

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MATTHEW J. BROUILLETTE, et al.,	:	
	:	
PETITIONERS	:	
V.	:	
	:	Docket No. 410 MD 2017
THOMAS WOLF, et al.,	:	
	:	
RESPONDENTS	:	

**RESPONDENT AUDITOR GENERAL EUGENE DEPASQUALE’S
ANSWER TO AMENDED PETITION FOR REVIEW**

And now, comes Respondent, Eugene DePasquale, Auditor General, who answers Petitioners’ Amended Petition for Review filed November 7, 2017 as follows:

1. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 1 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

2. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 2 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

3. Paragraph 3 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

4. Paragraph 4 is denied as a conclusion of law to which no response is required by this answering respondent and strict proof thereof is demanded at time of trial. The “borrowing” in question referenced in the Amended Petition for Review speaks only to Short-Term Investment agreements, for which the Auditor General merely provides an acknowledgement, not an authorization. By way of further answer the Short-Term Investment agreements referenced in the Amended Petition for Review do not constitute additional debt for the Commonwealth.

5. Paragraph 5 is denied as a conclusion of law to which no response is required by this answering respondent and strict proof thereof is demanded at time of trial. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

6. Paragraph 6 is denied as a conclusion of law to which no response is required by this answering respondent and strict proof thereof is demanded at the time of trial.

7. Paragraph 7 is denied as a conclusion of law to which no response is required by this answering respondent. By way of further answer, it is denied that the Auditor General has violated the Pennsylvania Constitution or that he borrowed monies, subsidized, or otherwise authorized deficit spending during FY 2016-2017 and FY 2017-2018. The Auditor General was not an authorizing signatory to any borrowing agreement during FY 2016-2017 and was requested to be an acknowledging signator by Treasury for subsequent short term investment line of credit agreements in FY 2017-2018 only to evidence that the agreement had been brought to his attention as a courtesy by Treasury. The Auditor General is not a party to such agreements and as such, the agreement does not require his signature. The Auditor General has no authority to prevent agreements such as those identified in the Amended Petition for Review.

8. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 8 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

9. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements

contained in paragraph 9 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

10. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 10 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted

18. Admitted.

19. Admitted.

20. Admitted.

21. Paragraph 21 is denied as a conclusion of law to which no response is required by this answering respondent.

22. Paragraph 22 is denied as a conclusion of law to which no response is required by this answering respondent.

23. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 23 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

24. Admitted

25. Admitted

26. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 26 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

27. Admitted.

28. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 28 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

29. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 29 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

30. Paragraph 30 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Administrative Code speaks for itself.

31. Paragraph 31 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution and Administrative Code speaks for itself.

32. Paragraph 32 is denied as a conclusion of law to which no response is required by this answering respondent. By way of further answer, paragraph 32 consists of a partial quotation from a section of the Pennsylvania Constitution and as such, the Pennsylvania Constitution speaks for itself.

33. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 33 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

34. Denied as stated. It is denied that the statements contained in paragraph 34 are set forth in the statutory sections cited. Strict proof thereof

is demanded at time of trial. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

35. Denied as stated. It is denied that the statements contained in paragraph 35 are set forth in the statutory sections cited. Strict proof thereof is demanded at time of trial.

36. Admitted.

37. Paragraph 37 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

38. Paragraph 38 is denied as a conclusion of law to which no response is required by this answering respondent.

39. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 39 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

40. Admitted.

41. Admitted.

42. Denied as stated. Article VIII §13 does not state that “both the House and Senate must pass a General Appropriations Bill”. To the extent

that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

43. Paragraph 43 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

44. Admitted.

45. Admitted.

46. Denied as stated. 71 P.S. §238.1 provides that the Department of Revenue and the Office of Budget *may* issue revised revenue estimates for the budget year.

47. Denied as stated. It is denied that Article IV §16 confers a “duty” on the Governor as stated in paragraph 47 of the Amended Petition for Review. The language of the Pennsylvania Constitution speaks for itself.

48. Admitted that the cited provisions of the Administrative Code include the language contained in paragraph 48 of the Amended Petition for Review.

49. Admitted.

50. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements

contained in paragraph 50 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

51. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 51 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

52. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 52 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

53. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 53 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

54. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 54 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

55. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements

contained in paragraph 55 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

56. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 56 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial. The averments in paragraph 56 are further denied as they state a conclusion of law to which no response is required.

57. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 57 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

58. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 58 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

59. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 59 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

60. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 60 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

61. Paragraph 61 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution and Administrative Code speaks for itself.

62. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 60 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

63. Paragraph 63 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

64. Paragraph 64 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

65. Paragraph 65 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

66. Paragraph 66 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

67. Paragraph 67 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

68. Paragraph 68 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

69. Paragraph 69 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the state Fiscal Code speaks for itself.

70. Paragraph 70 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the state Fiscal Code speaks for itself.

71. Paragraph 71 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution and the state Fiscal Code speaks for itself.

72. Denied as stated. It is admitted in part that the quoted article states what is contained in paragraph 72 of the Amended Petition for Review. Answering respondent is without sufficient knowledge or information as to the truth or veracity of the statements contained therein and as such, to the extent that an answer is required, the same is denied and strict proof thereof is demanded at time of trial.

73. Paragraph 73 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

74. Paragraph 74 is denied as a conclusion of law to which no response is required by this answering respondent. Further, Petitioners allege “actions taken during the FY 2016-2017”, yet fail to identify what

these actions are, such that this respondent is without sufficient knowledge or information to respond fully to paragraph 74. Should an answer be required, it is denied that the Auditor General issued or authorized any debt for the Commonwealth as he was not a party to the August 3, 2017 agreement between Treasury and the Office of the Budget and only acknowledged that agreement. By way of further answer, the indebtedness provisions of the Pennsylvania Constitution were not violated by any actions taken during FY 2016-2017 or by “issuing debt” on behalf of the Commonwealth as the lines of credit did not constitute new debt and did not extend any debt from one fiscal year to another.

