

Bond

INVESTIGATION REPORT

CITY OF ITHACA

REIMAGINING PUBLIC SAFETY

INVESTIGATION REPORT

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INTRODUCTION

The following report (the “Report”) is the result of an investigation conducted at the request of the City of Ithaca (the “City”) to examine the facts, events and influences related to the City’s Reimagining Public Safety (“RPS”) Process. The RPS Process is the series of steps taken by the City, in partnership with Tompkins County (the “County”), to remake the public safety function in the City and County. This included:

- The work undertaken in 2020 in response to Governor Cuomo’s Executive Order No. 203, New York Police Reform and Reinvention Collaborative (“EO 203”), culminating in the “*Public Safety, reimagined*” report;
- The Resolution passed by the City on March 31, 2021, containing nineteen recommendations for how to reimagine public safety, including “[c]reat[ing] a new department, tentatively named the Department of Public Safety (DPS), which may be led by a civilian to manage various public safety functions in the City;” and
- The work of the task force appointed to design this new department (the “Working Group”), which resulted in the report, “*Implementing the City of Ithaca’s New Public Safety Agency.*”

The City requested the investigation after members of the City’s Common Council raised concerns about the potential for outside influence on the RPS Process. Those specific concerns are documented in at least two letters from Alderperson Cynthia Brock to the Tompkins County Ethics Advisory Board (“TCEAB”). (*Exhibit 1*).¹ Although the TCEAB commenced an investigation, the City sought to conduct its own investigation. It retained this investigator, Kristen Smith, Esq., of the law firm of Bond, Schoeneck & King, PLLC. The Common Council approved retention of the investigator on July 6, 2022.

While this investigation was requested and funded by the City of Ithaca, the conclusions expressed in this Report are wholly independent from any City official, and represent the views and analysis of the investigator alone free of any personal or political connection to or influence by the City or County.

I. SCOPE OF THE INVESTIGATION

The investigation and this Report are limited to the scope of investigative authority established by the City. The scope is limited to the following issues:

¹ Brock’s May 4, 2022 letter contained a number of attachments. Those are not included with Exhibit 1, but to the extent they are relied upon in this Report, they are referenced as separate Exhibits.

- A. Payments made to non-City employed participants in the RPS Process, including RPS Working Group Co-Leads, Eric Rosario and Karen Yearwood, as well as other members of the Working Group. Specifically, the investigation examined the manner in which funding for such payments was obtained, accounted for, and distributed, and whether such payments impacted the integrity of the RPS Process and its outcomes.
- B. The procurement of consultants in the RPS Process, and their role and influence in the work of the RPS Working Group. The consultants examined in connection with this investigation include the Center for Policing Equity (“CPE”), Matrix Consultants and Understory.
- C. The manner in which outside interest groups, lobbyists and/or donors were arranged, recruited, funded or otherwise solicited by any City employee or consultant. This concerns the role of Former City Mayor, Svante Myrick, in recruiting personnel and/or raising funds for the People for the American Way for the purpose of advocating for the City’s RPS Process within the Ithaca community.

To the extent questions have been raised in the community or throughout the course of this investigation about the quality, effectiveness and fairness of the RPS Working Group, its process and its report, those issues were considered only to the limited extent they relate to whether outside funding or consultants impacted the work of the group. Neither the investigation nor this Report is intended to evaluate the overall inner workings of the RPS Working Group or the quality or substance of its work or report.

II. INVESTIGATION PROCESS

The investigation was conducted over a period of several months. It involved a review countless documents, hundreds of emails, and numerous interviews with individuals involved in the RPS Process.

The investigator received and reviewed documents provided by the City, as well as emails housed on City servers between individuals involved in the RPS Process, including City personnel, CPE employees, and others.

The investigator also conducted one-on-one interviews with witnesses involved in the RPS Process. Following the interviews, additional documents collected and examined, including agendas and minutes from meetings of the RPS Working Group. Several follow-up interviews were conducted with witnesses throughout the process.

Independently, as noted above, the Tompkins County Ethics Advisory Board (TCEAB) conducted its own investigation in parallel with this investigation. Written submissions from witnesses contacted by the TCEAB were made publicly available in beginning in 2022. Those publicly

posted submissions were relied upon to supplement the information collected directly, as noted throughout the Report.²

During August, September and October of 2022, the following witness interviews were conducted by the investigator. Each interview was conducted in-person, unless otherwise noted:

1. Acting Mayor Laura Lewis
2. Former Mayor Svante Myrick (via Zoom video conference)
3. City Director of Human Resources, Schelley Michell-Nunn
4. City Attorney Ari Lavine
5. City Controller Steven Thayer
6. City Chief of Staff Faith Vavra
7. City Public Information Specialist Melody Faraday
8. Alderperson Cynthia Brock
9. Alderperson Ducson Nguyen
10. Alderperson George McGonigal
11. Acting Police Chief John Joly
12. Sgt. Mary Orsaio
13. Working Group Subcommittee Member Yasmin Rashid (via Zoom video conference)
14. Working Group Subcommittee Member Karl Lewis (via Zoom video conference)

Where necessary, follow-up interviews were conducted in October and November of 2022. The investigator also attempted to interview RPS Working Group Co-Leads Eric Rosario and Karen Yearwood, however, both individuals declined to be interviewed, and instead referred to their

² Submissions collected in connection with the TCEAB investigation are publicly available at: <https://www.tompkinscountyny.gov/legislature/ethics> . For ease of reference, the following are appended as exhibits to this Report:

- *Exhibit A*: Tim Horner, Esq. on Behalf of the Center for Transformative Action and Dorothy Cotton Institute - dated July 15, 2022
- *Exhibit B*: Rachel Leon, Executive Director, Park Foundation - dated July 15, 2022
- *Exhibit C*: James F. Moran, Esq. on Behalf of Eric Rosario and Karen Yearwood - dated August 29, 2022
- *Exhibit D*: Richard Brady, President, Matrix Consulting Group - dated July 6, 2022, with select attachments
- *Exhibit E*: Reimagining Public Safety Op-Ed Article from Matthew Van Houten, Tompkins County District Attorney - dated April 6, 2022

written submissions to the TCEAB. The investigator also attempted to interview community members who served either on the full RPS Working Group or on a subcommittee and who (as explained further below) accepted compensation for their work. Only two of the five community members who were contacted responded to the request for an interview, and are noted in the list above.

The investigator also attempted to interview Tompkins County (the “County”) employees who were heavily involved in the City’s RPS Process, however, per County Attorney William Troy, the witnesses would not be made available until after the TCEAB was able to interview City witnesses for its parallel investigation. This condition prevented these interviews from being conducted within a reasonable timeframe for this investigation, and so this investigation did not include interviews with County employees. The investigator also contacted CPE and requested interviews with several CPE employees, each of whom was deeply involved in the RPS Working Group. CPE declined to participate.

**PART A:
PAYMENTS TO CO-LEADS AND WORKING GROUP MEMBERS**

I. FACTUAL FINDINGS

A. Promise To Pay Working Group Co-Leads

In the April to May 2021 timeframe, Eric Rosario (“Rosario”) was invited to serve as the Lead of the RPS Working Group by Former Mayor Svante Myrick (“Myrick”).³ According to Myrick, when Rosario was asked to serve, he requested compensation due to the substantial amount of work that would be required. Rosario also asked that a co-lead be appointed to share the workload. Rosario additionally requested the support of a consultant—specifically CPE. According to Myrick, Rosario was familiar with CPE because of the work CPE performed during an earlier phase of the RPS Process, when the City developed a report in response to Governor Cuomo’s Executive Order No. 203, New York Police Reform and Reinvention Collaborative (“EO 203”). Rosario, on the other hand, reported in his response to TCEAB that he had not worked with CPE prior to his appointment as Co-Lead of the RPS Working Group, but does not specifically address whether or not he asked that CPE be involved. (*Exhibit C*). Myrick agreed to each of Rosario’s requests: to be compensated, to appoint a co-lead, and to retain a consultant to support the RPS Process. By all accounts, an unwritten agreement was made to compensate Rosario in the amount of \$20,000.

In Rosario’s written submission to the TCEAB, he states that he did not ask to be paid to serve as Co-Lead of the RPS Working Group, but that Myrick intended the position to be paid and offered compensation. According to Alderperson George McGonigal (“McGonigal”), he had a dinner meeting with Rosario soon after Rosario’s conversation with Myrick about leading the Working Group. McGonigal reports that during their dinner meeting, Rosario stated he would be compensated for the role. However, McGonigal does not recall if Rosario stated that he requested compensation, or that it was offered.

Rosario selected Karen Yearwood (“Yearwood”) to be his Co-Lead. At Rosario’s request, Myrick extended the invitation to Yearwood. She accepted the role on July 21, 2021, just as the Working Group was getting underway. (The Working Group members were announced on June 24, 2021, and their first meeting was on July 21, 2021). According to Myrick, at the time Yearwood was asked to serve as Co-Lead, it was already established that the Co-Leads would be paid. Like Rosario, Yearwood was to be paid \$20,000.

³ Rosario recalls that he was first contacted by Myrick in April. As early as May 9, 2021, Rosario was copied on emails between Myrick and CPE regarding planning for the RPS Working Group.

Ultimately, it is not material whether Rosario initially requested the payment, or whether it was offered by Myrick as it is undisputed that there was an understanding from the outset that the Working Group Co-Leads would each be compensated \$20,000 for their time.

B. Initial Discussions Regarding Funding for the Working Group Co-Leads

According to Myrick, it was his expectation that the payments for Rosario and Yearwood would come from the City. This is consistent with City Attorney Ari Lavine's ("Lavine") account. Lavine recalled a conversation with Myrick during which the \$20,000 Co-Lead payments were discussed. It was Lavine's understanding that the Co-Leads would be compensated as independent contractors for the City, and that the City's Director of Human Resources, Schelley Michell-Nunn ("Michell-Nunn"), who was also serving as the liaison to the Working Group, would process the payments through the normal City channels. According to multiple witnesses, the typical practice for paying a contractor is for the relevant Department Head to prepare a professional services contract, which must be approved by the City Attorney, City Controller, and depending on the amount and funding source, by either the Chair of the Common Council's City Administration Committee or the Council as a whole.

Myrick recalled that he tasked Michell-Nunn with processing the payments. Myrick explained that it would have been unusual for him to be personally involved in processing payments for this amount in the usual course of City business. Lavine confirmed that it would be unusual for the Mayor himself to process the paperwork, and that this task is always handled by a Department Head.

Michell-Nunn, on the other hand, reported that she spoke with Myrick about the fact that the Co-Leads would be paid \$20,000 each, but they did not discuss who would be responsible for ensuring the payments were processed through the City's system. Michell-Nunn reported that while she assumed that Myrick would prepare the contract, in early 2022 she learned that the contract and payments had not been processed through the City's system. However, a review of email records shows that Michell-Nunn emailed Myrick on May 7, 2021, providing a scope of work for Rosario's Project Leader position, stating "[h]ere is the draft of the project leader scope *that we will need for the contract,*" and asked for feedback. (*Exhibit 2*) (emphasis added). This suggests that Michell-Nunn intended to begin the City's contracting process for Rosario.⁴ However, it appears nothing further happened to advance the process. There is no evidence that Myrick responded to the May 7, 2021 email, or that Michell-Nunn followed up further. Myrick reported that he did not recall receiving that email. It is not clear what happened with the Project Leader scope of work after Michell-Nunn asked for Myrick's feedback, but it appears from a review of email records that it fell through the cracks.

Given that it would be highly unusual for the Mayor himself (or his office) to prepare a contract for payment to an independent contractor, the investigator concludes that it was Michell-Nunn's oversight that led to the failure to follow through and process a contract for Rosario's and Yearwood's consulting services at the time they were retained in May and July 2021, respectively. Had the contract been initiated at this time, it would have triggered a review by City leaders

⁴ At this early stage, Yearwood had not yet been identified as the Co-Lead for the Working Group.

(including the City Attorney, City Controller and at a minimum, the Chair of the Council's City Administration Committee) prior to the work being performed.

On the issue of outside funding for the Co-Leads' payments, Myrick, Lavine and Michell-Nunn all reported that at the time Rosario was retained, there were no specific discussions related to obtaining outside funding to compensate the Co-Leads. Myrick reported that he believed there were sufficient funds available in the City's budget.

However, Michell-Nunn's initial draft of a grant application to the Park Foundation in early June 2021 (discussed in more detail below) included \$10,000 to each Co-Lead. Thus, it appears that at the same time that a professional services contract with the City should have been initiated to compensate Rosario, the City was already pursuing an outside match for the Co-Lead payments. It is not clear whether Michell-Nunn shared this detail with Myrick, but Myrick reported that even if she had shared with him the fact that the grant would cover the Co-Lead payments, that he would have been supportive of this arrangement. Myrick further explained that he would have assumed the funds would come from the Park Foundation to the City to be paid out to the Co-Lead rather than the funds being directed from the Park Foundation to the Co-Leads directly. According to Lavine, he was not aware of this grant application at all, let alone the fact that the application sought a match for the payments to the Working Group Co-Leads. (As explained further below, he was made generally aware of the idea of seeking funding, and led to believe the funding would flow to the City, but was not informed of this specific grant application.)

C. Decision To Obtain Outside Funding

The concept of compensating Working Group participants, and obtaining outside funding for this purpose, was raised early and often between City and CPE leaders. Indeed, the investigation revealed that this was a frequent topic of discussion as plans were made to establish the Working Group. The following sequence of events is illustrative:

- May 9, 2021: In early discussions with CPE about CPE playing a role in the Working Group phase, CPE Senior Vice President, Tracie Keesee ("Keesee"), wrote that "[w]e [CPE] believe the task force members should receive a stipend." (*Exhibit 3*). Keesee also asked, "[d]oes the city have funding to support the following," including a "stipend for task force members." *Id.*
- May 21, 2021: CPE sent Myrick their Scope of Work (which was later signed by Myrick in June 2021⁵), which states that CPE will create a "[s]tipend budget for the working group."⁶ (*Exhibit 4*). The proposed budget that accompanied this Scope of Work included \$27,000 for payments to members of the Working Group and subcommittees.⁷ *Id.*
- May 28, 2021: After a planning meeting between the City and CPE, a CPE employee sent a follow-up email stating that one of Myrick's (and Rosario's) action items was to "reach

⁵ See Exhibit 5.

⁶ See Part B, Section I.D for a more detailed discussion of this Scope of Work document and the proposed budget.

⁷ As explained in more detail in Part B, Section I.D of this report, this proposed budget was never accepted or even discussed in any detail.

out to The Park Foundation and others *for donation options for the stipends and a grant for the work.*” (*Exhibit 6*) (emphasis added).

- June 10, 2021: CPE’s Keesee sent an email to Myrick summarizing the follow-up items from another planning meeting between CPE, the City and the County. Relative to this issue, Keesee stated: “You will continue to work with local foundations to secure funding for working group members and other community members who are asked to participate during this phase of the project.” (*Exhibit 7*).
- June 11, 2021: Myrick sent an email to Common Council referencing the idea of outside funding to compensate members of the RPS Working Group. In a “Confidential Reimagining Public Safety Working Group Update,” Myrick wrote: “It is also becoming clear that the working group will need a budget to fulfill it’s [sic] mission. I believe the American Rescue Plan Funds can be a source of revenue – and *I am currently pursuing private philanthropic dollars* as well.” (*Exhibit 8*) (emphasis added).

When asked about the action item to contact the Park Foundation, Myrick reported that he does not recall being tasked with this, but that if he was, he did not follow through. Despite what he wrote to Council about “pursuing private philanthropic dollars,” Myrick does not recall ever doing proactive outreach to the Park Foundation or other funders for RPS support (although he recalls doing outreach for a number of other City needs at the time, such as a City pool). Myrick also reported that he does not recall delegating the task of reaching out to the Park Foundation to anyone else. While there were a number of things that Myrick could not specifically recall, he confidently and emphatically recalled that the Park Foundation approached the City, not the other way around.

Documents confirm that on June 9, 2021, in the midst of the above-referenced communications, Michell-Nunn emailed Laura Branca (“Branca”), Project Director and Senior Fellow at the Dorothy Cotton Institute (“DCI”), and wrote: “I am starting to look at the Park [Foundation] application for stipends for the taskforce and working committees.” Branca replied, “When we last talked, I guess you were going to check in with Sue [Kittel of Park Foundation] about that, but I didn’t hear that she was okay with having DCI be the grantee.” (*Exhibit 9*). Michell-Nunn then wrote to Branca with an initial draft grant application on June 20, 2021. (*Exhibit 10*). Michell-Nunn and Branca collaborated on further drafts. Michell-Nunn’s initial draft and budget included \$10,000 each for Rosario and the yet to be named Co-Lead, \$2,000 each for Working Group members, and \$500 each for subcommittee members. *Id.* Branca edited and adjusted the amounts to cover administrative grant costs.

On June 30, Michell-Nunn also shared a draft with County employee, Deanna Carrithers (“Carrithers”).⁸ Carrithers suggested minor edits on the grant application. When Michell-Nunn shared the draft with Carrithers she explained, “I have asked the Dorothy Cotton Institute to be the fiscal sponsor, *I can’t get it as the City.*” (*Exhibit 11*) (emphasis added). Michell-Nunn reported that she said this because she believed that the City could not receive the money because it is not a 501(c) organization.

