an understanding of government operations or activities,” “disclosure must contribute to an understanding of the subject by the public at large,” and “disclosure must be likely to contribute significantly to such public understanding.” *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

<sup>3</sup> *See, e.g.*, Katherine Shaver, *Purple Line Advocates Question Town of Chevy Chase Hiring Congressman’s Brother*, WASHINGTON POST (Jan. 23, 2014).

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## REQUEST PROCEDURES

The MPIA requires the custodian of the records to produce a requested record immediately upon receipt of a written request if the record is responsive to a request and is open to inspection. The Act provides for an additional reasonable period not to exceed 30 days only where the additional period of time is required to retrieve the records and assess their status under the Act. If access to the records in this request will take longer than 30 days, please contact me as soon as possible with information regarding when ACT can expect copies (paper or electronic) or the ability to inspect the requested records. If it is convenient for you to provide some or all of the records in an electronic format, that is acceptable to ACT.

If this request is unclear in any way, please contact me as soon as possible to clarify the request. If you deny any portion of this request, please provide a "*Vaughn* index" that sets forth the date, author, and general subject matter of any documents withheld, as well as the legal basis for your belief that the document should be shielded from disclosure.<sup>4</sup> Additionally, if you deny the request for a fee waiver, please provide the legal grounds for the denial.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

Baker & Hostetler LLP



Ambika J. Biggs

cc: Todd Hoffman, Town Manager

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<sup>4</sup> *Office of Attorney Gen. v. Gallagher*, 359 Md. 341, 345, 753 A.2d 1036, 1038 (2000).