75. Denied. It is denied that State Treasurer Torsella issued a loan from the Treasury due to long-term deficit spending and strict proof thereof is demanded at the time of trial.

76. Paragraph 76 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

77. Paragraph 77 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an

answer is required, the language of the Pennsylvania Constitution speaks for itself.

78. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 78 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

79. Paragraph 79 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Administrative Code speaks for itself.

80. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 80 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

81. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 81 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

82. Denied. Answering respondent is without sufficient knowledge or information as to the truth or veracity of the statements contained in

paragraph 82 of the Amended Petition for Review and strict proof thereof is demanded at time of trial.

83. Admitted.

84. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 84 of the Amended Petition for Review and strict proof thereof is demanded at time of trial.

85. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 85 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

86. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 86 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

87. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 87 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

88. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 88 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

89. No response is required by this answering respondent to paragraph 89 of the Amended Petition for Review.

90. Paragraph 90 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution and Administrative Code speaks for itself.

91. Paragraph 91 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution and Administrative Code speaks for itself.

92. Paragraph 92 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

93. Paragraph 93 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an

answer is required, the language of the Pennsylvania Constitution speaks for itself.

94. Paragraph 94 is denied as a conclusion of law to which no response is required by this answering respondent.

95. Paragraph 95 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

96. Paragraph 96 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

97. Paragraph 97 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, it is denied that Governor Wolf's not vetoing the General Appropriations Bill in its entirety required two-thirds majorities in both Houses of the General Assembly to pass the Bill. In fact, Petitioners' own averments contradict this statement.

98. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements

contained in paragraph 98 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

99. Paragraph 99 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution and the Administrative Code speaks for itself.

100. Paragraph 100 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

101. No response is required by this answering respondent to paragraph 101 of the Amended Petition for Review.

102. Paragraph 102 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

103. Paragraph 103 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

104. Paragraph 104 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

105. Paragraph 105 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

106. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 106 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

107. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 107 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

108. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 108 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

109. Paragraph 109 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

110. No response is required by this answering respondent to paragraph 110 of the Amended Petition for Review.

111. Denied. It is denied that Auditor General Eugene DePasquale “authorized” the Commonwealth to borrow \$2.5 billion on a line of credit from the State Treasury and was not a party to this agreement. By way of further answer, the Auditor General chose not to be a signatory whatsoever on the August 10, 2016 short-term investment line of credit between Treasury and the Office of the Budget within the Office of Governor referenced in paragraph 111 of the Amended Petition for Review and thus could not have possibly “authorized” said line of credit. A copy of the \$2.5 billion line of credit agreement by the Treasury, clearly showing that the Auditor General was not a party, did not sign, or is anywhere mentioned on the same is attached hereto as Exhibit “A”.

112. Denied. It is denied that the Auditor General “used” any funds to address a revenue shortfall in the Budget for FY 2016-2017. By way of further answer, the Auditor General had no part or involvement with the

allocation or use of funds stemming from a short-term investment line of credit in August 2016, having not been a party nor a signatory to that agreement, nor is otherwise even mentioned in the same. See Exhibit “A” attached.

113. Denied. It is strictly denied that the Auditor General “authorized spending set forth in the General Appropriations Bill” or that he had any involvement with the same. By way of further answer, Petitioners’ own Amended Petition for Review does not allege anywhere that the Auditor General is part of the General Appropriations process. Answering respondent is without sufficient knowledge or information as to the truth or veracity otherwise of the statements contained in paragraph 113 of the Amended Petition for Review.

114. Denied as stated. It is denied that Auditor General DePasquale “approved” a \$750 million line of credit in August, 2017, as he was not a party to this agreement, but rather merely acknowledged the short-term investment agreement line of credit between Treasury and the Office of the Budget, under 72 P.S. §301.1 on August 3, 2017. A true and correct copy of the August, 2017 line of credit agreement between Treasury and the Office of Budget is attached hereto as Exhibit “B”.

115. Paragraph 115 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, DePasquale (the Auditor General) is not a party to the referenced agreement and thus did not “authorize” the Commonwealth to incur long-term debt, but merely acknowledged a short-term investment line of credit in August of 2017 by the Treasury and as such, could not have violated the Pennsylvania Constitution as averred in paragraph 110 of the Amended Petition for Review.

116. Denied. It is strictly denied that respondent Auditor General “used” lines of credit or was in any other way involved with “borrowing” from the Treasury. The Auditor General has no ability to distribute or utilize any such proceeds as any advance by Treasury is only to the Office of Budget. (See Exhibit “B”)

117. Paragraph 117 is denied as a conclusion of law to which no response is required by this answering respondent.

118. Denied. It is denied that respondent Auditor General “authorized” or otherwise was a party to any “intra-year lines of credit”. Strict proof thereof is demanded at time of trial.

119. Paragraph 119 is denied as a conclusion of law to which no response is required by this answering respondent.

120. Paragraph 120 is denied as a conclusion of law to which no response is required by this answering respondent.

121. Paragraph 121 is denied as a conclusion of law to which no response is required by this answering respondent.

122. Paragraph 122 is denied as a conclusion of law to which no response is required by this answering respondent.

123. Denied. It is denied that the Auditor General Eugene DePasquale “violated” the Pennsylvania Constitution “by authorizing” the Commonwealth to incur long-term debt, as he merely signed as acknowledging the August 2017 and October 2017 short-term lines of credit described in the Amended Petition for Review. The Auditor General is not a party to either agreement. The balance of paragraph 123 of the Amended Petition for Review is denied as the lines of credit were not to “finance deficit spending from FY2016-2017”.