⁸ Carrithers was Tompkins County’s Chief Equity & Diversity Officer and was Michell-Nunn’s counterpart who attended all RPS project management meetings, as detailed further in Part B of this Report.

One notable email exchange related to the grant application shows Branca questioning whether Rosario would also be paid by the City. On July 2, 2021, Branca wrote to Michell-Nunn:

Also, I have a question about whether the City is also going to pay Eric, since they need a facilitator and it really is odd to expect the community to pay for his role without some contribution from the City. If getting a grant to pay him was always the plan, it's not a problem for me. But I just want to be aware of whether the grant is the only source of money for Eric's coordination. (*Exhibit 12*).

Email records do not show a written reply to this question, but in Branca's written response to the TCEAB, she wrote that "Schelley [Michell-Nunn] let me know that the City was likely going to offer project leaders \$10,000 each." (*Exhibit A*).

Email records confirm that Myrick and Rosario were provided a draft of the grant application on July 7, 2021. (*Exhibit 13*). Records do not reveal a written response from Myrick, and when asked, he reported that he does not recall reviewing the grant application. On July 8, 2021, Rosario offered minor input and added: "I think this is excellent. You lay out a compelling case. I didn't realize Park had helped us with those gift cards.⁹ You're just building on what they've already invested." *Id.*

When interviewed for this investigation, Michell-Nunn described a chain of events consistent with Myrick's recollection. She reported that the idea of obtaining outside funding arose not from discussions and meetings with CPE or because of an action item assigned to Myrick, but because she was approached by Sue Kittel ("Kittel") of the Park Foundation. According to Michell-Nunn, Kittel wanted to know how the Park Foundation could support the RPS Process and mentioned that there was alignment with the mission of DCI, which focuses on engagement and civil rights. Based on the alignment between the Working Group's involvement of community members and DCI's mission, Kittel suggested that DCI could be a fiscal sponsor.

In DCI's written response to the TCEAB, Branca had a slightly different version. Branca reported that when the Working Group was convened, she asked Michell-Nunn whether community participants would be paid by the City, that Michell-Nunn stated that they would not, and therefore, DCI submitted the grant proposal. Branca wrote that "neither Schelley [Michell-Nunn] nor any other City staff has ever solicited any award, contribution, donation, endowment, funding, grant support for a City department or program from DCI or CTA." (*Exhibit A*). However, while the City was not technically the applicant or direct recipient, the investigation reveals that the City played a large role in applying for and distributing the grant (discussed further below), not to mention that the ultimate payees were members of the City-appointed Working Group, *i.e.*, a City program.

Michell-Nunn reported that Myrick was aware that there was the possibility of grant funding for the RPS Working Group. Myrick confirmed that Michell-Nunn did make him aware, and as noted above, he was provided a draft of the grant application. However, Myrick reported that he assumed the funding would come from the outside funders *to the City*, and that the City would then disburse

⁹ See Part A, Section I.E below regarding a discussion of gift cards provided in the EO 203 process.

the funding to the recipients. He pointed to the City’s approach to the Green New Deal as the appropriate model, in which case the City received grant funding from the Park Foundation, and then used that grant funding to compensate a City employee. Notably, in his interview for this investigation, Myrick expressed his view that it was a “mistake” and an “administrative lapse” to allow the funds to flow directly from the outside source to the RPS Working Group Co-Leads and participants.

As to whether any other City leaders were aware that there was the possibility of grant funding for the Working Group, City Attorney Lavine reported that Myrick mentioned the *potential* for outside funding, but Myrick gave the impression that this funding had one specific purpose—to fund portions of the payments to the Co-Leads (and not other participants). He further reported that when he learned of this outside funding, Myrick implied that the funding would be processed by the City, meaning any grant would be awarded to the City, and the City would then accept and disburse it to the Co-Leads, in what Lavine understood to be their capacity as paid consultants to the City. This is consistent with Myrick’s account, as noted above.

Michell-Nunn and Lavine both reported that Michell-Nunn never sought advice from the City Attorney’s Office as to whether there would be legal issues with outside funding flowing directly from an outside organization to the Co-Leads or participants in the Working Group. In fact, Lavine did not become aware that those participants were paid until March 2022. After Lavine became aware of the payments, in May 2022, he sent letters to Working Group participants asking them to return the payments to the funder to avoid a violation of the City’s Code of Ethics. City Controller Steven Thayer (“Thayer”) similarly reported that he was not aware of this funding until it became a public issue in or around April 2022.

D. Distribution of Outside Funding to Working Group Participants

1. Payments to Working Group & Subcommittee Members

The Park Foundation grant was approved in September 2021. The actual fiscal sponsor and grant recipient turned out to be the Center for Transformative Action (“CTA”). DCI is a project of CTA. The investigation revealed that once the funds were secured, Michell-Nunn was the City employee who (a) decided how to apportion the funding to Working Group participants; and (b) facilitated the flow of funds from CTA to the Co-Leads and other Working Group participants.

Emails reveal that in late September 2021, Michell-Nunn asked that the issue of stipends be added to the agenda of an RPS project management meeting, stating “I want to discuss my thoughts on the fairest way to distribute.” (*Exhibit 14*). The RPS project management meetings were attended by Michell-Nunn, Rosario, Yearwood, two County representatives (Carrithers and Dominick Recckio) and at least six CPE representatives. Myrick sometimes attended, as did the City’s Melody Faraday. (A further discussion of these RPS project management meetings can be found in Part B of this Report.)

Michell-Nunn reported that she alone designed the payment criteria, which was based on the level of Working Group members’ attendance at RPS meetings. On September 30, Michell-Nunn shared with Rosario and Yearwood (but not Myrick or other members of the City’s senior staff)

her draft email to Working Group participants laying out her proposed formula for payment to participants, saying she believed it was “the fairest way to distribute the stipends.” (*Exhibit 15*).

The formula was as follows:

- Two-Day Onboarding – \$250.00 for each day attended
- Working Group Meetings – \$75.00 for each day attended
- Subcommittee Meetings – \$75.00 for each day attended
- Maximum amount per Working Group participant – \$2,000.00

It is not clear whether Rosario or Yearwood provided any feedback on Michell-Nunn’s proposed payment formula. (A review of emails shows neither Rosario nor Yearwood offered any input in writing, other than what was stated in their September 30, 2021 email to Michell-Nunn. (*Exhibit 15*)).

By email dated October 2, 2021, Working Group members were informed that they were eligible for stipends. (*Exhibit 16*). The email set forth the above-described payment formula and provided instructions on how to seek payment. Michell-Nunn wrote:

I am pleased to inform you that the Dorothy Cotton Institute (DCI) has secured a grant through the Park Foundation. This grant will enable you to receive a stipend for your time and commitment to improving public safety for all and specifically those in minoritized and most vulnerable communities. Too often, you are called upon to provide valuable information for the success of many programs or to help fix a problem that impacts you, but you did not cause it. So, this is modest recognition of your value, and again I thank you.

On November 10, 2021, community members who served on a Working Group subcommittee but were not members of the full Working Group were also informed that they would be eligible for stipends. (*Exhibit 17*). Michell-Nunn wrote:

Once again, I want to thank you for your willingness to give your time for this very important endeavor. Doing this right will have an immeasurable impact on our community, particularly communities of color and our most vulnerable populations.

Too often, you are called upon to provide valuable information for the success of many programs or to help fix a problem that impacts you, but you did not cause it. This is different. I am pleased to inform you that the Dorothy Cotton Institute (DCI) has secured a grant through the Park Foundation. This grant will enable you to receive a \$500.00 stipend for your time and commitment to improving public safety for all and specifically those in minoritized and most vulnerable communities.

Payments were made directly from CTA to the recipients. Working Group members were required to complete an invoice that detailed their meeting attendance. Eight participants followed up to receive payment. Payments were requested as follows:

Participant	Date Requested	Amount Requested & Approved
Luca Maurer	10/7/2021	\$ 1,025.00
Mar'Quan Frederick	10/20/2021	\$ 875.00
Yasmin Abdur-Rashid	12/3/2021	\$ 875.00
Tierra Labrada	1/16/2022	\$ 500.00
Norma Gutierrez	2/18/2022	\$ 500.00
Karl Lewis	2/26/2022	\$ 500.00
Amos Malone	*	\$ 200.00
Amir Tazi	*	\$ 1,325.00

**Invoices for Tazi and Malone were not located, but email correspondence between Michell-Nunn and Branca suggest these payments were requested in these amounts.*

Michell-Nunn reviewed and approved invoices and forwarded the approved invoices to Branca at DCI/CTA. Upon receipt of the invoices, CTA paid the participants directly. Based on the information provided by Michell-Nunn and garnered from emails, the total amount of compensation requested, approved and paid was \$5,800 out of the \$60,000 grant.

On October 5, 2022, CTA submitted its interim grant report to the Park Foundation related to the \$60,000 RPS grant. According to the grant report, 35 individuals received a combined total of \$7,724.¹⁰ According to Michell-Nunn, the additional funds (the difference between \$7,724 and \$5,800) were spent on gift cards and lunches for a community meeting held during the Working Group process. Emails confirm that Michell-Nunn asked Branca for twenty \$50 gift cards for attendees at a forum attended by members of the unhoused population on November 22, 2021, and that a meal was purchased for participants at this session. This, however, does not entirely explain Branca's account that thirty-five individuals received payment.

¹⁰ A copy of this interim grant report was provided to the investigator by counsel representing CTA and DCI. However, it was provided with the request that the document not be further disclosed to the public. Accordingly, while it was relied upon for the information contained in the Report, a copy of the grant report is not being provided with this investigation Report.

2. *Knowledge of Payments to Working Group Members*

As to whether City leaders other than Michell-Nunn were aware of either the existence of the payments to Working Group participants, or the manner in which the payments were distributed, the investigation reveals that some, but not all, City leaders were aware, and that there were varying degrees of knowledge.

When asked if Myrick knew how the stipends would be paid, including the formula, Michell-Nunn responded that he was aware of the payments, and that he would have been aware of the formula because it was discussed at the project management meetings that he frequently (but not always) attended. Myrick does not recall receiving information about how the grants would be distributed or the formula for determining amounts owed to Working Group participants. As noted above, it was his assumption that the funding was passing through the City before being distributed to Working Group participants.

The City's Chief of Staff, Faith Vavra ("Vavra"), would have become aware of the payments after she began employment in October 2021 because records reflect the payments were discussed at a November 8 2021 RPS project management meeting at which she was in attendance. However, Vavra admitted that when she first joined these meetings, she did not have sufficient background or context to question decisions that appeared to have been made prior to her tenure. For this reason, any discussion about the Working Group stipends did not stand out to her.

Other senior City staff members who did not attend these RPS project management meetings (Lavine and Thayer) were not aware of the payments to Working Group participants and were not consulted to determine if there were any legal, ethical or other issues to consider regarding the way the payments would be made.

As for the Common Council, Michell-Nunn did not directly inform Council about the payments to the Working Group participants or share related information with them. However, because the topic was discussed at Working Group meetings, individual Council members who served on the Working Group (Alderspersons Lewis, Nguyen, and McGonigal) were privy to some amount of information. Notes from the October 14, 2021 Working Group meeting indicate that there was a discussion about stipends at its September 30 meeting. (*Exhibit 18*). Minutes from the September 30 meeting are silent on this issue, and so it is not clear what, exactly, was discussed, and how much detail was shared.

At the October 14 Working Group meeting, Rosario and Yearwood made a "leadership statement" to the group, defending the idea of paying Working Group members. A full written statement by Rosario and Yearwood accompanies the October 14 meeting minutes, stating, in part:

At our last meeting, we had a conversation about stipends. In the spirit of our Big Ears shedding practice, we heard what was unsaid: that stipends somehow taint input from community members, and that those community members can't be trusted. We find that implication, intentional or not, uninformed at best. A foundational element of our system of democracy is community input in shaping public policy. However, historically communication input has been

centered around those with a disproportionate amount of wealth, privilege and power. (*Exhibit 18*).

The statement goes on in more detail and concludes that “[s]tipends are a way to ensure equity and diversity in our processes and outcomes.” *Id.*

The statement, however, did not appear to provide details about the source of the payments, or how they would be distributed. Councilors on the Working Group who attended this meeting reported that they were vaguely aware of payments from this discussion, but did not understand that a final decision had been made, or that such payments were actually happening, and were definitely not informed about the source and method of the payment, i.e. a direct payment from an outside group.

3. Outside Payments to Working Group Co-Leads Rosario & Yearwood

As indicated above, the grant application to Park Foundation specifically requested funding for Co-Leads Rosario and Yearwood in the amount of \$10,000 each. This investigation revealed that Rosario and Yearwood were each required to enter into an Independent Contractor Agreement with CTA in order to receive payment. (*Exhibits 19 & 20*). Yearwood and CTA’s Executive Director, Anke Wessels (“Wessels”), electronically signed an agreement on November 9, 2021. Wessels also signed Rosario’s agreement on November 9. Rosario countersigned on November 15, 2021. Key terms of both agreements include the following:

- Term of October 3, 2021 until January 30, 2022;
- Rosario and Yearwood would each work “as a Project Leader of the Reimagining Public Safety Working Group... [and] will organize and facilitate regularly scheduled meetings of the Working Group;”
- Rosario and Yearwood were not agents of CTA, and were not able to transact business or enter into agreements on CTA’s behalf;
- CTA would own the data, information and other worked developed or obtained by Rosario and Yearwood in the scope of their work; and
- Upon termination of the Agreement, all data, information and other work was to be turned over to CTA.

Yearwood submitted an invoice for payment to Michell-Nunn on January 31, 2022, copying Branca and Rosario. Michell-Nunn replied, “I do not have an authorization process for the Project Leads. Do you [Branca] need anything formal from me? They have both more than fulfilled their obligation for this disbursement.” (*Exhibit 21*). Rosario’s invoice was submitted on February 1, 2022. Wessels’ written statement to the TCEAB confirmed that CTA did pay Rosario and Yearwood \$10,000 each. (*Exhibit A*).

E. Other Outside Funding in the Broader RPS Process

While this investigation is primarily focused on the presence and effect of outside funding on the Mayoral-appointed RPS Working Group in 2021-2022, the investigation revealed that some outside funding was used earlier in the RPS process to fund gift cards for participants during the EO 203 process.

In September 2020, the Ultimate Reentry Opportunity (“URO”) Initiative received a grant of \$79,000 from the Park Foundation. Like DCI, URO is a CTA project. In October 2020, Michell-Nunn asked for a meeting with Branca of DCI and Kittel of the Park Foundation to see whether some of those funds could “be used as stipends for individuals to participate in the police reform community forums.” (*Exhibit 22*). Ultimately, according to Michell-Nunn, there was an agreement to use grant funding for this purpose, and gift cards were distributed to participants in focus groups.

F. Process Of Securing City Funding For Co-Leads

As noted above, there was an understanding by Myrick, Lavine and Michell-Nunn that some amount of payment would be made directly by the City to Rosario and Yearwood for the services rendered in leading the Working Group, but that no one took the required steps to facilitate that payment when it was first discussed in 2021.

Michell-Nunn reported that in early 2022 as the Working Group was finishing its work and Rosario and Yearwood were receiving payment from CTA, she realized they had not been paid by the City. She followed the procedure applicable to professional services contracts¹¹ for the City.

According to multiple City witnesses, the process to secure professional services funding is for the relevant City Department Head or representative to initiate the process by preparing a contract and submitting it for review and approval by the City Attorney’s office and the City Controller’s office. The City Attorney reviews the contract to determine whether the form and substance of the contract comports with the law, and whether the correct procurement process is being followed. The City Controller reviews to ensure the funds required for the contract are available in the City budget.

In this case, City Attorney Lavine approved the Co-Lead payments because there was \$800,000 budgeted for the RPS Process. He did not identify any other legal issues with the City paying a portion of the Co-Leads’ payments, as they were rendering consulting services to the City. City Controller Thayer approved the Co-Lead payments for the same reason. The payments then went before the Chair of the Council’s City Administration Committee, Robert Cantelmo, for approval. This led to additional questions about the source of the funding and the process.

¹¹ The investigation considered whether the types of services provided by Rosario and Yearwood meet the definition of “professional service” in the City’s procurement policies. (See City Purchasing and Procedure Manual, at p. 22, attached as *Exhibit 23*). The Purchasing and Procedure Manual provides that “professional services involve specialized expertise, use of professional judgment and/or a high degree of creativity.” It appears that the City has a practice of broadly interpreting that term, and the definition in the policy provides for broad latitude, allowing projects to be “examined on an individual case basis.” Given this broad definition, and the broad latitude historically used by the City to consider whether services are a “professional service,” the investigation concludes that the policy would not have been violated if the City ultimately entered into such a contract with Rosario and Yearwood.

Although Lavine and Thayer approved the payments because of the \$800,000 budgeted for the RPS Process, it was later determined that this amount was budgeted for joint City-County initiatives, which the Working Group was not. Thus, the money would need to come from another budget line for RPS, which was a restricted contingency account. Under the City's processes, payments from a restricted contingency account require full Common Council approval. The approval of payments to Rosario and Yearwood went before the Council's City Administration Committee on April 27, 2022, and the committee declined to forward the item to the Council for a vote.