124. Denied that the Auditor General Eugene DePasquale authorized a \$750 million line of credit, but rather was not even a party to the agreement and only signed as an acknowledgement of the transaction. See Exhibit “ B” attached.

125. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements

contained in paragraph 125 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

126. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 126 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

127. Admitted.

128. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 128 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

129. Denied. It is strictly denied that respondent Auditor General was even a party to any “new loan” by Treasury. The Auditor General had no bearing on the agreement. A true and correct copy of this agreement between Treasury and the Office of Budget is attached hereto as Exhibit “C”.

130. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 130 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

131. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 131 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

132. Denied. It is strictly denied that any actions taken by respondent Auditor General resulted in the Commonwealth accruing a FY 2016-2017 deficit. It is further denied that Rep. Christiana's authority was in any way usurped by any actions of the Auditor General and strict proof thereof is demanded at the time of trial.

133. Denied. It is denied that respondent Auditor General "allowed" the Commonwealth to assume long-term debt or that he is in any way involved with the budget process or the spending authorization or lending within the Commonwealth of Pennsylvania as suggested in Paragraph 123.

134. Denied. It is denied that respondent Auditor General "authorized" or was a party to any additional "smaller recurrent lines of credit to finance this long-term debt".

135. Denied. Answering respondent is without sufficient knowledge or information to form a belief as to the truth or veracity of the statements contained in paragraph 135 of the Amended Petition for Review. Strict proof thereof is demanded at time of trial.

136. Paragraph 136 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

137. Paragraph 137 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself. By way of further answer, it is denied that the Auditor General was a party to any of the “borrowing” referenced in the Amended Petition for Review.

138. Paragraph 138 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

139. Paragraph 139 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an answer is required, the language of the Pennsylvania Constitution speaks for itself.

140. Paragraph 140 is denied as a conclusion of law to which no response is required by this answering respondent. To the extent that an

answer is required, the language of the Pennsylvania Constitution speaks for itself.

WHEREFORE, Respondent, Auditor General Eugene DePasquale requests that this Honorable Court dismiss Petitioners' Amended Petition for Review.

Respectfully submitted,

BY: /s/ F. Stephenson Matthes

F. Stephenson Matthes

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Respectfully submitted,

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Date: December 6, 2017

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EXHIBIT A

SHORT TERM INVESTMENT AGREEMENT
BETWEEN
TREASURY DEPARTMENT OF THE COMMONWEALTH OF PENNSYLVANIA
AND
THE OFFICE OF THE BUDGET

This Agreement is made as of the Effective Date between and among the Treasury Department of the Commonwealth of Pennsylvania, a government instrumentality of the Commonwealth of Pennsylvania (hereinafter "the Treasury") and the Office of the Budget, an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania (hereinafter "the Department"), and referred to collectively as "the Parties."

BACKGROUND

The Treasury and the Department desire to enter into this investment Agreement by which Treasury shall make available and provide to the Department periodic investments, which the Parties have structured in the format of draws upon a line of credit, which impose a market based rate of return, for the exclusive purpose of providing revenue for the general purposes of the Commonwealth and such other expenses payable from the General Fund.

Based upon the negotiated rate of return, Treasury has determined that this Agreement is consistent with the provisions of the Pennsylvania Fiscal Code (72 P.S. § 301.1) and is an appropriate and prudent Investment of Commonwealth funds.

The Treasury and the Department have determined and hereby represent that any indebtedness that is incurred pursuant to this Agreement, in addition to the outstanding amount of any other general obligation indebtedness during the period in which this Agreement is in effect, does not exceed one-fifth of the contemplated revenues for the General Fund of the Commonwealth pursuant to the Pennsylvania Fiscal Code (72 P.S. § 1601-A).

This Agreement will provide the collateral benefit, consistent with the public interest, that this alternate means of financing short term revenue shortfalls avoids unnecessary costs and fees otherwise associated with traditional short-term bond financing.

1. Definitions; Construction,

- a. *Construction.* This Agreement shall be interpreted in accordance with the Pennsylvania Statutory Construction Act (1 Pa.C.S.A. § 1501, et seq.).
- b. *Definitions.* The following words and phrases when used in this Agreement shall have the meanings given to them in this section unless the context clearly indicates otherwise:
 - i. "Agreement" shall mean this Investment Agreement, as amended, modified or supplemented from time to time.

- ii. "Advance" shall mean an advance made by the Treasury to the Department pursuant to the provisions of this Agreement.
 - iii. "Closing Date" shall mean the date on which an Advance is made.
 - iv. "Credit Limit" shall mean Two Billion, 500 Million Dollars (\$2,500,000,000.00).
 - v. "Effective Date" shall be the date on which the last signatory has affixed his or her signature to the signature page.
 - vi. "Interest Payment Date" shall mean each Refunding Date and the final Maturity Date.
 - vii. "Interest Period" shall mean the period from and including each Interest Payment Date (or in the case of the initial Interest Period, from and including the Closing Date for the first Advance made pursuant to this Agreement) to but excluding the next succeeding Interest Payment Date.
 - viii. "Maturity Date" shall mean June 30, 2017.
 - ix. "Person" shall mean any natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, Commonwealth or political subdivision, public agency, department, commission, board or other like entity or any other form of legal business entity.
 - x. "Refunding Date" shall mean the date on which each Advance, including the accrued interest and any fees, is completely repaid.
2. **Line of Credit.** Treasury hereby establishes a revolving line of credit for the exclusive, limited purpose of making available for deposit only into the General Fund (including the fund's sub-accounts) a principal amount not to exceed Two Billion, 500 Million Dollars (\$2,500,000,000.00) for the period beginning on the Effective Date through the Maturity Date as may be requested and directed by the Department in its written instructions. Such funds shall be made available from Treasury's Investment Pool 99.
3. **Advances.**
- a. Upon the terms and conditions hereof and in reliance on the representations and covenants set forth herein, the Treasury hereby agrees to make Advances to the Department from time to time on or after the Effective Date and to but not including the Maturity Date; provided, however, that during the period from the Effective Date through the Maturity Date, the aggregate unpaid principal amount of any outstanding Advances shall not at any time exceed the Credit Limit.

- b. Treasury will make each Advance in accordance within written instructions issued to Treasury by the Department that shall include the requested date and amount of the Advance.
 - c. Treasury shall deposit specific amounts from each advance into specific sub-accounts within the General Fund in accordance with written instructions issued to Treasury by the Department no more than 10 days from the date that Treasury receives the Department's written instructions.
4. **Exclusive Use.** Any advance made by Treasury to the Department pursuant to this Agreement shall be used exclusively for the general purposes of the Commonwealth during the current fiscal year, for all expenses payable from the General Fund.
5. **Interest Rates.**
- a. The unpaid principal amount of the initial Advance shall bear interest for each day during its Interest Period at an annual rate of 75 basis points. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.
 - b. The interest rate applicable to each succeeding Advance shall be reset, upon the mutual Agreement of the parties memorialized in writing, but in no instance at less than 75 basis points annualized, as of the Refunding Date for the immediately preceding Advance. Such reset rates shall apply to each day until the next date on which the rate is reset. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.
6. **Repayment.**
- a. *Interest.* The Department shall pay Treasury interest in the amount accrued on the unpaid principal balance during the preceding interest period on the Interest Payment Date.
 - b. *Payment at Maturity Date.* On the Maturity Date, the Department shall pay to Treasury the entire unpaid principal amount of any outstanding Advance plus all accrued and unpaid interest and fees thereon to the Maturity Date.
 - c. *Manner of Payment.* All payments to be made in respect of principal or interest by the Department hereunder shall be made by 2:00 p.m., Harrisburg, Pennsylvania time, on the day when due without presentment, demand, protest or notice by Treasury of any kind. Such payments shall be made in a manner specified by Treasury.

7. **Default.** A Default shall mean the occurrence or existence of one or more of the following events or conditions (whatever the reason for such Default and whether voluntary, involuntary or effected by operation of law):
- a. The Department shall fail to pay when due any principal or interest or fees due hereunder; or
 - b. Any representation or warranty made by the Department under this Agreement or any related document or any statement made by the Department in any financial statement, certificate, report, exhibit or document furnished by the Department to Treasury pursuant to this Agreement or any related document shall prove to have been false or misleading in any material respect as of the time when made (including by omission of material information necessary to make such representation, warranty or statement not misleading); or
 - c. The Department shall fail in any material respect to perform or observe any covenant, obligation, or duty contained in this Agreement or in any other related document; or
 - d. One or more judgments for the payment of money shall have been entered against the Department by any Person, including judgments in the Board of Claims, and such judgment or judgments shall have remained undischarged and unstayed for a period of 60 consecutive days unless enforcement of such judgment has been stayed or adequate security therefore has been delivered to Treasury; or
 - e. The debt rating of the Commonwealth were to fall below a rating of Aa3 (Moody's) or AA (S&P) at any time prior to any advance made by Treasury under this Agreement.
8. **Consequences of Default.**
- a. If any event of Default by which the Department fails to pay when due any principal, interest or fees shall occur and be continuing or exist, Treasury may refuse to make any subsequent Advances requested by the Department pursuant to this Agreement.
 - b. If any event of Default specified in subsections (a) through (d) under the caption "Default" shall occur and be continuing or shall exist, Treasury may, by notice to the Department, declare the unpaid principal amount of all Advances, interest accrued thereon and all other amounts owing by the Department hereunder to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and a right to bring an action therefore shall immediately accrue.

- c. If any event of Default specified in subsections (e) under the caption "Default" shall occur and be continuing or exist, Treasury shall be prohibited from providing any advance to the Department pursuant to this Agreement.
9. **Revenue Intercepts.** If any event of Default by which the Department fails to pay when due any principal, interest or fees shall occur and be continuing for 60 days, or shall exist for 60 days, Treasury may, in addition to other remedies available to it under this Agreement or under law or equity, intercept without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, any revenues collected and directed for deposit into the General Fund in amounts sufficient to reimburse every other Commonwealth Fund according to the proportion in which each has participated along with the General Fund as investors in the provision of Advances under this Agreement. The reimbursements will be for the full principal amount plus fees and any accrued interest due to such other Commonwealth Funds.
10. **Other Remedies.** If any event of Default shall occur and be continuing for 60 days, or shall exist for 60 days, Treasury may, in addition to the other remedies available to it hereunder, whether considered in a proceeding at law or in equity, take such action under any applicable law as shall be permitted thereby. No failure or delay on the part of Treasury in exercising any right, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.
11. **Cumulative Rights and Remedies.** The operation of any provisions, rights or remedies of this Agreement, or Treasury's exercise of any of the provisions, rights and remedies of this Agreement, shall not be in derogation of the operation or exercise of any other provisions, rights or remedies. The provisions, rights and remedies of this Agreement are cumulative within each section and among different sections, and not exclusive of each other or any other rights.
12. **Organization and Powers.** The Department hereby represents and warrants to Treasury that it is an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania, in good standing, that it was established by Article VI of the Administrative Code of 1929, 71 P.S. § 229 et seq., as amended. The Department is independent of Treasury, is empowered to enter into and perform this Agreement, and has all necessary power and authority, and has taken all official action necessary, to enter into and perform its duties and obligations under this Agreement and to request Advances provided for herein.
13. **Absence of Conflict.** The Department hereby represents and warrants to Treasury that neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated nor performance of or compliance with the terms and provisions hereof or thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law or of any Agreement or instrument to which the Department is a party or by which it is bound or to which it is subject, or constitute a default thereunder or result in the creation or imposition of any lien, security interest,

charge or encumbrance of any nature whatsoever upon any of the property of the Department pursuant to the terms of any such Agreement or instrument.

14. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when telecopied (with receipt confirmed), delivered (personally, by overnight courier service such as Federal Express, or by other messenger) or two Business Days after deposit in the United States mails (sent by registered or certified mail, postage prepaid, return receipt requested), addressed as set forth below:

- a. If to the Department:

Secretary of the Budget
Office of the Budget
238 Main Capitol
Harrisburg, Pennsylvania 17120

- b. If to Treasury:

Pennsylvania Treasury Department
ATTN: Chief Counsel
Room 129, Finance Building
Harrisburg, Pennsylvania 17120

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

15. **Amendments.** Treasury and the Department may from time to time enter into Agreements amending, modifying or supplementing this Agreement or changing the rights of Treasury or of the Department hereunder, and Treasury may from time to time grant waivers or consent to a departure from the due performance of the obligations of the Department hereunder, including amendments, modifications, supplements, waivers or consents having the effect of changing the Maturity Date in a manner or to a date or dates other than as provided hereby. Any such Agreement, waiver or consent must be in writing signed by Treasury and the Department and shall be effective only to the extent specifically set forth in such writing.
16. **Governing Law.** This Agreement shall be consumed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without giving effect to principles governing conflicts of law.
17. **Prior Understanding.** This Agreement supersedes all prior understandings and Agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein.

18. **Survival.** All representations and warranties of the Department contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement, any investigation by Treasury or the making of an Advance hereunder. All covenants and Agreements of the Department contained herein shall continue in full force and effect from and after the date hereof so long as it may request and accept Advances hereunder and until payment in full of any Advances, interest thereon and all other obligations of the Department hereunder.
19. **Counterparts.** This Agreement may be executed by the parties in four (4) counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
20. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect.
21. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Treasury, the Department and their respective successors and assigns, except that the Department may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Treasury, which consent may be withheld in Treasury's sole and absolute discretion.
22. **Obligations Unconditional.** So long as any Advance or any portion thereof or any interest thereon remains unpaid and outstanding, the obligations of the Department under this Agreement shall be absolute and unconditional and shall not be suspended, abated, reduced or otherwise modified in any manner or to any extent whatsoever, regardless of any right of setoff, recoupment or counterclaim that the Department might otherwise have against Treasury and regardless of any contingencies, act of God, event or cause whatsoever and notwithstanding any circumstance or occurrence that may arise or take place after the date hereof.
23. **No Third Party Benefits Created.** The parties do not intend for any of the benefits of this Agreement to inure to any third party. No portion of Treasury's commitment to make Advances shall, at any time, be subject to attachment or levy by any creditor of the Department or the Commonwealth of Pennsylvania, or by any contractor, subcontractor, materialman or supplier, vendor, or service provider hired or retained by the Department or the Commonwealth of Pennsylvania, or by any creditor of any such contractor, subcontractor, materialman or supplier, vendor, or service provider, or by any grantee of the Department. Notwithstanding any provision of this Agreement, or any other document executed in connection with this transaction, or any conduct or course of conduct by any of the parties to this Agreement, either before or after signing this Agreement or any of the other aforesaid documents, this Agreement shall not be construed as creating any rights, claims, or causes of action against the Department or the Commonwealth of Pennsylvania, in favor of any contractor, subcontractor, supplier of

labor or materials or services, vendor, grantee or any of their respective creditors, or any other person or entity.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

FOR TREASURY:

FOR OFFICE OF THE BUDGET:

By: _____

By: Randy C. Albright

Print Name: Timothy A. Reese

Print Name: Randy C. Albright

Title: State Treasurer

Title: Secretary of the Budget

Date: _____

Date: 8-10-2016

~~XXXXXXXXXXXXXXXXXXXX~~

~~By: XXXXXXXXXXXXXXXXXXXX~~

~~Print Name: Eugene A. DePasquale~~

~~Title: Auditor General~~

~~Date: XXXXXXXXXXXXXXXXXXXX~~

APPROVED AS TO FORM AND LEGALITY:

Chief Counsel
Treasury Department of Pennsylvania

Eva D. Zverev

Chief Counsel
Office of the Budget

Date: _____

Date: 8/10/2016

Aligath...

Office of General Counsel

Angela...

Office of Attorney General

Date: 8/10/16

Date: 8/11/16

labor or materials or services, vendor, grantee or any of their respective creditors, or any other person or entity.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

FOR TREASURY:

FOR OFFICE OF THE BUDGET:

By: Timothy A. Reese

By: _____

Print Name: Timothy A. Reese

Print Name: Randy C. Albright

Title: State Treasurer

Title: Secretary of the Budget

Date: 8/10/16

Date: _____

~~XXXXXXXXXX~~

~~By: XXXXXXXXXXXX~~

~~Print Name: Eugene A. DeRosa~~

~~Title: Auditor General~~

~~Date: XXXXXXXXXXXX~~

APPROVED AS TO FORM AND LEGALITY:

[Signature]

Chief Counsel
Treasury Department of Pennsylvania

Date: 8/10/16

Chief Counsel
Office of the Budget

Date: _____

[Signature]
Office of General Counsel

Date: 8/10/16

Office of Attorney General

Date: _____

EXHIBIT B

SHORT TERM INVESTMENT AGREEMENT
BETWEEN
TREASURY DEPARTMENT OF THE COMMONWEALTH OF PENNSYLVANIA
AND
THE OFFICE OF THE BUDGET

This Agreement is made as of the Effective Date between and among the Treasury Department of the Commonwealth of Pennsylvania, a government instrumentality of the Commonwealth of Pennsylvania (hereinafter “the Treasury”) and the Office of the Budget, an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania (hereinafter “the Department”), and referred to collectively as “the Parties.”