II. ETHICAL AND LEGAL CONSIDERATIONS AND CONCLUSIONS

A. Are Working Group Leads and Members "City Officials" Bound by the City's Code of Ethics?

In order to determine whether Working Group Co-Leads and participants violated the City's Code of Ethics, it is necessary to first determine whether these individuals meet the definition of a "City Official" in the City's Code of Ethics (Chapter 55). If Working Group Co-Leads and participants could be categorized as City Officials, they would be subject to Section 55-5, which states:

No city official or city employee shall, directly or indirectly, solicit, accept or receive any gift having a value of \$75 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her or could reasonably be expected to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part.

The Code of Ethics defines a "City Official" as "[a]ny elected official and any person, other than a city employee, appointed to any position in the city government." For the reasons explained below, the investigation concludes that Working Group Co-Leads and participants were *not* City Officials.

The Working Group was established by a Resolution of the Common Council dated March 31, 2021. (*Exhibit 24*). The Council resolved to "[c]reate a task force to design the new [Police] department," and specified that the task force (*i.e.*, the Working Group) "shall include some combination of IPD staff, other City staff, Alderpersons, interested City residents, and outside experts or consultants." The Resolution further specified that the task force would "submit its *recommendations*, including budget estimates, naming conventions, and a timeline for public review and comment, to Common Council..." *Id.* (emphasis added).

While the Resolution does not specify who, on behalf of the City, would appoint the task force/Working Group members, the appointments were made by Mayor Myrick in consultation with the Common Council. Council was not required to vote to approve the members, and no vote occurred. Also, the Resolution does not specify that leaders of the Working Group should be selected and appointed. However, Mayor Myrick determined that it was necessary to have someone lead the group, rather than hiring a new City employee or assigning a current City

employee, as was done with the Executive Order 203 process when Michell-Nunn served in a project management capacity. Myrick ultimately appointed two community members to co-lead the Working Group: Rosario and Yearwood.

It is a close question as to whether the members of a City appointed task force are considered “City Officials.” On its face, the City Code’s definition is quite broad, referencing appointment to “any position.” At first glance, therefore, it is possible to conclude that Working Group Co-Leads and participants are City Officials because they were appointed to a position related to City government.

However, further review of local and state law requires the opposite conclusion. First, the City’s Charter lists its “elective and appointive officers.”¹² Officers are specifically enumerated by title or category. Some categories are broad, such as “officers appointed by the Mayor with approval of the Common Council.” Members of the Working Group were appointed by the Mayor, but Common Council approval was not required. Other are explicitly named, such as “the six Commissioners of the Board of Public Works, the nine members of the Public Safety and Information Commission, the nine members of the Community Life Commission, the nine members of the Mobility, Accessibility, and Transportation Commission...”¹³ To the extent the City wished advisory board members to be considered City officials, they are explicitly named in the Charter. The resolution that created the RPS Working Group did not include language to suggest they should be treated the same as those formally listed in the Charter.

The conclusion is the same under state law. New York State General Municipal Law Article 18 is the source of the City’s responsibility and authority to implement its Code of Ethics. General Municipal Law § 806 requires the governing body of each municipality, including cities, to adopt a code of ethics. State law requires that this code of ethics “set[] forth the guidance of its *officers and employees* the standards of conduct reasonably expected of them.” The City of Ithaca’s Code uses the term “city official,” rather than “officer,” but given that the code was adopted to comply with this provision of state law, “official” should be interpreted the same way “public officer” is interpreted under state law, unless there is local authority providing otherwise (such as Charter Section C-5(C)(1) discussed above.)

¹² Ithaca Charter §C-5

¹³ The full provision is as follows:

Members of boards, councils and commissions: the six Commissioners of the Board of Public Works, the nine members of the Public Safety and Information Commission, the nine members of the Community Life Commission, the nine members of the Mobility, Accessibility, and Transportation Commission, the nine members of the Parks, Recreation, and Natural Resources Commission, the 10 members of the Workforce Diversity Advisory Committee, the three members of the Building Code Board of Appeals, the five members of the Board of Zoning Appeals, the three members of the Civil Service Commission, the nine members of the Community Police Board, the five members of the Design Review Board, the three members of the Examining Board of Electricians, the three members of the Examining Board of Plumbers, the five members of the Housing Board of Review, the five members of the Ithaca Housing Authority, the seven members of the Ithaca Landmarks Preservation Commission, the five members of the Ithaca Urban Renewal Agency, the seven members of the Planning and Development Board, and the five members of Pegasys Access Oversight Committee, all of whom shall be appointed by the Mayor in accordance with the provisions of the Charter or the ordinances or resolutions which create such boards, commissions or councils. Ithaca Charter §C-5(C)(1).

Courts have examined the outer boundaries of the term “public officer” and have concluded that individuals who merely offer recommendations to government officials and do not have the right to exercise the powers of the sovereign are not public officers. See *Poughkeepsie Newspaper v. Mayors Intergovernmental Task Force*, 145 A.D.2d 65, 67 (2d Dep’t 1989). As the New York Office of the Attorney General has explained, “[i]t is clear that while there are several indicia of status as a public officer, one cannot qualify as a public officer without the authority to exercise a portion of the sovereign powers of government.” 1989 N.Y. Op. Att’y Gen. 18 (1989) (citing *Matter of Haller v. Carlson*, 42 A.D.2d 829 (4th Dep’t 1973)).

Here, the Common Council’s resolution provides that members of the RPS Working Group would “submit its *recommendations*” to the Council. (*Exhibit 24*). Members of the Working Group did not possess the power to make decisions on behalf of the City, as would members of a City commission (i.e., Civil Service Commission) or board (i.e., Board of Zoning Appeals). There is no language specifically giving them the status of “City official,” as was done for other advisory-type groups. This is a critical distinction and is the reason this investigation concludes that Working Group Co-Leads and participants were not, as a matter of law, “City Officials.”

This conclusion with respect to the Co-Leads is bolstered by the fact that the City originally intended that the Co-Leads would serve as consultants via a professional services contract. A party whose relationship with the City is to provide services via a contract is not a City Official.¹⁴

B. Are There Other Ethical Concerns Relating to the Way Grant Funds Were Disbursed Directly to RPS Working Group Co-Leads and Members from an Outside Organization?

Having concluded that Rosario, Yearwood and the other non-City employee members of the Working Group were not City Officials, the conclusion must be that they did not technically violate the City’s Code of Ethics by accepting outside payment, because they are not subject to the Code of Ethics.

Nonetheless, it is still important to examine:

- a) whether there was any *actual* or *potential* influence by the outside funders on the Working Group members who were compensated in connection with their participation in the RPS Process and;
- b) whether there was sufficient transparency and approval *prior to* the decision to allow direct payments from CTA to Working Group Co-Leads and participants.

This Report will consider these two issues in reverse order.

¹⁴ See *Budin v. Davis*, 172 A.D.3d 1676 (3d Dep’t 2019) (holding that a not-for-profit corporation that entered into a contract for consulting and grant writing services for the City was not a municipal officer subject to the ethical disclosure requirements of General Municipal Law § 803).

1. Was there sufficient transparency and approvals prior to the decision to allow an outside group to directly compensate Working Group leaders and participants?

The short answer to this question is no. Knowledge that outside funding would be directed to the Working Group Co-Leads and members was limited to a small circle, and was not handled in a way to trigger the typical checks and balances of local government. Within City government, full knowledge of this arrangement was limited to Michell-Nunn. Others within City government had varying amounts of limited information, but none knew the full picture. Myrick was aware that grant funding was being sought and that it was ultimately obtained, however, he claims he did not know that the money was paid directly from the grantor to the participants.

The three Common Councilors who served on the Working Group (now-Acting Mayor Lewis, Nguyen, and McGonigal) were present at a Working Group meeting for a philosophical discussion about whether Working Group participants should be paid to support goals of equity and inclusion, but it was not clearly disclosed that this funding was flowing directly from an outside source to the recipients. Other Common Councilors were completely in the dark. The City Attorney and City Controller, who typically play a prominent role in funding decisions, were not involved at all.

Background context about how grant funding is typically handled by the City is instructive. The City is a frequent applicant for and recipient of outside grant funding to supplement its traditional sources of revenue. For example, the Park Foundation has provided grants directly to the City every year since at least 1995.¹⁵ When the City receives grants from various sources, the Common Council typically votes to accept and appropriate such grant funding because the funds must be accounted for in the City Budget as revenues and expenditures.¹⁶ This acceptance and disbursement process by Council invites transparency, allowing the Council and the public to evaluate whether the City should accept such funding.

The direct funding approach used to compensate the Working Group circumvented the checks and balances that should attach when grant funding is received by the City and is directed to a City project. The lack of transparency eliminated the ability of elected leaders or the public to evaluate whether: (a) it was in the City's best interest to compensate individuals appointed by the Mayor to advise the Common Council on significant questions of public policy and operations; (b) the amounts expended were fairly and appropriately apportioned; and (c) the identity and role of the funder might influence the views and actions of those being compensated. The answer to those questions could very well have been yes, yes and no, but the issue is that the Council was never given the opportunity to consider these questions and arrive at those conclusions fully informed.

Moreover, the failure of Michell-Nunn to consult the City Attorney about the grant and its purpose eliminated the ability of his office to evaluate whether any legal or ethical concerns were triggered by the arrangement. Particularly concerning is the way that the Working Group Co-Leads were

¹⁵ The Park Foundation's response to the TCEAB lists grants made to the City prior to 2020. See *Exhibit B*.

¹⁶ See, e.g., Ithaca Common Council Minutes, December 4, 2019 (accepting and appropriating \$5,000 grant from the Park Foundation "to bring members of Center for Performance and Civil Practice (CPCP) to Ithaca for a one-day consultation"); Ithaca Common Council Minutes, February 6, 2019 (accepting and appropriating grant from Triad Foundation "to offset the cost of the consultant helping to update the [Ithaca Police] Department's policies and procedures.").

required to sign an independent contractor agreement with CTA in which they agreed that all information developed during the RPS Process would be owned by and turned over to CTA – information that was created for the purpose of advising Common Council on how to proceed with City policy issues. (See Exhibits 19, 20). Consultation with the City Attorney would have enabled him to evaluate whether such an agreement was in the best interest of the City.

Working Group participants—especially the Co-Leads—were given a weighty and important advisory role to make recommendations to elected officials, who in turn were entrusted with the authority make important decisions regarding the future of the City’s public safety function. Those elected officials, whose role it was to review and potentially adopt the Working Group’s recommendations, (i.e., those in the executive and legislative branches of government) should have been fully aware of, and given an opportunity to weigh in on, whether, how and from whom they would be compensated.

2. Was there any actual or potential influence by the outside funding agencies due to their direct funding of Working Group leaders and participants?

a) Was there potential influence?

There are several facts and circumstances that support a conclusion that a potential for influence was created by allowing outside organizations to directly pay Working Group Co-Leads and participants. First, the mere fact that the individuals who were voting on what recommendations to present to Common Council were receiving funding from an outside group creates a potential for influence. It created the potential that Working Group Co-Leads and participants might feel pressured or persuaded to provide input and vote in a way consistent with the views of those organizations.

Second, the lack of transparency in the arrangement, detailed above, creates additional potential for influence. Common Council received and voted on the Working Group’s report without knowing that some of those who contributed to the report were paid by an outside organization. This lack of information allowed a situation where the views of those outside organizations *could have* crept into the input, and Council was not positioned to evaluate that possibility.

It is also extremely significant that Yearwood and Rosario not only received funding from CTA, but they were required to enter into an independent contractor agreement with CTA. This agreement formalizes the idea that Yearwood and Rosario were not working for the City, but *for and on behalf of CTA*. By signing this contract, Yearwood and Rosario agreed that all of the work product they produced in their roles as Working Group Co-Leads belonged not to the City that appointed them, but to an outside organization—CTA. The investigator was not able to interview Rosario or Yearwood as part of this investigation. It is conceivable that they believed this contract was a formality in order to receive payment, and did not pay close attention to its terms and did not view themselves as working on behalf of CTA and its interests. It is also possible that CTA viewed the arrangement as a mere formality in order to process payments. Regardless of the intent, the arrangement introduced another way CTA/DCI could *potentially* exert influence—intentionally or otherwise—through the Co-Leads.

Additionally, the DCI representative who formally applied for the grant and processed the payments, Branca, was not a completely disinterested bystander. She was involved in the RPS Process in various roles at various stages. Branca was compensated by the City as a facilitator during the development of the Executive Order 203.¹⁷ Branca was also identified as a potential facilitator for other RPS initiatives in or around October 2021. During the Working Group process, when the City solicited community input on the issue of call delineation¹⁸ in order to assist the Working Group's discussions, Branca was one of the community members who sought to provide input.¹⁹

Further, Branca works closely with both Michell-Nunn and Rosario as part of the Community Leaders of Color of Ithaca (CLOC) coalition, which made public statements about the report that lead to the creation of the Working Group and in support of the creation of the Department of Community Safety. (*Exhibit 26*). It is conceivable that the funding recipients became aware of Branca's views on the subject matter under consideration, and felt influenced to take a position consistent with her views.

These facts and circumstances lead to the conclusion that the arrangement presented at least the potential of influence in the RPS Process.

b) Was there actual influence?

Of course, the potential for influence is not the same as actual influence. The presence of actual influence is much more difficult to identify and confirm, as it goes to individual Working Group participants' internal motivations.

The investigator attempted to interview the individuals who received funding from CTA to ask whether they felt pressured to vote or contribute in a certain way, or if they felt free to represent their own personal views. Only two of the compensated Working Group participants who were contacted responded to the outreach: Yasmin Rashid ("Rashid") and Karl Lewis ("Lewis"). Both Rashid and Lewis flatly denied actual influence by the Park Foundation, CTA and/or DCI. Rashid reported that she did *not* feel influenced by the funding, and that by the time she was informed that she would receive payment, she had already participated. Lewis reported the same—that he felt no influence, that it was not a *quid pro quo*, and that he agreed to participate even before he knew that a stipend would be offered. Lewis added that he did not believe it was unusual to be paid for services rendered, such as an honorarium.

Similarly, on the other side of the transaction, in their submissions to the TCEAB, the organizations involved in the funding—the Park Foundation, CTA and DCI—all strongly

¹⁷ Branca received \$200 per 90-minute focus group schedule, for a total of \$400.

¹⁸ Call delineation refers to the issue of which type of responder (armed or unarmed) would handle various types of 911 calls in the City's new public safety agency. A primary task of the Working Group was to make recommendations on this issue to the Common Council.

¹⁹ On December 23, 2021, City Public Information Specialist Faraday sent an email thanking Branca for her participation in a Town Hall about Call Type Response and asked her to complete a survey. Branca replied seeking more information in order to respond. (*Exhibit 25*).

disclaimed any intention to influence the participants. They denied any actual influence with equal force.

The Park Foundation wrote that it “did not provide stipends to particular people engaged in the Re-Imagining [RPS] process. No one at the Park Foundation had any part in selecting the participants or in providing any input in the process.” (*Exhibit B*). The investigation confirms this, as funds did not flow directly from the Park Foundation to the Working Group Co-Leads or participants, and participants were selected by Myrick in consultation with members of the Common Council.

CTA wrote that it “had no role in selecting the . . . working group members, nor did [it] communicate with them while their meetings took place. Indeed, [CTA] did not know who they were. [CTA] had only minimal communication with them *after* their participation had ended in order to facilitate the transfer of funds to those who accepted the honoraria.” Further, CTA explained that it “[was] not involved in [the Co-Leads’] selection” and did not “communicate with them about their work.” (*Exhibit A*).

DCI wrote that “[t]he organization and membership of the Working Group did not involve any DCI, CTA or Park Foundation input. The Working Group had already been established, and community members had agreed to join without any knowledge or promise of future stipends or honoraria.” Further, DCI stated that it “had no written or spoken contact with any participants,” and that participants “did not request or receive any money until weeks or months after their attendance and input.” (*Exhibit A*).

While not evidence of actual influence, it is worth noting that DCI’s statement to the TCEAB overstates its distance from the project. As noted above, Branca of DCI and Rosario held a close relationship due to their active involvement in CLOC. Branca admits having a “decades-long” relationship with Michell-Nunn. And while Michell-Nunn reported that all contact between DCI and stipend recipients went through her, that is also not entirely true. There were multiple emails directly between Branca and Rosario and Yearwood. These exchanges all related to payment, but there was still contact.

Additionally, it is not true that the participants “did not request or receive any money until weeks or months after their attendance and input.” Members were informed of this grant funding on October 2, 2021. (*Exhibit 16*). Working Group meetings began in July 2021 and continued through February 2022. At least three Working Group members who sought funding (Maurer, Frederick and Rashid) submitted their invoices in October and December – prior to the completion of their participation. Similarly, Yearwood signed her contract with CTA in November 2021.

On balance, however, the investigation did not identify or uncover any actual influence by the organizations who funded the Working Group stipends. But again, this conclusion is made without being able to speak to (and frankly, read the minds of) those who received the funding.