BACKGROUND

The Treasury and the Department desire to enter into this investment Agreement by which Treasury shall make available and provide to the Department periodic investments, which the Parties have structured in the format of draws upon a line of credit, which impose a market based rate of return, for the exclusive purpose of providing revenue for the general purposes of the Commonwealth and such other expenses payable from the General Fund.

Based upon the negotiated rate of return, Treasury has determined that this Agreement is consistent with the provisions of the Pennsylvania Fiscal Code (72 P.S. § 301.1) and is an appropriate and prudent Investment of Commonwealth funds.

The Treasury and the Department have determined and hereby represent that any indebtedness that is incurred pursuant to this Agreement, in addition to the outstanding amount of any other general obligation indebtedness during the period in which this Agreement is in effect, does not exceed one-fifth of the contemplated revenues for the General Fund of the Commonwealth pursuant to the Pennsylvania Fiscal Code (72 P.S. § 1601-A).

This Agreement will provide the collateral benefit, consistent with the public interest, that this alternate means of financing short term revenue shortfalls avoids unnecessary costs and fees otherwise associated with traditional short-term bond financing.

1. Definitions; Construction,

- a. *Construction.* This Agreement shall be interpreted in accordance with the Pennsylvania Statutory Construction Act (1 Pa.C.S.A. § 1501, et seq.).
- b. *Definitions.* The following words and phrases when used in this Agreement shall have the meanings given to them in this section unless the context clearly indicates otherwise:
 - i. “Agreement” shall mean this Investment Agreement, as amended, modified or supplemented from time to time.

- ii. "Advance" shall mean an advance made by the Treasury to the Department pursuant to the provisions of this Agreement.
 - iii. "Closing Date" shall mean the date on which an Advance is made.
 - iv. "Credit Limit" shall mean Seven Hundred Fifty Million Dollars (\$750,000,000.00).
 - v. "Effective Date" shall be August 14, 2017 or the date on which the last signatory has affixed his or her signature to the signature page, whichever date is later.
 - vi. "Interest Payment Date" shall mean each Refunding Date and the final Maturity Date.
 - vii. "Interest Period" shall mean the period from and including each Interest Payment Date (or in the case of the initial Interest Period, from and including the Closing Date for the first Advance made pursuant to this Agreement) to but excluding the next succeeding Interest Payment Date.
 - viii. "Maturity Date" shall mean August 23, 2017.
 - ix. "Person" shall mean any natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, Commonwealth or political subdivision, public agency, department, commission, board or other like entity or any other form of legal business entity.
 - x. "Refunding Date" shall mean the date on which each Advance, including the accrued interest and any fees, is completely repaid.
2. **Line of Credit.** Treasury hereby establishes a revolving line of credit for the exclusive, limited purpose of making available for deposit only into the General Fund (including the fund's sub-accounts) a principal amount not to exceed Seven Hundred Fifty Million Dollars (\$750,000,000.00) for the period beginning on the Effective Date through the Maturity Date as may be requested and directed by the Department in its written instructions. Such funds shall be made available from Treasury's Investment Pool 99.
3. **Advances.**
- a. Upon the terms and conditions hereof and in reliance on the representations and covenants set forth herein, the Treasury hereby agrees to make Advances to the Department from time to time on or after the Effective Date and to but not including the Maturity Date; provided, however, that during the period from the Effective Date through the Maturity Date, the aggregate unpaid principal amount of any outstanding Advances shall not at any time exceed the Credit Limit.

18. **Survival.** All representations and warranties of the Department contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement, any investigation by Treasury or the making of an Advance hereunder. All covenants and Agreements of the Department contained herein shall continue in full force and effect from and after the date hereof so long as it may request and accept Advances hereunder and until payment in full of any Advances, interest thereon and all other obligations of the Department hereunder.
19. **Counterparts.** This Agreement may be executed by the parties in four (4) counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
20. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect.
21. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Treasury, the Department and their respective successors and assigns, except that the Department may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Treasury, which consent may be withheld in Treasury's sole and absolute discretion.
22. **Obligations Unconditional.** So long as any Advance or any portion thereof or any interest thereon remains unpaid and outstanding, the obligations of the Department under this Agreement shall be absolute and unconditional and shall not be suspended, abated, reduced or otherwise modified in any manner or to any extent whatsoever, regardless of any right of setoff, recoupment or counterclaim that the Department might otherwise have against Treasury and regardless of any contingencies, act of God, event or cause whatsoever and notwithstanding any circumstance or occurrence that may arise or take place after the date hereof.
23. **No Third Party Benefits Created.** The parties do not intend for any of the benefits of this Agreement to inure to any third party. No portion of Treasury's commitment to make Advances shall, at any time, be subject to attachment or levy by any creditor of the Department or the Commonwealth of Pennsylvania, or by any contractor, subcontractor, materialman or supplier, vendor, or service provider hired or retained by the Department or the Commonwealth of Pennsylvania, or by any creditor of any such contractor, subcontractor, materialman or supplier, vendor, or service provider, or by any grantee of the Department. Notwithstanding any provision of this Agreement, or any other document executed in connection with this transaction, or any conduct or course of conduct by any of the parties to this Agreement, either before or after signing this Agreement or any of the other aforesaid documents, this Agreement shall not be construed as creating any rights, claims, or causes of action against the Department or the Commonwealth of Pennsylvania, in favor of any contractor, subcontractor, supplier of labor or materials or services, vendor, grantee or any of their respective creditors, or any other person or entity.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