The inability to determine if there was actual influence underscores why state and local law prohibit practices that present any potential appearance or possibility of influence. The very existence of this investigation illustrates how the flow of money to participants in a City working group or other advisory body can give the *appearance* of potential influence, which undermines

the legitimacy (real or perceived) of that group's work. If charitable organizations wish to encourage participation in government by individuals and groups who have been traditionally marginalized, the better practice would be to direct grant funding to the City to enable the City to compensate such individuals.

PART B: PROCUREMENT OF AND ROLE OF OUTSIDE CONSULTANTS

I. FACTUAL FINDINGS

A. Selection of Center for Policing Equity as a City Consultant for the Executive Order 203 Phase (“Phase I”)

The City’s first involvement with CPE occurred during the first phase of the RPS Process, which took place in response to EO 203.

Mayor Myrick reported that he first became aware of CPE when he attended a TED Talk by CPE’s founder Dr. Phillip Atiba Goff (“Goff”). Myrick recalls this being in the 2017-2018 time period, but online research shows Goff gave his TED Talk in September 2019. After EO 203 was issued in June 2020, requiring all New York State municipalities to undertake a formal process of evaluating and improving their police departments, Myrick sought to identify a consultant to guide the City through the process and realized this was the type of work Goff’s organization, CPE, performed. Goff introduced Myrick to Dr. Tracie Keesee via email on July 28, 2020, describing her as “a National Academies grad, a PhD in communications, a 30+ year policing vet, and co-founder and SVP of the Center for Policing Equity.” Goff explained that “[s]he [Keesee] runs our engagement with cities.” Goff stated his understanding that Myrick was “trying to make Ithaca, NY the model for public safety reform.” (*Exhibit 27*). Myrick spoke with Keesee that week, on July 30. The City’s Police Chief at the time, Dennis Naylor (“Naylor”), and CPE’s Rob Kenter (“Kenter”), Senior Director of the Triage Response Team, were also invited, however, it is not clear whether they attended.

The following week, on August 6, Myrick held a call with a “Community Advisory Group” for “Reinvent[ing] Public Safety.”²⁰ In the invitation he wrote:

[T]he City of Ithaca has engaged in thought partnership²¹ with the Center for Policing Equity. In the months of work to come they will be aiding with data collection, public engagement, and policy development. I am thrilled have [sic] them on board. (*Exhibit 28*).

On August 11, 2020, Keesee sent Myrick a template “Research Agreement.” The agreement’s purpose appeared to be for the Ithaca Police Department (“IPD”) to transfer data to CPE to enable CPE to conduct research on the department. Keesee wrote that this was the standard Memorandum

²⁰ Myrick reported that the City started the EO 203 process on its own, without a consultant, and this Community Advisory Group was likely related to those early efforts.

²¹ A “thought partnership” is generally defined as a practice where ideas and expertise are shared to help navigate complex challenges. *See, e.g.*, <https://www.causeit.org/being-a-thought-partner>.

of Understanding CPE used with police departments, and that CPE may need something additional with the City. The investigation revealed that this agreement was never signed.

On August 12, 2020, Myrick held a meeting to introduce CPE to Tompkins County Administrator Jason Molino (“Molino”). On August 18, Molino emailed Keesee confirming the County would work together with the City and CPE. (*Exhibit 29*).

Notes from an August 27, 2020, “meet and greet” reveal that CPE representatives met with City and County representatives to introduce themselves and their organization. Myrick, Michell-Nunn, Naylor, and now-Acting Police Chief John Joly (“Joly”) from the City attended, as did numerous County representatives. The purpose of the meeting, as described in an email by Keesee, was “to learn more about CPE, [its] role in guiding the work, and to address any concerns that may arise from [the] conversation.” (*Exhibit 30*). Meeting notes indicate that “CPE does not charge for these services,” but that they are “funded by grants and foundations.” (*Exhibit 31*).

On September 16, 2020, the County issued a press release announcing their collaboration and the involvement of CPE. (*Exhibit 32*). The City and County proceeded to work together, with CPE’s support.

B. Financial/Contractual Arrangement with CPE for Phase I

According to Myrick, in his early discussions with CPE, he explained the City’s dire fiscal status, which was particularly troubling in summer 2020 due to the still-unknown impact of the Covid-19 pandemic. According to Myrick, CPE offered its services for free and Myrick agreed. (This is reflected in the notes from the August 27, 2020, meeting referenced above).

In emails between Myrick and CPE officials, there is a reference to a Research Agreement and a Memorandum of Agreement (referenced above), but no agreements were ever signed by the City for Phase I of the work.

According to Myrick, since CPE was not requiring payment, no City funds were needed and therefore, he did not seek legislative or other approvals.

C. Role of CPE in the EO 203 Process and the March 31, 2021 Resolution

During Phase I, it appears CPE’s role was to provide expertise and support about how to engage the community and how to effectively collect and process input into actionable plans. For example, CPE representatives provided worksheets and agenda templates to guide the process. (For an example of this type of support, see *Exhibit 33*). In this stage of the RPS Process, community meetings were largely facilitated by City employees or contractors, but those facilitators received coaching from CPE, and CPE sometimes prepared agendas and/or co-facilitated meetings. CPE provided administrative and organizational support for the process, but also provided outside expertise about public safety models from other communities, and brought in outside consultants for certain issues, including Acosta Consulting for a healing discussion. Michell-Nunn and Carrithers both served as project managers, but CPE appeared to play a project management role as well, summarizing meetings and lists of tasks for involved participants, and generally working to keep the EO 203 process moving forward.

Myrick does not recall exactly what, if anything, was explained to Common Council regarding CPE's role during Phase I, but indicated that because he was excited to have their assistance, he likely conveyed this to Councilors, either in public meetings or at the very least, in one-on-one conversations. All three of the councilors interviewed in connection with this investigation expressed a lack of knowledge regarding CPE's role during the EO 203 process. Alderperson Brock reported that information was not shared with Council regarding their role in the EO 203 process. Similarly, Alderperson Nguyen reported that the final EO 203 report came to Common Council as a "black box" and that the Council was not involved or informed as to what led to the final recommendations. Alderperson McGonigal also expressed that he was not aware of CPE's involvement in the development of the EO 203 process or the resulting report. It should be noted, however, that RPS-related news reports during the EO 203 process consistently referenced CPE's involvement.²²

Following the work conducting focus groups and community meetings, a final report was drafted and presented to the Common Council (and County Legislature). According to Michell-Nunn, the drafting process was a group effort including herself, Carrithers and County Communications Director Dominick Recckio.

Alongside the EO 203 Report, the County and City each presented resolutions to their respective legislatures containing recommendations related to police reform. On March 31, 2021, the Common Council passed the City's version of the resolution ("City RPS Resolution"). (*Exhibit 24*). The City RPS Resolution contained recommendations in two categories: those that would be jointly pursued by the City and County, and those that were specific to the City and its police department. The first City-specific recommendation was to "Create a new department, tentatively named the Department of Public Safety (DPS), which may be led by a civilian to manage various public safety functions in the City." ("Recommendation #1").

Some involved with the EO 203 process have publicly suggested that Recommendation #1 was not a product of the EO 203 working group's efforts, and some have implied that it was CPE's drafting. Alderperson McGonigal reported that Recommendation #1 caught Council by surprise and that they did not see it coming. However, Myrick reported that he personally drafted that recommendation; he denies that CPE had a role in drafting. Myrick elaborated that while CPE pushed him to decide what he wanted to see reflected in the City RPS Resolution, CPE did not pressure or push for any particular outcome or verbiage. Similarly, City Attorney Lavine recounted that Myrick spoke about this being his own policy objective, and pointed out that Myrick's GQ interview around this same time was consistent with that objective.²³

²² See, for example, <https://ithacavoiced.com/2020/10/county-hosting-online-police-reform-forum-seeking-feedback/>; <https://ithacavoiced.com/2020/11/police-reform-2020/>; <https://ithacavoiced.com/2020/11/police-reform-2020-community-voices-public-forums-elicited-criticism-from-the-community/>; <https://ithacavoiced.com/2021/01/common-council-recap-update-on-reimagining-public-safety-dogs-allowed-on-commons/>; <https://ithacavoiced.com/2021/01/reimagining-public-safety-alternatives-to-policing-in-tompkins-county/>

²³ In February 2021, GQ published an article featuring Myrick and discussing his policy objective regarding the RPS Process. See <https://www.gq.com/story/ithaca-mayor-svante-myrick-police-reform>.

D. Retention of CPE as a City Consultant for the RPS Recommendation #1 Working Group (“Phase II”)

Myrick reported that the Council wanted a working group to flesh out the Recommendation #1 concept, and this resulted in the City RPS Resolution language establishing the group. (*Exhibit 24*) (“Create a task force to design the new department.”). Mayor-Elect Lewis also recalled that it was Council that wanted to see a task force formed to work on Recommendation #1.

Myrick further reported that at this point, he was impressed with the work CPE did during Phase I and wanted to engage them to facilitate the Phase II Working Group. He also reported that when he asked Rosario to lead the Working Group, Rosario requested CPE’s support. Rosario, in his written response to TCEAB, stated that he had not worked with CPE prior to serving as Co-Lead, but his statement does not directly address whether he specifically requested support from CPE. (*Exhibit C*). However, a March 2, 2022, email written by Rosario is consistent with Myrick’s recollection. In it, Rosario explained “when Svante reached out to me, I shared that I couldn't do this without a project manager, that I was impressed with CPE, and asked if they were available.” (*Exhibit 34*).

On April 28, 2021, Michell-Nunn contacted Keesee to request a meeting to “discuss the Taskforce ASK,” *i.e.*, the Phase II work. (*Exhibit 35*). An April 30, 2021 memo from Myrick and Molino was drafted and sent to CPE by Carrithers formally requesting CPE to provide “implementation support” of not only Recommendation #1, but the broader City-County joint recommendations in the City and County’s respective resolutions. (*Exhibit 36*).²⁴ The memo listed nine tasks the City and County sought assistance with, including “[s]erv[ing] as project managers for the City of Ithaca Taskforce for the Redesign of the Police Department.” Myrick did not recall if he shared this memo with the Common Council. None of the Council members interviewed reported ever seeing the memo, and only saw it when it was released by the County to the TCEAB or presented to them in this investigation.

City Attorney Lavine and Controller Thayer were also not shown the memo at the time. However, Lavine reported that in May 2021, Myrick had a brief conversation with him where he stated that he wanted CPE to work on Phase II and asked what procurement process he needed to follow. According to Lavine, he advised Myrick that CPE would be considered a professional services consultant and that no bidding was required. At this stage, according to Lavine, there was no indication that they were going to be paid, and so it was not thought of as a procurement issue. Additionally, Lavine reported that he did not receive a definitive indication of the scope or the terms of CPE’s involvement, which would traditionally would have been the prompt for him and his office to opine on any remaining procedural requirements.²⁵ Lavine recalled that Thayer was also part of that conversation, but Thayer, on the other hand denies having such a conversation. Thayer reported that he was not aware of Myrick’s desire to work with CPE or CPE’s role in the RPS Process, and that he was never asked and never offered advice related to the procurement of

²⁴ Myrick did not specifically recall writing this memo.

²⁵ As will be discussed further below, Myrick also did not share with Lavine a copy of CPE’s Scope of Work document—even before Myrick signed it on behalf of the City.

CPE services. He described himself as being completely out of the loop on anything related to CPE or the Working Group.

On May 9, 2021, Keesee wrote to Myrick, copying Michell-Nunn, Rosario and other CPE employees. Keesee stated that CPE was “looking forward to [its] continued partnership with the city of Ithaca,” but stated that it “believe[d] that some critical questions and decisions remain[ed] before [it could] move forward with this groundbreaking work.” (*Exhibit 3*). The questions included issues of the City’s budget and capacity, whether CPE would have access to IPD and City data, the role of the task force, including whether it was “a decision-making body or a working body,” the role of the County, and the level of Myrick’s personal involvement. With respect to the budget issue, Keesee asked whether the City had funding to support training, taskforce onboarding, stipends for task force members (*see* Part A, Section I.C, above), and data collection.

On May 11, 2021, a meeting with City, County and CPE officials was held to discuss the scope of CPE’s work on the project. According to the meeting invitation, only Myrick, Michell-Nunn and Rosario were invited on behalf of the City.

Keesee sent a follow-up email to Myrick on May 17, and then on May 21, sent an unsigned draft Scope of Work document for Myrick’s review and signature, together with a “draft budget.” (*Exhibit 4*). Again, only Michell-Nunn and Rosario were copied for the City.

On May 28, 2021, Myrick, Michell-Nunn and Rosario met with Keesee and six other CPE employees to discuss the project. An email sent after the meeting listed several follow-up steps. (*Exhibit 6*). The follow-up steps included Myrick and Michell-Nunn working with City Controller Thayer, to “mark up/revise the budget and send it back to CPE for comment.” Myrick reported that he does not recall consulting with Thayer on the proposed budget. Thayer similarly reported that he was not consulted.

On June 1, 2021, Keesee attempted to send Myrick the final Scope of Work document for Phase II, asking him to sign, but the attached document was actually a different description of work to be performed for Tompkins County. (*Exhibit 37*).²⁶ On June 7, 2021, Keesee sent Myrick the correct Scope of Work, which she had already signed. (*Exhibit 38*). The document was largely the same as the first draft sent on May 21, 2021. The only differences were introductory sentences under the Working Group Operations and Project Design headings, and a new line in bold at the end stating, “***There is a budget component of the work to be submitted to the city of Ithaca.**” (*Compare Exhibit 4 with 37*).

With respect to the lingering budget issue, Michell-Nunn reported that when she received CPE’s detailed budget, she thought it was “a joke” and “ridiculous.” She expressed her concern to Myrick, who directed her to put her questions in writing. Michell-Nunn emailed her concerns to Myrick on June 1, 2021, inserting her questions in red on a new version of the Excel document. (*Exhibit 39*).

²⁶ Questions about whether this Tompkins County Scope of Work document was ever received and/or accepted by the County is outside the scope of this investigation.

In the email accompanying this marked up proposed budget, Michell-Nunn expressed to Myrick her concern that it would “take forever to get approved through our process if you don’t get grant monies,” and suggested that the Working Group begin its work without CPE. She wrote: “I think we should launch the Taskforce now, bring CPE in for the analytics (the parts where you think they would add significant value).” (*Exhibit 39*).

While the budget and funding issue remained open, on June 9, 2021, Myrick returned a copy of the Scope of Work with his signature. (*Exhibit 40*). Myrick reported that at the time he signed the Scope of Work, he believed that the City would be paying for CPE’s services. However, he did not ask either Lavine or Thayer to review the Scope of Work, although he admitted during this investigation that a document or issue like this would typically involve a review by his full senior team including Lavine and Thayer. Michell-Nunn was aware of the Scope of Work, but reported that once she sent Myrick her written concerns about the proposed budget, she did not hear further from Myrick about the issue, and that she was not engaged in substantive discussions with CPE about budget issues.

Underscoring that he believed the City would be paying for the work, Myrick wrote that, “it would be great to begin the work right away but it will take a couple months to line up the funding so we are caught in a bit of an awkward stage” in the email accompanying the signed Scope of Work. (*Exhibit 40*).

As for the draft CPE budget, it covered a two-year period broken down into two segments: 6/2021-6/2022 (“Year 1”) and 6/2022-6/2023 (“Year 2”). The proposed Year 1 budget totaled \$175,500, including:

- Stipends for Working Group members, subcommittee members and a historian for a total of \$27,500;
- Recruitment expenses of \$2,000;
- Social media campaign, “swag,” and printing expenses of \$15,000;
- A contract Project Manager at \$19,000; and
- Data analysis costing \$112,000.

(*See Exhibit 4*). Notably, it appears only the \$112,000 for the data analysis represent fees that would have been payable to CPE (or its subcontractors) for professional services. The rest of the \$175,500 proposed Year 1 Budget was for payments to other to-be-identified individuals or organizations. As for the contract project manager, Myrick reported that he was considering hiring an individual to perform this work, but instead decided to appoint paid co-leads for this role.

The proposed Year 2 budget was substantially greater, totaling \$610,000, including:

- Social media campaign, “swag,” and printing expenses of \$15,000;
- A contract Project Manager at \$95,000; and
- A vaguely worded line for an “Implementation Team” at \$500,000.

(*Exhibit 4*). In discussing the budget issue during this investigation, Myrick reported that in June 2021, the City was in a better financial position than it was when it first started working with CPE in 2020. Myrick believed that he could utilize funding from the American Rescue Plan Act

(ARPA), but that it would take at least two months to work through that process. He further explained, however, that despite his willingness to pay CPE, after conversations with Keesee, he and CPE agreed that CPE would continue doing the work without charge. Myrick further explained that this was decided because of the potential political difficulty getting funding approved and the shared desire by himself and CPE to focus on accomplishing the work in the recommendation rather than getting bogged down with a “process fight” about whether to pay CPE.²⁷ Myrick also reported that Keesee indicated that CPE did not typically charge cities for work of this nature, and that CPE did not need the income because it is funded by donors.

Ultimately, the documentation shows that CPE’s decision to move forward without funding was tentative at first. In a June 10, 2021 email to Myrick, Keesee wrote: “CPE is fully committed to moving forward while you and the city work to secure funds to support the success of this work.” Keesee further specified:

1. The CPE team will work with Schelley [Michell-Nunn] and Eric [Rosario] to create the first budget request to cover onboarding costs, followed by data analysis needs for the project.
2. You will continue to work with local foundations to secure funding for working group members and other community members who are asked to participate during this phase of the project.
3. Once in place, the working group will to the best of their ability, make every attempt to secure a budget number for continuity of this project as ramp-up cost for phase 3 implementation by September 1st.

(Exhibit 7). It is likely that Myrick’s conversations with Keesee about completely foregoing funding for Year 1 occurred after this June 10 email. Ultimately, it is undisputed that no funds were paid to CPE by the City at any point.

According to Mayor-Elect Lewis, no one on the Working Group, including her in her role as a Council member at the time, was aware of CPE’s proposed budget, or the discussions between Myrick and CPE about this issue. Similarly, none of the other Councilors interviewed (McGonigal, Nguyen, Brock) were aware of this proposed budget.

E. The Role of CPE in the Working Group²⁸

The Scope of Work signed by Myrick and Keesee outlined CPE’s proposed role in three categories: (1) Working Group Operations; (2) Administrative; and (3) Project Design. According to the

²⁷ Myrick further reported that CPE Founder Goff’s Art of Power podcast aired around this time, creating resistance to CPE and would have made the funding discussion and approval process more difficult. However, the timing does not line up for the podcast to have been a factor in the decision to move forward without funding. The podcast aired on August 26, 2021. The funding discussion appears to have occurred in June – July 2021.

²⁸ When considering the day-to-day role of CPE in the Working Group, the investigation was somewhat hampered by the inability to interview Rosario, Yearwood or any CPE representative. Thus, this analysis is based on interviews with City employees who attended either the Working Group meetings (Lewis, McGonigal, Nguyen, Orsaio, Michell-

Scope of Work, the tasks ranged from administrative support, including scheduling and communications, to substantive input, including “provid[ing] content expertise to support the development of an alternative response model that centers equity in the delivery of services.” (*Exhibit 5*).

During an August 4, 2021, presentation to Common Council regarding the Working Group, Alderperson Nguyen²⁹ described CPE’s role as a “thought partner,” and “logistical consultant,” that would “identify needs, coordinate the Working Group and support the [RPS] process.” Nguyen said CPE was a “process facilitator[], mostly.”³⁰

Based on interviews with Working Group participants and a review of agendas, meetings and emails, the investigation concludes that CPE played an expansive role in Phase II of the RPS Process. Although CPE incorporated feedback received from local participants on process issues, communications and decisions, and ultimately deferred to local participants for final approval and decision making, its various roles were so substantial that it inevitably drove the direction of the Working Group. The numerous ways in which this occurred are detailed below.

1. Size of CPE’s Presence

First, the sheer number of CPE officials involved in the Working Group, either at the meetings or behind the scenes, far outnumbered City participants. There were two primary management meetings that occurred on a weekly basis to prepare for Working Group sessions. In one meeting, discussions covered not only the Working Group, but other RPS joint recommendations. At these meetings, there would be two, and later three, City participants: Michell-Nunn; occasionally, Public Information Specialist Faraday; and after she joined the City, Chief of Staff Vavra. Two County attendees (Dominick Recckio and Deanna Carrithers) also participated. CPE, on the other hand, had six, and sometimes seven or eight participants present at these meetings.

A second weekly meeting was more narrowly focused on preparing for the Working Group meeting. These included all of the same individuals in the first meeting and added the Working Group Co-Leads Rosario and Yearwood, and sometimes Myrick. Both Michell-Nunn and Vavra expressed feeling outnumbered and sometimes disregarded in these meetings. Michell-Nunn reported that she found CPE’s large presence “confusing” and “overwhelming.” Faraday expressed that it seemed like CPE “wanted a seat at every table.”

2. CPE’s Role in Project Management Meetings

Second, the content and direction of these management meetings were driven by CPE. CPE officials drafted the agendas and the minutes. CPE sought input from City and County officials on items they would like added, and that input was accepted. The discussion at the project

Nunn) or the project management meetings that oversaw the Working Group process (Myrick, Faraday, Vavra.), as well as a review of all available written documents referenced at the start of this Report.

²⁹ This presentation was planned to be given by Rosario, but due to an unexpected conflict Alderperson Nguyen, who was serving on the Working Group, filled in.

³⁰ The quoted phrases are taken from Nguyen’s oral presentation, but the presenter notes from the PowerPoint slide deck used for the meeting contains similar language. (*Exhibit 41*).

management meetings were facilitated by CPE officials, although Rosario and Yearwood had control of the project management meetings that prepared for the Working Group's meetings.

Notably, Michell-Nunn reported that she felt “frustrated” with the process because CPE seemed to be more involved than in the earlier phase of the RPS Process. She said CPE would call for meetings when the City was not yet ready to move forward. If CPE saw something needed to be done, CPE would do it. Michell-Nunn explained, however, that the City would push back when CPE crossed a line because although CPE was a subject matter expert, only local officials understood the local community. Michell-Nunn reported that at one point in the summer 2021, she called a “time out” and held a separate meeting with Rosario and Yearwood. According to Michell-Nunn, she, together with Carrithers, encouraged the Co-Leads to feel empowered to make decisions. Michell-Nunn reported in this investigation that CPE's presence was such that if allowed to take on a task or a decision, they would fill the vacuum and take it on.³¹ For that reason, she wanted to see Rosario and Yearwood step up. She reported that after she encouraged Rosario and Yearwood to take a stronger leadership role, they did so. Faraday also reported that she observed Rosario cutting back on CPE's involvement in the Working Group.

From Vavra's perspective, she felt that the input from City representatives in these management meetings were viewed as secondary, and that if the City attendees' decision on an issue did not line up with CPE's, CPE would approach Myrick for his opinion.

3. CPE's Role in Working Group Meetings and Operations

Third, CPE's influence in the project management meetings spilled over into the Working Group meetings. Although Rosario and Yearwood ran the meetings, there was a great deal of behind-the-scenes work by CPE. For example, although the Co-Leads sent emails to the group to prepare for the meetings, those emails were originally written by CPE, and provided to the Co-Leads to edit as they saw fit. (Action items from the project management meetings show Rosario and Yearwood being tasked with approving emails to the Working Group). CPE drafted the slide decks for the meetings. CPE took notes and drafted the meeting minutes. Sometimes, Working Group participants were asked to complete worksheets or other homework, and those were developed by CPE. Certain key documents were written by CPE, such as draft job descriptions for the new leadership positions being developed for the new Department of Community Safety. More globally, though, CPE—as the content experts—provided direction on how and what order the issues would be addressed by the Working Group. CPE decided, for example, that the group should examine the call delineation issue as its first task.

The significant CPE presence during the management meetings also occurred in the Working Group. During the first Working Group meeting on July 21, eight CPE representatives were in attendance. Most meeting minutes list CPE attendees generically as “CPE Onsite team” so it is difficult to confirm exact attendance, but it appears that for most meetings, between six and eight CPE representatives attended including: Keesee; Josh Young, Deputy Senior Vice President, Justice Initiatives; Kenter, Senior Director of the Triage Response Team; Hans Menos, Vice President, Triage Response; Lydia Imani, Program Manager, Triage Response; Emma Decker,

³¹ As an example, Michell-Nunn recounted how CPE moved forward with trying to bring in an outside consultant to work on a healing plan when the City (and County) wanted to handle the issue locally.

Project Manager, Triage Response; Price Nyland, Project Coordinator, Community Engagement; Lillian Hua, Program Assistant, Triage Response.

Michell-Nunn was the City employee with the broadest view of CPE's role because she was the only City representative who attended both weekly project management meetings as well as the Working Group meetings. She reported that CPE played a dual role. According to Michell-Nunn, CPE provided guidance and assistance from an organizational perspective, including how to run a meeting, and prepared agendas and minutes. But she explained that CPE also offered subject matter expertise, as most of the CPE representatives came from a policing background. CPE provided information about other municipalities' approaches to policing. Michell-Nunn described CPE as being a "wealth of information." When asked if the group's agenda was driven by CPE, Michell-Nunn denied this. She reported that CPE did not implement its agenda to the exclusion of the City's needs and wants. Instead, she reported that CPE focused the group on centering the marginalized and communities of color, implying that this was not a CPE-only goal/perspective, but was the City's goal as well. Myrick similarly described a distinction of authority as opposed to capacity. He explained that Rosario and Yearwood had the ultimate authority over the Working Group, but that CPE had far more time and resources to devote to the project, *i.e.*, capacity, and so it took on many tasks and roles.

In their TCEAB submissions, Rosario and Yearwood reported that "[a]t no time did CPE dictate agenda, or in any way attempt to impose control on the progress," and that "CPE served as a resource to assist the working group, while never attempting to exert undue influence on the work of the group." Additionally, the Co-Leads stated that their duties included:

preparing weekly agendas; convening and chairing weekly working group meetings; attending sub-committee meetings with larger community participation; reviewing materials from other communities around the country engaged in similar efforts; keeping the working group focus on the task at hand; working efficiently to comply with the reporting calendar; maintaining ongoing communication with the public, the press, Common Council, and the Mayor, and more. *Exhibit C.*

Unable to interview the Co-Leads, the investigation was not able to delve deeper into this view or ask about documents which suggest that CPE provided substantial support for these efforts, including drafting of the Co-Leads' communications.

Other Working Group witnesses who had a more limited view of CPE's role had diverging observations. Some witnesses reported that it seemed like the work was steered to align with what CPE wanted, and that it felt like there was a predetermined outcome. One witness described the experience as "coloring within the lines of the CPE coloring book." The witness translated this to mean that the topics of discussion were selected and steered by CPE. Another witness stated that "[i]t seemed important to [CPE] to show a model of success."

A particularly notable event involving CPE occurred at a February meeting of the Working Group. At this meeting, the group was voting on whether to remove the word "operations" from the name being proposed for the armed division of the new department (*i.e.*, the existing police department).

Since meetings were held by Zoom, participants cast votes via the chat feature in Zoom. When Yearwood cast her vote, Kenter of CPE sent a chat message to the entire group that stated, “Did Karen vote remove,” followed immediately by “wtf.” A group member replied (via chat), “Robert was that meant for everyone?” followed by “Completely inappropriate.” Hans Menos of CPE responded (via chat), “[Y]ou are absolutely correct. I apologize on behalf of all CPE. I will discuss with Rob. I think he was surprised and thought he was sending a private message.” (*Exhibit 42*). Multiple members of the Working Group noted this exchange during the investigation and perceived this message as proof that CPE representatives were not merely facilitators, but believed they had a personal stake in the outcome of the RPS Process, and perhaps were applying pressure for the Co-Leads to vote in a particular manner. Rosario and Yearwood’s description of CPE’s role, however, pushes back on this notion, stating that CPE “never attempt[ed] to exert undue influence on the work of the group.”

Other witnesses reported their view that CPE limited its role to facilitation, and that when CPE representatives facilitated discussions, they did not assert their views. Alderperson Nguyen, for example, reported that CPE representatives did not weigh in directly during the Working Group sessions.

4. CPE’s Role in Working Group Subcommittees

CPE’s presence was also felt in subcommittees. Two of the three subcommittees were facilitated (solely or in partnership with other members) by CPE employees. Subcommittee A (Staffing Levels, Shift Assignments and Beat Design) was facilitated by Josh Young from CPE. Subcommittee B (Training, Technology and Equipment needs) was facilitated by CPE’s Niles Wilson, together with Michell-Nunn. Subcommittee C (Data Analysis & Research) was facilitated by Carrithers, but Keese from CPE provided assistance. Like the larger Working Group, the subcommittee meeting agendas, structure, and homework assignments were developed by CPE.

Nevertheless, several subcommittee A participants who were interviewed noted that the facilitation role seemed unbiased and not an attempt to steer the group to a particular outcome.

5. CPE’s Retention and Use of Subcontractors

CPE decided when to use subcontractors and selected those subcontractors without input or review by the City. The most significant and controversial was the use of Matrix Consulting (“Matrix”). Matrix was retained by CPE to collect computer-aided dispatch data from IPD to “develop a detailed and comprehensive assessment of patrol workload, response times, and utilization relative to staffing levels.” (*Exhibit 43*). According to Michell-Nunn, Matrix was one of CPE employee Josh Young’s contacts. No City employee or officer (neither Michell-Nunn, Myrick, nor his senior staff) had a role in vetting or selecting Matrix or procuring its services. The decision to utilize Matrix’s services was decided entirely by CPE. A written proposal from Matrix describing the work to be performed and the expertise of its team is dated July 28, 2021. *Id.* The written proposal was sent from Young to Michell-Nunn on August 6, 2021, but was presented in a way that conveyed the decision to work with Matrix was already made, and they were simply working on the logistics to begin the project. (*Exhibit 44*). Young wrote, in relevant part:

Just want to make sure we get Matrix Consulting and us (CPE) to sign anything we need to before we talk to anyone from the city or county about transferring data.

Types of data we will need:

911 (county) – Do we need Lisa/CPE to sign off on this to transfer the data to consultants?

RMS – City I believe. This will have the disposition codes that we need. Does the Mayor own this data?

City administrative data, e.g. demographics of police personnel etc.

John Joly said he would connect me with his Sgt. In charge of data next week. I wonder if I should be connected to someone (maybe IT person at the county?)

No written agreement was signed to facilitate the transfer of IPD data to Matrix at the time. (The City eventually executed a Mutual Non-Disclosure and Confidentiality Agreement (“NDA”) with CPE, but not until March 2022—well after IPD data was provided to CPE. (*Exhibit 45*)). Additionally, no agreement was signed between CPE and Matrix.³² Matrix submitted four invoices to CPE for its consulting services, and according to Matrix’s submission to the TCEAB, it received payment from CPE. (*Exhibit D*). The total amount paid by CPE for Matrix’s work was reportedly \$47,480.00. *Id.*

Matrix’s work product became one of the most controversial issues in the Working Group. Acting Police Chief Joly expressed his view that IPD data was not maintained in a way that could allow Matrix to perform the type of workload analysis they were attempting, and that Matrix was misinterpreting the data. Because of the limitations of the department’s data and Matrix’s methodology, Joly felt that the report prepared by Matrix should not serve as a basis for policy decisions about staffing and deployment. (*Exhibit 46*). Some Working Group members were sympathetic to this view and echoed Joly’s concern about relying on the data or the analysis performed by Matrix. This issue was discussed in the project management meetings, and according to Vavra, the majority of the project management group opposed IPD’s view of the data and report limitations. Vavra reported a “very uncomfortable” dynamic where the City was being pressured by the project management group (dominated by CPE) to take a position against its own agency (IPD). Vavra reported that when she tried to support IPD, she was told by one CPE representative that the department needed to be “knocked down.”

Ultimately, Rosario and Yearwood responded to Joly in a letter dated January 31, 2022, pushing back on the Acting Chief’s concerns, and stating that the Working Group would be “encourage[d] to engage with these [Matrix] materials with an objective lens, unbiased by the opinions” he outlined in his letter. (*Exhibit 47*). The investigation was unable to definitively determine if this

³² In its submission to the TCEAB, Matrix included a contract between CPE and Matrix, but it is not executed. Oddly, it was signed by a Matrix representative in May 2022 – months after its work was completed. It does not contain a signature by a CPE representative.

letter was written by CPE for Rosario and Yearwood’s signature, as was done with other communications, but at a minimum the content was likely driven by conversations in the project management meetings, where CPE held a strong presence.

Matrix was not the only subcontractor selected and hired by CPE to play a role in the Working Group process. CPE also retained Understory to draft the final report of the Working Group. Understory, made up of consultants Sarah Tofte (“Tofte”) and Nasir Husain, “is a consulting firm with a focus on social impact and public policy work.”³³ According to Understory’s LinkedIn profile, it helps clients “realize their social impact goals.” Understory provides services such as “strategic planning, research & writing, political research, and donor advisement.”³⁴ None of the City representatives interviewed in connection with this investigation had any information about how Understory was paid or how much Understory was paid—they merely presumed CPE was handling the expense.

Tofte and CPE officials exchanged emails in late August 2021 regarding the scope of her work. On September 23, 2021, Lydia Imani of CPE wrote to Tofte to tell her “that approvals have been received, and we are just getting the draft agreement together,” and setting her “official start date for onboarding” as October 5, 2021. (*Exhibit 48*). No City employee or representative was copied on those emails. Tofte was introduced to Working Group members on October 18, 2022 as a Technical Writer; she attended at least some of the meetings of the project management group, the full Working Group, and subcommittees through the end of Phase II of the project.

6. CPE’s Attempt to Broaden Its Involvement

In October 2021, several months after the Working Group began its work, and after Matrix was underway with its data collection and analysis, Young wrote to Michell-Nunn and Carrithers stating CPE “would like to request IPD’s body-worn camera footage and add this to our analysis plan, but I’m not sure who owns the data. Would it be the Mayor? How would we go about making this request?” In response, Michell-Nunn responded, “[t]he request should be made to the Acting Chief. You can copy the Mayor on the request.” (*Exhibit 49*).