FOR TREASURY:

FOR OFFICE OF THE BUDGET:

By: Joe Torsella

By: [Signature]

Print Name: Joseph M. Torsella

Print Name: Randy C. Albright

Title: State Treasurer

Title: Secretary of the Budget

Date: 8/3/2017

Date: 8/4/2017

ACKNOWLEDGED:

By: [Signature]

Print Name: Eugene A. DePasquale

Title: Auditor General

Date: 8-3-17

APPROVED AS TO FORM AND LEGALITY:

[Signature]

Chief Counsel
Treasury Department of Pennsylvania

Date: 8/3/17

[Signature]

Chief Counsel
Office of the Budget

Date: 8/4/2017

[Signature]

Office of General Counsel

Date: 8/7/17

[Signature]

Office of Attorney General

Date: 8/9/17

EXHIBIT C

SHORT TERM INVESTMENT AGREEMENT
BETWEEN
TREASURY DEPARTMENT OF THE COMMONWEALTH OF PENNSYLVANIA
AND
THE OFFICE OF THE BUDGET

This Agreement is made as of the Effective Date between and among the Treasury Department of the Commonwealth of Pennsylvania, a government instrumentality of the Commonwealth of Pennsylvania (hereinafter "the Treasury") and the Office of the Budget, an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania (hereinafter "the Department"), and referred to collectively as "the Parties."

BACKGROUND

The Treasury and the Department desire to enter into this investment Agreement by which Treasury shall make available and provide to the Department periodic investments, which the Parties have structured in the format of draws upon a line of credit, which impose a market based rate of return, for the exclusive purpose of providing revenue for the general purposes of the Commonwealth and such other expenses payable from the General Fund.

Based upon the negotiated rate of return, Treasury has determined that this Agreement is consistent with the provisions of the Pennsylvania Fiscal Code (72 P.S. § 301.1) and is an appropriate and prudent Investment of Commonwealth funds.

The Treasury and the Department have determined and hereby represent that any indebtedness that is incurred pursuant to this Agreement, in addition to the outstanding amount of any other general obligation indebtedness during the period in which this Agreement is in effect, does not exceed one-fifth of the contemplated revenues for the General Fund of the Commonwealth pursuant to the Pennsylvania Fiscal Code (72 P.S. § 1601-A).

This Agreement will provide the collateral benefit, consistent with the public interest, that this alternate means of financing short term revenue shortfalls avoids unnecessary costs and fees otherwise associated with traditional short-term bond financing.

1. Definitions; Construction,

- a. *Construction.* This Agreement shall be interpreted in accordance with the Pennsylvania Statutory Construction Act (1 Pa.C.S.A. § 1501, et seq.).
- b. *Definitions.* The following words and phrases when used in this Agreement shall have the meanings given to them in this section unless the context clearly indicates otherwise:
 - i. "Agreement" shall mean this Investment Agreement, as amended, modified or supplemented from time to time.

- ii. "Advance" shall mean an advance made by the Treasury to the Department pursuant to the provisions of this Agreement.
 - iii. "Closing Date" shall mean the date on which an Advance is made.
 - iv. "Credit Limit" shall mean Seven Hundred Million Dollars (\$700,000,000.00).
 - v. "Effective Date" shall be October 13, 2017 or the date on which the last signatory has affixed his or her signature to the signature page, whichever date is later.
 - vi. "Interest Payment Date" shall mean each Refunding Date and the final Maturity Date.
 - vii. "Interest Period" shall mean the period from and including each Interest Payment Date (or in the case of the initial Interest Period, from and including the Closing Date for the first Advance made pursuant to this Agreement) to but excluding the next succeeding Interest Payment Date.
 - viii. "Maturity Date" shall mean October 20, 2017.
 - ix. "Person" shall mean any natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, Commonwealth or political subdivision, public agency, department, commission, board or other like entity or any other form of legal business entity.
 - x. "Refunding Date" shall mean the date on which each Advance, including the accrued interest and any fees, is completely repaid.
2. **Line of Credit.** Treasury hereby establishes a revolving line of credit for the exclusive, limited purpose of making available for deposit only into the General Fund (including the fund's sub-accounts) a principal amount not to exceed Seven Hundred Million Dollars (\$700,000,000.00) for the period beginning on the Effective Date through the Maturity Date as may be requested and directed by the Department in its written instructions. Such funds shall be made available from Treasury's Investment Pool 99.
3. **Advances.**
- a. Upon the terms and conditions hereof and in reliance on the representations and covenants set forth herein, the Treasury hereby agrees to make Advances to the Department from time to time on or after the Effective Date and to but not including the Maturity Date; provided, however, that during the period from the Effective Date through the Maturity Date, the aggregate unpaid principal amount of any outstanding Advances shall not at any time exceed the Credit Limit.