In November, CPE’s Kenter wrote to Michell-Nunn again and elaborated that CPE’s request was to analyze IPD’s body camera footage,

for Procedural Justice and civility of the interaction. That footage is an untapped resource for an objective look at IPD’s work. We have spoken with a lab at Washington State University, Pullman who specializes in this work. As you can expect this is a very nuanced scientific process and this lab has been vetted by our Science team, they also meet all the CJIS requirements to view unredacted BWC footage.

(*Exhibit 50*). Kenter’s email asks about “the best way to move this forward,” asking if they should meet with the Mayor or the Acting Chief or both. Action Items circulated following a December

³³ <https://www.linkedin.com/company/understory-consulting/about/>

³⁴ *Id.*

6, 2021 project management meeting show a pending data request for body camera footage. City Attorney Lavine reported that he was never consulted about this possible arrangement. Myrick did not recollect if this research work occurred or not. However, according to Vavra and Joly, the City ultimately determined that it would not move forward with this research project, and did not provide Matrix or its university partner with IPD body camera footage.

Additionally, CPE sometimes opined in areas outside its Scope of Work with the City. At one point, CPE's Kenter wanted to know who wrote IPD's press releases and criticized the releases, telling Faraday: "The biggest concern is the framing and the level of unnecessary details included." (*Exhibit 51*.) The question of how IPD issued and framed its press releases was unrelated to the Working Group's efforts, and illustrates that their role extended beyond Working Group facilitation.

7. CPE's Emphasis on Confidentiality

CPE representatives expressed strong desire from the beginning of Phase II to maintain strict confidentiality of the Working Group's work. One of the items Keesee wanted resolved before the Phase II work began was a Non-Disclosure Agreement signed by members of the Working Group. On the list of items to complete, she wrote:

The city of Ithaca's NDA form (blank) to be completed by the CPE team as well as the working group members. We also would like guidance from your city attorney on whether or not city employees are expected to complete this form and if not what is the mechanism for accountability regarding disclosing the work, topics of discussions and products of the group, to individuals, groups, or media who wouldn't ordinarily have access unless publically [sic] disclosed. (*Exhibit 7*).

Following this message, Michell-Nunn sought clarification regarding the purpose of an NDA, and Keesee explained that "[t]he purpose of the NDA is to put everyone on notice regarding confidentiality and not discussing what is going on in the working groups." (*Exhibit 52*).

Michell-Nunn responded by explaining that "[t] The City Attorney informed me that we generally do not ask City staff to sign an NDA, but rather instruct them as to which information is confidential. Also, please be aware, that the NDA does not shield any foil-able information from disclosure." (*Exhibit 53*).

In July 2021, it was decided that Working Group members would be asked informally to maintain confidentiality. In a July 13, 2021 email, Kenter from CPE wrote that Rosario had decided not to ask Working Group members sign an agreement, feeling that an informal agreement would work better. (*Exhibit 54*).

Despite a decision to informally require confidentiality within the group, CPE continued to ask the City for a signed NDA in emails through at least October—many months into the Working Group's work. Even as late as February 2022, the topic of an NDA was on the agenda of an RPS project management meeting. Mayor-Elect Lewis did ultimately sign an NDA with CPE in March 2022,

as noted above in *Part B, Section I.5.v.* of this Report. (*Exhibit 45*). It is unclear the purpose of this agreement, as the Working Group’s meetings had concluded at that point.

As evidence that the expectation of confidentiality with the Working Group persisted, documents from the group’s January 6, 2022, meeting include a stern reminder of that requirement. A written summary of a discussion from that meeting stated:

Some working group members have come to us with the concerns of breach of group expectations. We want to be responsible and acknowledge this concern. While we agreed upon not signing an NDA as a group, to instead focus our trust on a verbal understanding of confidentiality and a commitment to fostering a safe space, there have been members of the working group who have publicly aired discussions, progress, and ideas voiced within the confines of the working group. This must not occur again.

(*Exhibit 55*). In bold and underlined font, the summary stated: “We commit that our conversations in this room stay in this room.” Meeting notes from this January 6, 2022 reflect this discussion as well. (*Exhibit 56*).³⁵

8. Ownership/Control of the Working Group’s Work Product

Throughout the entirety of Phase II, all documents related to the planning, operation and decision-making of the Working Group were housed on a shared Google Drive, owned and controlled by CPE. City employees involved in the project management team had access to the drive, as did Working Group members (at least partially). When the City ended its relationship with CPE in June 2021, CPE unexpectedly cut off City access to the Google Drive. The emails, agendas and minutes from the Working Group are laden with hyperlinks to other resources, but these links are all tied to CPE’s Google Drive. Unless City employees or other non-CPE participants downloaded Working Group documents to a local drive, there is no longer any access to these countless documents.

The only legal document signed between the City and CPE is the Scope of Work described above in Part B, Section I.4. (*See Exhibit 5*). The Scope of Work does not address ownership of the documents prepared, collected, and created during Phase II.

When the City received a Freedom of Information Law (FOIL) request for Working Group-related documents in or around April 2022, City Attorney Lavine contacted CPE to obtain the documents. In response, CPE’s counsel responded in a strongly worded letter, accusing the City of “mismanaging its own recordkeeping” and refused to provide the documents. It explained:

While CPE discontinued the City’s access to CPE’s private cloud-based Google drive around the time of acceptance of the RPS report,

³⁵ While individual members of the Working Group were not allowed to speak outside the meetings about their work, leaders made monthly presentations to the Common Council about the progress, and maintained an RPS website containing updates.

it is presumably not be [sic] the case that CPE maintains the only copies of the records shared with the City via CPE's Google Drive or that the City expected to indefinitely retain access to CPE's private drives as a means of public recordkeeping. Regardless, we are not aware of any authority that would obligate CPE to make its private drives accessible to the City beyond the conclusion of the project. The City should consider any convenience CPE may have once extended to the City (via Google Drive) for the duration of the RPS project to be formally withdrawn as of the date of the City's termination of the parties' relationship a several weeks ago. (*Exhibit 57*).

Thus, without notice, CPE terminated the City's access to any documents related to the RPS Working Group and other RPS initiatives CPE was involved in, leaving the City with an incomplete record of the work completed by its own employees and appointed Working Group members.

F. CPE's Role Outside the City's Phase II Working Group

The investigation revealed that CPE's involvement in the RPS Process in 2021 through early 2022 was not limited to Recommendation #1. As noted above, weekly project management meetings facilitated by CPE included County officials. These meetings provided project management oversight of not only the Recommendation #1 Working Group, but the joint recommendations between the City and the County as well. Agendas and action items for these meetings confirm that discussions sometimes covered other recommendations. For example, a CPE representative served on the committee that created the Community Justice Center ("CJC") Advisory Board and sat on the search committee to select the CJC's Project Director.³⁶

II. LEGAL AND ETHICAL CONSIDERATIONS AND CONCLUSIONS

A. Were Local or State Policies or Laws Violated in the Procurement of Outside Consultants?

It is undisputed that CPE received no financial compensation from the City. There is no claim otherwise. The question, therefore, is whether any policies, rules, regulations or laws were violated by requesting and accepting CPE's substantial donation of services.

1. Procurement Laws and Policies

Procurement by local government is governed by New York General Municipal Law Article 5-a. The law's declaration of policy states that it "shall be construed . . . so as to assume the prudent and economical *use of public moneys* for the benefit of all the inhabitants of the state and to facilitate the acquisition of facilities and commodities of maximum quality at the *lowest possible cost.*" N.Y. GEN. MUN. LAW. Art. 5-a (emphasis added). Similarly, the Procurement Policy for

³⁶ See https://www.ithaca.com/news/tompkins_county/monalita-smiley-named-first-director-of-community-justice-center/article_5363d420-56e2-11ec-b5f8-d7bec073cb05.html (reporting that CPE served on the search committee).

the City states that it has two central purposes: “protection of public *financial resources* by obtaining the best work, service or product for the *lowest possible price*, and the prevention of favoritism, improvidence, fraud and corruption in awarding public contracts to the lowest responsible bidder.” *Exhibit 24*. (emphasis added). The policy continues, expressing that the City “need[s] to foster competition, assure the prudent and economical *use of public moneys*, and adhere to Sections 103 and 104 of the General Municipal Law.” *Id.* (emphasis added).

In other words, state procurement law and local procurement policy are concerned with protecting taxpayers by ensuring public money is expended wisely. Because no public funds were spent on outside consultants during the RPS Process, the investigation concludes that state procurement law and local procurement policy are inapplicable to the analysis and no violation occurred.

2. *City of Ithaca Gifting and Solicitation Policy*

Since the services of the outside consultants were donated, rather than purchased, the more appropriate analysis is whether any state or local laws related to the receipt of gifts or donations were violated.

The City maintains a Gifting and Solicitation Policy. (*Exhibit 58*). This policy was issued by then-Mayor Myrick in 2016. It was not adopted by the Common Council via resolution or other legislative act, so while it is the City’s operational policy, it does not have the force of law. According to City Attorney Lavine, it was issued to tighten controls around the acceptance of gifts by City departments. Prior to issuance, City departments accepted gifts to the City of various sizes without any approvals or sometimes without knowledge of the Mayor’s Office or Common Council.

The policy states, in relevant part:

Under New York State Law, the City of Ithaca is able to accept any type of donation/gift that it chooses to (i.e. art, equipment, ***professional services***, funds, etc.). General City Law § 20(3).³⁷ If goods, services, or funds are donated for a purpose that is limited to the purview of a single City department, then the donation may be accepted by the Mayor upon the advice of the City Attorney’s Office. If the goods, services, or funds are donated for a purpose that would fall under the purview of multiple City departments, then the donation must be accepted through a resolution of Common Council that specifies how the donation will be allocated between departments. Acceptance by the Mayor or Common Council is not required when a private entity makes an unrestricted donation of funds to the City, a City department, or a City department’s pre-existing program (“unrestricted funds”). (emphasis added).

CPE donated professional services, and so this policy should have been followed. Myrick, however, reported that he did not believe this policy was applicable. He viewed CPE’s donated

³⁷ See Part B, Section II.1.iii of this report for further discussion of General City Law § 20(3).

services not as a gift, but no different than any business reaching out to the government to offer input on an issue, such as when a local business—whether it be a car dealership or a retail store—holds meetings with government to make suggestions about how public safety could be improved near their business. However, the latter is an example of local constituencies’ interaction with their government. CPE, on the other hand, offered assistance and advice in their areas of their specialized expertise (i.e., community engagement, process management and policing). Providing advice and assistance in the area of one’s expertise is the very definition of a consultant. Consulting is a core type of professional service that would typically be compensated. In fact, Myrick admitted that he initially intended to compensate CPE for their services, and only decided to accept the services to avoid a political battle. This is entirely inconsistent with his claim that CPE’s work was akin to a local business offering ideas to the government. Viewing CPE’s services as a donated professional service is also consistent with the discussion of professional services in the City’s Purchasing Policy & Procedure Manual. (*Exhibit 24*, at p. 22). (“Generally, professional services involve specialized expertise, use of professional judgment and/or a high degree of creativity.”). Accordingly, this investigation concludes that the Gifting and Solicitation Policy applies to the acceptance of CPE’s services.

To determine what level of approval was required under the City’s Gifting and Solicitation Policy, it is necessary to first determine whether the donation’s purpose was limited to a single department or multiple departments. An argument could be made for either interpretation. On one hand, this was undoubtedly a project focused on the reimagining of one department—the police department. Under this view, all that was required under local policy was the Mayor’s acceptance upon the advice of the City Attorney’s Office. The City Attorney, however, denied giving advice to Myrick that the donation could be accepted. He recalled that he did not have a meaningful conversation with Myrick about what services CPE would be donating, or their degree of involvement. According to Lavine, use of CPE and its services was a foregone conclusion in his brief conversations about this subject with Myrick. The only advice Lavine offered regarding CPE was that no procurement process was needed if no payment was sought. Thus, even if limited to one department, the policy was arguably not followed.

Another argument can be made that the donation’s purpose was for multiple departments. The investigation concludes that this is the stronger argument, given the expanse of the project. The work of the Working Group touched on issues of staff levels and scheduling, which related to the Human Resources Department. The Working Group prepared a proposed budget, which related to the Finance Department. The Working Group weighed in on Mayoral policy issues, and so their work also related to the Mayor’s Office. Given the breadth of CPE’s involvement of the Working Group, the donation of their services should have been accepted through a resolution of the Common Council. The Gifting and Solicitation Policy states that the purpose of such a resolution is to determine how to allocate the donation between departments, but this resolution could have served the additional purpose of vetting the donor’s qualifications and role to assess whether the donation should be accepted in the first instance.

Ultimately, whether CPE’s donation of services is characterized as being limited to a single department or conferred upon multiple departments, the investigation revealed that the City’s Gifting and Solicitation Policy was not followed under either interpretation.

3. Local Law Regarding Acceptance of Gifts and Donations

Since the City's Gifting and Solicitation Policy does not have the force of law, the investigation also considered whether there was any local or state law regulating the acceptance of this gift of CPE's professional services. New York General City Law sets forth the powers of cities in New York. As cited in the City's Policy, General City Law § 20(3) addresses the acceptance of gifts, and states that cities may "*take by gift, grant, bequest or devise and to hold and administer real and personal property within and without the limits of the city, absolutely or in trust for any public or municipal purpose, upon such terms and conditions as may be prescribed by the grantor or donor and accepted by the city.*" N.Y. GEN. CITIES LAW § 20(3) (emphasis added).

Similarly, the Charter of the City of Ithaca states that the City "*may receive, by gift, grant, devise, bequest or purchase, and hold and convey such real or personal estate, either within or without the City limits, as the purposes of the corporation may require.*"

Neither the General Cities Law nor the City Charter specifically refer to the receipt or acceptance of gifts of *services*. They cite to "real and personal property" and "real and personal estate," respectively. However, when interpreting nearly identical language in the laws governing New York towns and villages, the New York State Comptroller broadly construed the authority to accept personal property to encompass the authority to accept services. New York State Comptroller Opinions, 72-15 (interpreting N.Y. TOWN LAW § 64(8)); New York State Comptroller Opinions, 82-434. Thus, the language in Ithaca's Charter regarding the acceptance of gifts can reasonably be construed to include services, and the City had the legal authority to accept a gift of services.

The conclusion that the City could lawfully accept the donated services raises an additional question as to which individual or body within the City government had the authority to exercise that right on the City's behalf. Within the City of Ithaca, the power to manage and control City property rests with the Common Council. *See* Ithaca City Charter, § C-35. Additionally, the Common Council holds the residual powers of the City, *i.e.*, those not explicitly assigned to another branch of the government. *Id.*³⁸ Therefore, the investigation concludes that the appropriate body to legally accept gifted property, including the provision of professional services, is the Common Council, not the Mayor. Thus, there was a legal obligation separate and apart from the Gifting and Solicitation Policy to involve the Council in the decision to accept CPE's gift of services. Myrick exceeded his authority under the Charter by unilaterally accepting the services.³⁹

³⁸ The Charter states that the Council,

"shall also have such powers of legislation, by ordinance or resolution, as are conferred upon it by this Charter or any other provision of law affecting the City not inconsistent with this Charter, except such as are specially conferred by this Charter upon any separate department or board of the City government. It shall have the management and control of the finances and of all the property, real and personal, belonging to the City, except as otherwise provided by this Charter or by any other provision of law not inconsistent therewith." Ithaca City Charter, § C-35.

³⁹ Based on this conclusion, it is advisable for the City to review its gifting laws and policies to bring them into line with its Charter, by either revising the policy to more broadly require Council approval or through legislation delegating some or all authority to accept gifts to the Mayor.

4. *City of Ithaca Code of Ethics*

Another question presented is whether the City's Code of Ethics was violated by the acceptance of CPE's professional services. As noted above, the City's Code of Ethics states:

No city official or city employee shall, directly or indirectly, solicit, accept or receive any gift having a value of \$75 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her or could reasonably be expected to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part. Ithaca City Code, Chapter 55.

The investigation concludes that CPE's services constitute a "gift" as that term is used in the Code of Ethics. The New York Attorney General has opined that the word "gift" in General Municipal Law § 805-a, which is the source of the City's Code of Ethics, "was intended to be read broadly." 2005 N.Y. Op. Att'y Gen. No. 10 (Apr. 12, 2005).

However, the City's Code of Ethics, like General Municipal Law § 805-a, is directed at the conduct of *individual* employees and officers in order to prevent them from being personally subject to improper personal influence (and the appearance of such). See 1995 Ops Att'y Gen No. I 95-32 ("The provisions of section 805-a generally are intended to prohibit the influencing of municipal officers and employees in the performance of their governmental duties.") Thus, the question is whether the services were accepted by a "city official or city employee," or whether they were accepted by the City itself.

If CPE's (and their subcontractors') services were accepted via a Common Council resolution, it would be clear that the City as a municipal corporation—and not an individual city official or city employee—accepted the services. Given that Myrick singularly made the decision to accept the services, and did not involve the Council, there is a murkier issue of whether these services were solicited and accepted by him individually, versus by the City as an entity. On balance, the investigation concludes that Myrick believed he was acting on behalf of the City in his role as Mayor, and was not soliciting and accepting the services personally. The services were not rendered to Myrick personally, but to the City. Although it would have been wiser to accept the services by Council resolution to eliminate any question of who was accepting the services, not to mention to comply with the Charter's division of authority and to enhance the transparency of the gift, the investigation concludes that Myrick did not personally violate the Code of Ethics by accepting the services without a Council resolution.

B. Are There Other Ethical Concerns with the Role of Outside Consultants in the RPS Process?

A primary concern raised by those who called for the investigation of the RPS Process is whether outside consultants, and in particular CPE, played an inappropriately outsized role in the RPS Process and used its role to promote its own agenda irrespective of the needs and desires of the local community.

A major driver of the suspicion around CPE's role and motivation can be traced directly to a lack of transparency. As noted above, under both City policy and law, the decision to accept CPE's services should not have been made by Myrick alone, but by the Common Council. This would have allowed the Council and the community to publicly discuss and consider CPE's qualifications, motivations, and role, and decide whether they were compatible with the City's needs.

The lack of transparency continued throughout the entirety of the Working Group's meetings. As explained above, CPE insisted from the beginning of Working Group that no one involved publicly share information about their "work, topics of discussions and products of the group." (*Exhibit 7*). And when it appeared someone in the group did speak about its work outside their meetings, there was a stern reminder at a Working Group meeting that all their conversations must stay within the meeting room. (*Exhibit 55-56*). This secretive approach is directly contradictory to the concept of open government that protects from inappropriate influence or the appearance of such.

But aside from the lack of transparency, the question is whether CPE did, in fact, influence the Working Group's work and outcomes. Similar to the question in Part A of this Report regarding the influence of outside funding, the question will be assessed in two parts: (i) whether there was the potential for influence, and (ii) whether there was actual influence. Additionally, if the answer to either of these questions is yes, the investigation also considers whether the type of potential or actual influence was unethical or otherwise problematic.

1. Was there potential influence?

The answer to this question is resoundingly yes. As enumerated above, CPE played a sizable role in the Working Group process. CPE representatives outnumbered City (and County) participants, drafted communications, set agendas and priorities, created worksheets and facilitation guides, and decided how to structure the discussion and much of the Phase II process. In RPS management meetings (which were unknown to those not invited, including Common Council members), CPE took such a strong lead that several City representatives felt "overwhelmed" by, and were motivated to push back on, CPE's role. Although Myrick stated that the ultimate authority rested with his appointed Co-Leads, Rosario and Yearwood, the sheer capacity offered by CPE created the danger described by Mitchell-Nunn—that CPE would take over whenever there was an opening for further work or input. CPE appeared to seek to expand their role throughout the RPS Process. This was exemplified by CPE's selection of a data consultant (Matrix) and technical writer (Understory) without opportunity for input by the City (which CPE independently paid for) and its request to collect IPD body camera footage for additional research.

When considering the potential for influence, it is also relevant to consider what motivation CPE might have for influencing the City's process to achieve its desired result. It is undisputed that CPE must raise funds to maintain its existence, since (as illustrated by its work in Ithaca) it does not charge municipalities for its services. Thus, CPE potentially may have been motivated to achieve a certain result that resonates with its funders across the country. This potential could have been particularly strong in Ithaca due to the national media attention on Ithaca's reimagining

work.⁴⁰ As evidence of the national interest in Ithaca’s work, in August 2021, CPE’s Goff appeared on an NPR podcast, the Art of Power, and spoke about his conversations with Myrick and CPE’s work in Ithaca, and expressed excitement over a possibility of accomplishing the goals of Recommendation #1.⁴¹ Additionally, in CPE’s 2021 annual report, CPE’s work in Ithaca is featured prominently as a “Community Spotlight” with a full-page photograph of Rosario and Yearwood.⁴² The annual report includes several quotes from Rosario. It summarized the work in Ithaca by saying, “CPE’s data analysis, subject-matter expertise, and project-management guidance helped the community and police ‘work together better,’ Rosario says.”

In summary, there was both the opportunity and possible motivation⁴³ for CPE to influence Ithaca’s RPS Process and outcome.

2. *Was there actual influence?*

Although there was both an opportunity and possible motivation for influence, the investigation was not able to establish actual influence. This is not to say conclusively that there was no influence. Rather, given the nature of the group work that led to the outcome, it is impossible to pinpoint whether the outcome would have been materially different absent CPE’s involvement. In other words, the investigation is inconclusive on this point. A few observations on this issue are worth noting.

First, none of the Working Group participants interviewed expressed that their input was ignored, or that they felt pressured to decide an issue a certain way. All Working Group participants voted on each of the decisions that were ultimately presented to Common Council. While some individuals not involved in the process believed that CPE also voted, this was not the case.

Second, despite the many ways CPE was involved in RPS Process, there is no evidence that it made final decisions. A review of documents collected throughout the investigation reveal many examples of CPE officials seeking and deferring to local input.⁴⁴ Thus, even if there were ways in

⁴⁰ See <https://www.gq.com/story/ithaca-mayor-svante-myrick-police-reform>; <https://www.newsweek.com/fact-check-does-ithaca-new-york-plan-replace-its-police-department-1572231>).

⁴¹ Goff later apologized in writing to Myrick and the Common Council for this podcast, stating that it mischaracterized his role and was an overly simplistic discussion of the dynamics in Ithaca. (*Exhibit 59*).

⁴² CPE’s 2021 Annual Report is publicly available at https://policingequity.org/images/pdfs-doc/CPE_Annual_Report_2021.pdf.

⁴³ To be clear, the investigation did not reveal actual evidence that CPE was, indeed, motivated by forces outside of Ithaca. The conclusion is only that this possibility existed.

⁴⁴ For example,

- October 1, 2021 email from CPE employee Price Nyland wrote an email for Rosario and Yearwood but wrote, “please feel free to use whatever resonates, but we absolutely defer to you on how you want to phrase these emails.” (*Exhibit 60*);
- October 1, 2021 email from CPE employee Lydia Imani provides draft job descriptions written by CPE, and states: “Please review and provide feedback via suggested edits and comments...” (*Exhibit 61*);
- November 19, 2021 email from CPE employee Lydia Imani responds to a request from Melody Faraday asking for a change to an email by saying they will make those changes, “with Karen and Eric’s approval.” (*Exhibit 62*);

which CPE's views materially deviated from the those of the City or non-CPE Working Group members, there was an opportunity built into the relationship to check those views against City-employed or appointed officials. And while some City witnesses expressed frustration that CPE would go to Myrick when it disagreed with the City representatives' views, the fact that it did involve Myrick suggests that it ultimately respected local leadership's decision-making authority.

The conclusion is in concert with information offered by Rosario and Yearwood in their submission to the TCEAB in which they shared the following impression:

[T]hroughout the tenure of the working group, CPE acted in good faith, on a collaborative and supportive basis. At no time did CPE dictate agenda, or in any way attempt to impose control on the process. Both Rosario and Yearwood felt that at all times CPE served as a resource to assist the working group, while never attempting to exert undue influence on the work of the group. (*Exhibit C*).

Third, multiple individuals both inside and outside the RPS Process expressed concern for a puzzling disregard of local legal and law enforcement expertise to inform the group's analysis and conclusion. Some interpreted this as evidence that CPE was steering the group to a predetermined outcome, hypothesizing that certain voices were excluded because they may have interfered with CPE's policy objectives.

The investigation did confirm that the Working Group did not collect or consider input from several local advisors and experts that one would expect to be involved. One notable example was the complete lack of consultation with the Tompkins County District Attorney, as DA Van Houton recounted in his April 6, 2022 public statement. (*Exhibit E*). Given the highly regulated nature of public safety and public employment in New York State, one would expect a substantial reliance on local legal and law enforcement experts to inform the Working Group's analysis and conclusion. Multiple Working Group participants felt they were not being armed with sufficient information on these issues to make realistic, informed recommendations to the Common Council. Chief of Staff Vavra reported that she raised a concern to a CPE representative that much of what was being discussed and recommended was not legal in New York State, and this CPE representative flippantly stated that the City would just need to seek a change in state law.

However, on closer examination, this does not appear to be driven by CPE—at least not entirely. With respect to legal input, while it seems clear that New York state civil service and labor laws were not adequately considered, the City's Director of Human Resources (Michell-Nunn) was the City official most deeply involved in the RPS Process, including the Working Group. She is also the individual within City government who would have the greatest awareness and knowledge of these issues, besides, perhaps the City Attorney and his team. City Attorney Lavine reported that Michell-Nunn did ask questions of him during the RPS Process, and that he provided answers. Michell-Nunn reported that she was aware of issues like the legal obligation

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- January 3, 2022 email related to an exchange between Alderperson McGonigal and Rosario regarding the Matrix report, Keesee wrote to Rosario and Yearwood, "When ready please let us know the direction you both would like to go." (*Exhibit 63*).

to bargain with the Police Benevolent Association (PBA), but determined that these issues would be handled during the implementation following the recommendations in the Working Group’s report. While one can question the wisdom of leaving these issues for another day, there is insufficient evidence to conclude that this was because of CPE’s influence or decision-making, as opposed to a conscious decision by local actors like Michell-Nunn.⁴⁵

There is also evidence that the decision to exclude other key technical experts may have been a local decision. On August 30, 2021, a CPE representative, Lydia Imani, emailed Michell-Nunn and Carrithers with a list of technical advisors CPE deemed necessary for the Working Group’s consideration of call delineation. She wrote:

Below are the list of Technical Advisors that we will want to be in attendance for our Call Delineation meetings starting Thursday, September 9th.

Below you will see a familiar list also listed in [this document](#) under the "Sub Committee Members" tab. We have also added seven additional stakeholders that align with column H in our [RPS Plans Sequence Overview Document](#).

Please provide names for the highlighted text below for representatives. Once we get those names please send [this email](#) out by EOD tomorrow (8/31).

Technical Advisors & Stakeholders for Call Delineation:

- Derek R. Osborne | Sheriff
- John Halaychik | Director of Department of Emergency Response
- Harmony Ayers-Friendlander | Dep. Commissioner of Mental Health
- John Joly | Acting Police Chief
- Matthew Van Houten | District Attorney
- Lance Salisbury | Assigned Counsel
- Tom Parsons | Fire Chief
- Aaron (Ari) Lavine | City Attorney
- Possibly Tammy Baker | Child and Family Services**
- NEED REPRESENTATIVE | CJATI**
- NEED REPRESENTATIVE | Ultimate Reentry Opportunity (URO)**
- NEED REPRESENTATIVE | Victim Assistance**
- NEED REPRESENTATIVE | REACH Medical**
- NEED REPRESENTATIVE | Public Defender**
- NEED REPRESENTATIVE | Courts**

⁴⁵ As another example of a local representative minimizing local expertise, when the Working Group’s report was near completion in February 2022, Rosario asked Michell-Nunn to send the draft report to Lavine for his review, but stated, “[t]his is just to be sure there isn’t anything here that the City Attorney would have wanted to know about before we present to Council.” (*Exhibit 64.*) In other words, they were not seeking the City Attorney’s legal advice regarding the contents of the report, but providing a completed draft as a courtesy “FYI.”

(*Exhibit 65*) (bolded lines were highlighted in yellow in the original).

This suggests that CPE was recommending the involvement of a greater range of perspectives than those that were ultimately considered. In the end, Joly and Osbourne were invited to speak to the training subcommittee, while the County’s Director of Emergency Response Michael Stitely (not listed above) and John Halaychik, the County’s 911 Communications Center Manager were the main advisors to help the Working Group members understand the nature of various 911 calls. The remainder of those on this list, most notably the District Attorney, were not involved as technical advisors. As noted above, the DA later issued a public statement expressing his concerns with not being included. (*Exhibit E*). The investigation confirms that he repeatedly attempted to become involved and emailed Rosario and Yearwood twice seeking to have a voice, saying “I really think that the working group would benefit from an overview of the justice system and how the DA’s Office receives the IPD work product. Specifically, how does the system work and what do we need the police to do to be able to effectively prosecute cases (including diverting them to ATIs, etc).” (*Exhibit 66*). Each time he wrote, Rosario or Yearwood thanked him, but ultimately did not seek his participation in the group.

Ultimately, where CPE wrote “need representative” in the email quoted above, none were ever chosen. Based on this communication, however, it appears CPE was the party encouraging the involvement of other stakeholders – not the opposite.

Fourth, the work of Matrix became the most controversial aspect of the Working Group process due to the strongly divergent views over efficacy of the IPD data. The fact that CPE selected, retained and compensated Matrix without input from the City is troubling, as this consultant had the opportunity to significantly impact the decision-making of the Working Group through the conclusions of its analysis. However, most Working Group participants interviewed believed that despite the controversy over the Matrix report, that the data ultimately did not impact the decision-making of the group. Thus, Matrix’s role is more evidence of the potential for influence, but does not prove there was actual influence.

At bottom, while there was ample opportunity for CPE to exert influence, and some questionable decisions that make some wonder whether CPE was driving the result of the RPS Process, the investigation is unable to conclude that there was actual influence by CPE, rather than guidance that allowed the Working Group, and in particular the Co-Leads, to arrive at conclusions that were theirs alone.

3. Does the potential for CPE’s influence present an ethical issue?

Even if CPE had an impact on the actual outcome of the Working Group, this does not necessarily mean there was anything *unethical* about their involvement. Myrick, in his role as an elected official, believed that CPE’s mission aligned with his policy objectives and the City’s values and goals. He signed a Scope of Work with CPE outlining the role they would play, and that stated role went beyond administrative support to include offering their subject matter expertise in new policing models. (The scope included “[p]rovid[ing] content expertise to support the development of an alternative response model that centers equity in the delivery of services.”) (*See Exhibit 5*). The investigation shows that CPE’s involvement was consistent with the role described in the signed Scope of Work agreement. Thus, while CPE did share its perspective on policing in its role

as a “thought partner,” it may be that this partnership helped facilitate a process to arrive at a conclusion that was truly the Working Group’s (and Myrick’s) vision even if it also aligned with CPE’s view of the world.

There is no evidence that Myrick or any other supporter of CPE benefitted personally or financially as a result of CPE’s involvement in the RPS Process. At most, CPE could have (and may or may not have) gained positive publicity, but that is no different than a paid consultant touting the work it accomplished for a satisfied client.

In the end, the critical misstep with the use of a consultant like CPE was the *process* around it—specifically, the darkness under which their work was arranged and completed. The key document (i.e., the June 2021 Scope of Work) that outlined the role they were intended to perform—and did perform—was never seen by anyone in the City beyond Myrick and Michell-Nunn. This lack of transparency in the engagement of CPE was exacerbated by CPE’s direction that the Working Group should conduct its work in secret. While this may have been well-intended to make participants feel free to express their honest views about policing without fear of retribution, it allowed suspicions over the group’s work to fester and grow. If the Common Council and public had a full understanding of CPE’s role, and perhaps if the Working Group was conducted more openly, and not filtered through brief monthly updates to the Council, the Common Council and community could have viewed CPE’s work and judged whether it comported with their desired process and outcomes.

PART C: INVOLVEMENT OF OUTSIDE INTEREST GROUPS

I. FACTUAL FINDINGS

Former Mayor Myrick became employed part-time by the Washington, D.C.-based progressive nonprofit People For the American Way (“PFAW”) in 2017.⁴⁶ He was hired to oversee PFAW’s Young Elected Officials Network and Young People For (“YP4”).⁴⁷ His employment with PFAW was disclosed annually on his Annual Statement of Financial Disclosure and was known to the Ithaca community.

According to Myrick, at some point in 2021, an employee of PFAW who had been working on issues elsewhere in the country, Alana Byrd (“Byrd”),⁴⁸ as well as PFAW’s President, Ben Jealous (“Jealous”), took notice of Ithaca’s RPS work. Myrick reported that Byrd expressed interest in getting involved, and asked Jealous if this could be her full-time job. Jealous and Byrd presented this idea to Myrick (not the reverse, according to Myrick) and he was supportive. Myrick reported that he liked the idea of having “air support” for his RPS policy agenda in Ithaca, and was pleased to have resources to counteract a political action committee that was supporting the PBA’s resistance to RPS. Myrick reported that he sought legal advice from City Attorney Lavine before agreeing to PFAW becoming involved in campaigning for RPS.

Lavine corroborated Myrick’s report that he sought legal advice.⁴⁹ According to Lavine, in August 2021, Myrick asked him whether it would be legal for him to engage in fundraising activities via his position at PFAW to support outside advocacy for local policy issues in Ithaca. Myrick explained to Lavine that his job at PFAW involved fundraising and support of candidates and issues nationwide, and he wanted to do the same to support RPS in Ithaca. Myrick further explained to Lavine that the funds would not be expended on City government or on him personally, but only on public advocacy around local policy issues that he supports. While Myrick mentioned public advocacy, he did not provide additional details on precisely how the funds would be spent. It later turned out that the funding was used for the salaries of a local campaign manager

⁴⁶ PFAW is comprised of a 501(c)(3) public charity, the People For the American Way Foundation, and a 501(c)(4) organization. Under federal tax law, the 501(c)(3) organization is restricted from engaging in lobbying efforts or supporting political candidates. A 501(c)(4) organization is less restricted.

⁴⁷ See <https://cornellsun.com/2017/01/15/myrick-09-to-direct-young-leaders-organizers-with-progressive-nonprofit/>

⁴⁸ Ms. Byrd’s LinkedIn profile states that she was employed by the Young Elected Official Network, of which Myrick was the Director, from December 2019 through August 2021. Myrick stated that Byrd lived in Ithaca when she first expressed interest in RPS, but that fact could not be confirmed.

⁴⁹ While the contents of this advice were subject to the attorney-client privilege, this privilege belonged to the City, and in the interest of a complete and transparent investigation, the City waived the privilege with respect to the advice requested and obtained on this issue.

and additional full-time paid PFAW employees working on the ground in Ithaca to advocate for RPS in the community and with Common Council.

Lavine advised Myrick that as long as his compensation at PFAW was not affected by arranging this outside advocacy, this arrangement was legal, but he offered several notes of caution. He advised Myrick: (a) not to allow PFAW to donate to the City directly, at least not until the City's RPS policy was completely voted on and settled; (b) not to accept any funding from PFAW into his campaign account; and (c) to disclose PFAW's involvement in the RPS Process. Lavine offered further caution around the optics of the arrangement, raising the question of whether the arrangement was really "worth it." Lavine's personal notes, which he relied on in their meeting, stated: *"However you look at it, not great optics for you to appear to be meddling with outside influence on local politics."* At the time of this advice, Myrick was still Mayor and there was no indication that he would be leaving that position to join PFAW as a full-time employee.

With respect to the appearance of any financial conflict, Myrick reported that there was a financial firewall at PFAW to ensure that he was paid by the Foundation (the 501(c)(3)), while the Ithaca campaign was run out of the 501(c)(4) organization. Brock reported, however, that Myrick told her that he was paid by both sides of the PFAW organization. This was not confirmed.

Myrick reported that PFAW raised funds, started a campaign and hired people locally to work on the campaign. Myrick reported that his role in the fundraising was to provide "validation." Others at PFAW did the actual fundraising, but Myrick's support allowed them to tell funders that he, as the Mayor, was on board. In other words, he used his name to lend weight and influence to the fundraising efforts. Job postings for PFAW jobs related to RPS were placed online, and position descriptions were shared throughout the community.

Byrd was hired as the Campaign Manager. Her LinkedIn profile states that she began that role in October 2021. According to Myrick's account, PFAW's "ground operation" began in late 2021 or early 2022. However, it appears PFAW's involvement in the RPS Process began earlier in 2021. A review of email records shows Myrick forwarded a handful of emails from his City of Ithaca email account to Byrd regarding RPS-related issues in late October 2021, including a constituent email in favor of the IPD, an email from the PBA opposing RPS, and information about how to attend an RPS website training session.

Aside from asking Lavine if there was any legal impediment, and despite Lavine's advice that he disclose PFAW's involvement in RPS, Myrick admitted that he did not share with anyone else in the City that this PFAW campaign would be taking place, although two witnesses (as explained below) reported they were told about it by Myrick around the time he resigned, which was months after it began.

On January 6, 2022, Myrick announced his resignation as Ithaca Mayor in order to work full-time for PFAW as its Executive Director. He left office in early February and began his full-time role with PFAW. (Later, in November 2022, it was announced that Myrick would replace Jealous as PFAW's President effective January 1, 2023).

According to Alderperson Nguyen, he had a conversation with Myrick shortly before news of his resignation was announced about this full-time employment opportunity at PFAW. Nguyen

reported that Myrick explained he was attracted to the PFAW opportunity because he could still live in Ithaca, and because PFAW would be funding a campaign to advance RPS in Ithaca. When asked if he understood Myrick to be expressing a quid pro quo, where the local support was offered in order to attract Myrick, Nguyen said no. Nguyen stated that the opportunity was explained to him not as a financial benefit, but an ideological one, *i.e.*, that Myrick's policy goals would live on beyond his time as Mayor.

Michell-Nunn recalled a conversation with Myrick in connection with his resignation where he reassured her that he was not leaving Ithaca "hanging," and that he would have "boots on the ground" supporting RPS.

Other community leaders only became aware of the campaign and PFAW's role in it when Byrd sent an email to several Common Councilors in January 2022 seeking to discuss RPS with them. In her very first email to then-Acting Mayor (now Mayor-Elect) Lewis, Byrd's email signature referred to herself as the "Campaign Manager" for "Reimagining Public Safety." (*Exhibit 67.*) Other Councilors, including Brock, received the same email. She disclosed PFAW's involvement, stating:

I wanted to reach out and introduce myself as I'm running People for the American Way's campaign to get the Reimagining Public Safety referendum passed in November, working closely with Svante to garner public support and popular opinion on the plan.

Acting Mayor Lewis, Brock and McGonigal all remarked that they were confused by her role, particularly because she referred to her group "Reimagining Public Safety," and confused as to why she was contacting them to discuss RPS. It is important to recall that at this time, the RPS Working Group was still actively meeting and preparing its report.

Later, in online and public communications, Byrd referred to her group as "Ithacans for Reimagining Public Safety" without disclosing the relationship to PFAW. As an example of the way PFAW, through Byrd, obscured PFAW's involvement, Byrd wrote a Guest Opinion published in the Ithaca Times in February 2022 discussing crime, the IPD, the PBA and RPS. The Guest Opinion was entitled "Real Crime Data in the Wake of Disinformation."⁵⁰ Byrd was not identified as an employee of PFAW in the article.⁵¹ Alderperson McGonigal wrote a response a week later, on March 2, 2022, criticizing Byrd for not identifying her employment, and criticizing PFAW for boasting on its website about what PFAW called "the Ithaca Model"

⁵⁰ https://www.ithaca.com/opinion/guest_opinions/guest-opinion-real-crime-data-in-the-wake-of-disinformation/article_1697966c-944f-11ec-b21e-8fb21ccdfb8b.html

⁵¹ Similarly, in a news radio interview Byrd did on May 24, 2022, she is identified by the host as the "creator" of Ithacans for Reimagining Public Safety, but at no point in the interview is it explained that the group's "creator" is actually PFAW, not Byrd as an individual. Byrd's employment by PFAW for this purpose was not disclosed. <https://whcuradio.com/podcasts/alana-byrd-ithacans-for-reimagining-public-safety/>

when that model was “far from being built.”⁵² At this stage, the Working Group had just issued its report, but the report had not yet been considered by Common Council.

Mayor Elect Lewis similarly reported a concern that Byrd’s activities were “misleading,” “confusing,” and “problematic.” By borrowing the name “Reimagining Public Safety,” PFAW, through Byrd, did not make clear that it was not part of the Working Group, nor part of City government, and not directly involved with the work of the RPS Process, but was instead an outside group funded by a Washington, D.C.-based organization.

In June 2022, several months after the Working Group issued its report, PFAW published a white paper entitled “All Safe Report.”⁵³ The “Ithaca Public Safety Model” is prominently featured in the report, and the report’s reform recommendations mirror Ithaca’s RPS work.

II. LEGAL AND ETHICAL CONSIDERATIONS AND CONCLUSIONS

A. City of Ithaca Code of Ethics

The investigation considered whether Myrick’s decision to validate PFAW’s fundraising efforts and to allow PFAW to promote RPS with a well-funded team of paid community activists violated the City’s Code of Ethics and in particular, its prohibition against conflicts of interest.

The Code of Ethics begins with its purpose:

The purpose of this chapter is to establish minimum standards of conduct to help ensure that the exercise of governmental responsibilities by City of Ithaca officials and employees is free from improper influences that might cause those officials or employees to make, promote or hinder public decisions in order to advance their own private interests. The standards and guidelines set forth in this chapter are intended to eliminate, to the greatest extent possible, the existence of conflicts of interest pertaining to city officials and city employees in the exercise of their official duties, to minimize unwarranted suspicion that such conflicts exist and to avoid potential conflicts of interest before they arise. §55-1(A).

A central tenet of government conflicts of interest laws, including the Code, is the prevention of arrangements or situations that cause a public official to have divided loyalties, such that the official’s decisions are clouded by a desire to promote or reward his or her private interests over the public’s interests. This is seen in the Code’s repeated emphasis that an official act “solely in the public interest.” With respect to Ithaca’s specific requirements and prohibitions related to conflicts of interests, the Code first provides:

⁵² https://www.ithaca.com/opinion/guest_opinions/a-response-to-real-crime-data-in-the-wake-of-disinformation/article_b0ed1542-9a9a-11ec-a1ca-67a43bd4d40b.html

⁵³ <https://www.pfaw.org/report/all-safe-transforming-public-safety/>

City officials and city employees must exercise their official duties *solely in the public interest* and must avoid actual conflicts of interest to the greatest extent possible. §55-7(A) (emphasis added).

City officials and city employees should avoid circumstances which compromise their ability to make impartial judgments *solely in the public interest* and should, to the greatest extent possible, avoid even the appearance of conflict of interest. No city official or city employee shall knowingly *take any action or incur any obligation* of any nature which is in conflict with or might reasonably tend to conflict with the proper discharge of his or her duties on behalf of the City of Ithaca. §55-7(B) (emphasis added).

1. Was there an actual conflict of interest?

The question is whether, in using his dual role as Mayor and PFAW employee to validate PFAW's fundraising efforts aimed at creating a ground presence in Ithaca promoting RPS, and by agreeing to this ground presence, Myrick was able to continue exercising his duties "solely in the public interest," and whether his "ability to make impartial judgements solely in the public interest" was compromised.

In defense of PFAW's RPS lobbying efforts, Myrick emphasized the fact that PFAW was advocating for *his* stated policy ideals and plans, not the reverse. He discussed that PFAW was not working toward achieving its own goals, but those of the people of Ithaca. In Myrick's view, since there was complete policy alignment between what he, as the elected official, saw as the "public interest," *i.e.*, the RPS recommendations, and what PFAW was investing its resources in supporting, there was no conflict at all.

The investigation corroborated Myrick's statement that the RPS initiatives were his own mayoral policies. He championed these ideals in Ithaca, and even on a national stage (in ways such as the GQ article), well before PFAW became involved. Those who worked closely with him, in particular Lavine, reinforced this point. As Mayor, both before, during and after PFAW's involvement, Myrick viewed the RPS recommendations, and particularly Recommendation #1, as the very definition of "the public interest." PFAW's involvement did not conflict with this interest, nor did it influence Myrick to take any action or position contrary to this public interest. It merely amplified his voice. Thus, the investigation concludes that since PFAW's efforts were focused only on promoting Myrick's vision of what was in the public interest, there was no actual conflict within the meaning of the Code of Ethics.

As noted above, the Code is intended to avoid a situation where the official *personally* benefits from outside influences. It does not prohibit outside interests from agreeing with and helping to support an official's public policy agenda. The result would be different if Myrick *personally* benefitted in some financial or other tangible way. There is no evidence this occurred. The investigation did not reveal that Myrick reaped any personal reward, other than perhaps his continued part-time employment with PFAW, but there is no evidence of a causal relationship between the two.

Of course, the investigation considered whether Myrick’s acceptance of full-time employment with PFAW in the midst of their RPS campaign changes this analysis and constitutes the type of personal gain prohibited by the Code. In order for the offer of full-time employment to be a Code of Ethics violation, however, one would have to find that it was a reward for Myrick taking some action to benefit PFAW. But, as already noted, the investigation finds that Myrick pursued his RPS policy initiatives as his own because he believed them to be in the public interest, not because PFAW also supported those ideals. Myrick took no official action as Mayor to specifically benefit PFAW. There is simply nothing unethical about an outside organization hiring public officials because it appreciates or agrees with that official’s work or policies—as long as it is not done in exchange for some benefit flowing from the official to the organization.

2. Did Myrick violate the Code’s provision related to outside employment?

The investigation further analyzed whether Myrick violated the Code section addressing outside employment:

A city official or city employee shall exercise particularly careful diligence in avoiding any actual or potential conflict of interest when voting or taking other discretionary action on any matter brought before any element of the city government by *any entity that employs said official or employee*. In any such case, the involved city official or employee should attempt to avoid taking any action that could reasonably be interpreted as benefiting his or her *career advancement, salary or standing* within the entity that employs him or her. §55-7(E)(2) (emphasis added).

Since Myrick was employed part-time by PFAW, it is important to consider the application of this section. However, the investigation concludes that this section is inapplicable to the present fact pattern. This section pertains to situations where the official is called to “*vot[e] or tak[e] other discretionary action on any matter brought before any element of the city government by any entity that employs said official or employee.*” The critical fact is that PFAW did not and was not in a position to bring any matter before the government for a decision or action. It was not seeking a contract with the City, for example, or petitioning a City agency for some result, such as a developer seeking a zoning variance. PFAW was lobbying for the adoption of RPS-related legislation, but this is materially different than the type of activity this section intended to address. Having concluded that PFAW was not itself bringing any action before the government for action, this section is inapplicable and does not serve as the basis to find an actual conflict of interest in violation of the Code of Ethics.

3. Was there a potential conflict of interest or the appearance of a conflict?

The Code requires officials not only to avoid actual conflicts, but to exercise due diligence in avoiding potential conflicts, and even the appearance of a conflict. The question, therefore, is whether Myrick’s relationship with PFAW coupled with PFAW’s support of RPS crossed the line into a potential or the appearance of a conflict of interest. At first glance, it is tempting to conclude that there was an appearance of a conflict because many in the community were confused by PFAW’s sudden involvement in promoting RPS and suspicious of their motives. Despite the

undeniable confusion and suspicion, and after close consideration, the investigation concludes that the scenario does not constitute the type of potential conflict or appearance of a conflict prohibited by the Code.

In arriving at this conclusion, the investigation considered the following hypothetical scenario: Imagine that due to Myrick's employment at PFAW, he felt influenced to pursue a certain progressive policy agenda that aligned with PFAW's values. Thus, he sought to implement the RPS initiatives not because he believed it to be in the public interest, but in order to benefit his employer, PFAW. The benefit to PFAW would be in the form of national prominence and visibility on what it perceives as an important policy agenda, which in turn would enhance its fundraising success. This fundraising success would be a pecuniary benefit to Myrick, as PFAW's employee, because PFAW would become a more stable, better funded organization that could afford better compensation and benefits for its employees.

Ultimately, the investigation concludes that this scenario is too far-fetched and detached from what actually occurred to create a potential conflict or an appearance of a conflict within the meaning of the Code. The initial premise—that Myrick was doing PFAW's bidding by supporting RPS—is not supported by the facts. And the nature of Myrick's potential benefit in this scenario—more stable employment due to national visibility and enhanced fundraising—is too many steps removed from the type of pecuniary or personal benefit contemplated by a government code of ethics. Thus, the investigation concludes that the Code's prohibition on potential conflicts, or actions that give the appearance of a conflict, was not violated by Myrick.

B. Lack of Transparency

While the investigation does not find a violation of the City's Code of Ethics due to an actual or potential conflict of interest related to PFAW's work on RPS, this Report would be incomplete to not address the real issue with PFAW's arrival in Ithaca: the lack of transparency.

One cannot deny that Myrick's decision not to disclose PFAW's involvement was in poor judgment. Even if the Code did not technically require disclosure, Myrick violated the spirit of the Code and the public trust by not openly sharing information related to PFAW's campaign. Just as Myrick publicly revealed his employment with PFAW from the start, and continued to disclose it on his annual disclosures under the Code, he should have alerted City leaders, including the Common Council, that his employer would be investing its resources into promoting his RPS policy agenda.

Other than Myrick's discussion with City Attorney Lavine, which itself was not a particularly detailed description of how PFAW was going to be involved in the RPS Process, Myrick did not disclose to any other City leaders interviewed for this investigation—let alone the public—that PFAW was going to establish a group called Ithacans for Reimagining Public Safety, hire local advocates, and start a local campaign to promote RPS and seek its adoption and implementation. Rather, local officials learned of PFAW's involvement only when contacted by Byrd several months later in January 2022, and only after they were left to try to decipher Byrd's role. By failing to alert Common Council or any other local officials about PFAW's campaign, Myrick created a situation where confusion, mistrust and suspicion were inevitable. All of this could have been easily averted if he had been transparent from the start.

CONCLUSION

The Report is intended to bring openness and transparency to the procedural and ethical aspects of the RPS Process that Common Council and others in the community called into question. It is hoped that the investigation and Report allows City officials and community members to examine the RPS Working Group's outcomes with a better awareness of the process and potential influences that went into the Working Group's conclusions. It is important to reiterate here, that with respect to the outside influence of funders (Park Foundation, CTA and DCI) and consultants (CPE, Matrix Consulting and Understory), the investigation did not identify specific actual influence on the process or its outcomes. Rather, the investigation revealed that the potential for influence existed in several ways, due mainly to the lack of transparency surrounding the involvement of all these external organizations in this local reform effort. Similarly, the investigation did not reveal an actual conflict of interest based on PFAW's role, but a lack of judgement and transparency.

It is hoped that this Report will provide constructive information to allow the City to consider procedural controls to the minimize the likelihood that similar procedural and ethical missteps will occur in connection with future policy initiatives.