- b. Treasury will make each Advance in accordance within written instructions issued to Treasury by the Department that shall include the requested date and amount of the Advance.
 - c. Treasury shall deposit specific amounts from each advance into specific sub-accounts within the General Fund in accordance with written instructions issued to Treasury by the Department no more than 10 days from the date that Treasury receives the Department's written instructions.
4. **Exclusive Use.** Any advance made by Treasury to the Department pursuant to this Agreement shall be used exclusively for the general purposes of the Commonwealth during the current fiscal year, for all expenses payable from the General Fund.
5. **Interest Rates.**
 - a. The unpaid principal amount of the initial Advance shall bear interest for each day during its Interest Period at an annual rate of 85 basis points. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.
 - b. The interest rate applicable to each succeeding Advance shall be reset, upon the mutual agreement of the parties memorialized in writing, but in no instance at less than 85 basis points annualized, as of the Refunding Date for the immediately preceding Advance. Such reset rates shall apply to each day until the next date on which the rate is reset. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.
6. **Repayment.**
 - a. *Interest.* The Department shall pay Treasury interest in the amount accrued on the unpaid principal balance during the preceding interest period on the Interest Payment Date.
 - b. *Payment at Maturity Date.* On the Maturity Date, the Department shall pay to Treasury the entire unpaid principal amount of any outstanding Advance plus all accrued and unpaid interest and fees thereon to the Maturity Date.
 - c. *Manner of Payment.* All payments to be made in respect of principal or interest by the Department hereunder shall be made by 2:00 p.m., Harrisburg, Pennsylvania time, on the day when due without presentment, demand, protest or notice by Treasury of any kind. Such payments shall be made in a manner specified by Treasury.

7. **Default.** A Default shall mean the occurrence or existence of one or more of the following events or conditions (whatever the reason for such Default and whether voluntary, involuntary or effected by operation of law):
 - a. The Department shall fail to pay when due any principal or interest or fees due hereunder; or
 - b. Any representation or warranty made by the Department under this Agreement or any related document or any statement made by the Department in any financial statement, certificate, report, exhibit or document furnished by the Department to Treasury pursuant to this Agreement or any related document shall prove to have been false or misleading in any material respect as of the time when made (including by omission of material information necessary to make such representation, warranty or statement not misleading); or
 - c. The Department shall fail in any material respect to perform or observe any covenant, obligation, or duty contained in this Agreement or in any other related document; or
 - d. One or more judgments for the payment of money shall have been entered against the Department by any Person, including judgments in the Board of Claims, and such judgment or judgments shall have remained undischarged and unstayed for a period of 60 consecutive days unless enforcement of such judgment has been stayed or adequate security therefore has been delivered to Treasury; or
 - e. The debt rating of the Commonwealth were to fall below a rating of A1 (Moody's) or A+ (S&P) at any time prior to any advance made by Treasury under this Agreement.

8. **Consequences of Default.**
 - a. If any event of Default by which the Department fails to pay when due any principal, interest or fees shall occur and be continuing or exist, Treasury may refuse to make any subsequent Advances requested by the Department pursuant to this Agreement.
 - b. If any event of Default specified in subsections (a) through (d) under the caption "Default" shall occur and be continuing or shall exist, Treasury may, by notice to the Department, declare the unpaid principal amount of all Advances, interest accrued thereon and all other amounts owing by the Department hereunder to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and a right to bring an action therefore shall immediately accrue.

- c. If any event of Default specified in subsections (e) under the caption "Default" shall occur and be continuing or exist, Treasury shall be prohibited from providing any advance to the Department pursuant to this Agreement.
9. **Revenue Intercepts.** If any event of Default by which the Department fails to pay when due any principal, interest or fees shall occur and be continuing for 60 days, or shall exist for 60 days, Treasury may, in addition to other remedies available to it under this Agreement or under law or equity, intercept without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, any revenues collected and directed for deposit into the General Fund in amounts sufficient to reimburse every other Commonwealth Fund according to the proportion in which each has participated along with the General Fund as investors in the provision of Advances under this Agreement. The reimbursements will be for the full principal amount plus fees and any accrued interest due to such other Commonwealth Funds.
10. **Other Remedies.** If any event of Default shall occur and be continuing for 60 days, or shall exist for 60 days, Treasury may, in addition to the other remedies available to it hereunder, whether considered in a proceeding at law or in equity, take such action under any applicable law as shall be permitted thereby. No failure or delay on the part of Treasury in exercising any right, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.
11. **Cumulative Rights and Remedies.** The operation of any provisions, rights or remedies of this Agreement, or Treasury's exercise of any of the provisions, rights and remedies of this Agreement, shall not be in derogation of the operation or exercise of any other provisions, rights or remedies. The provisions, rights and remedies of this Agreement are cumulative within each section and among different sections, and not exclusive of each other or any other rights.
12. **Organization and Powers.** The Department hereby represents and warrants to Treasury that it is an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania, in good standing, that it was established by Article VI of the Administrative Code of 1929, 71 P.S. § 229 et seq., as amended. The Department is independent of Treasury, is empowered to enter into and perform this Agreement, and has all necessary power and authority, and has taken all official action necessary, to enter into and perform its duties and obligations under this Agreement and to request Advances provided for herein.
13. **Absence of Conflict.** The Department hereby represents and warrants to Treasury that neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated nor performance of or compliance with the terms and provisions hereof or thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law or of any Agreement or instrument to which the Department is a party or by which it is bound or to which it is subject, or constitute a default thereunder or result in the creation or imposition of any lien, security interest, charge or

encumbrance of any nature whatsoever upon any of the property of the Department pursuant to the terms of any such Agreement or instrument.

14. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when telecopied (with receipt confirmed), delivered (personally, by overnight courier service such as Federal Express, or by other messenger) or two Business Days after deposit in the United States mails (sent by registered or certified mail, postage prepaid, return receipt requested), addressed as set forth below:

- a. If to the Department:

Secretary of the Budget
Office of the Budget
238 Main Capitol
Harrisburg, Pennsylvania 17120

- b. If to Treasury:

Pennsylvania Treasury Department
ATTN: Chief Counsel
Room 129, Finance Building
Harrisburg, Pennsylvania 17120

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

15. **Amendments.** Treasury and the Department may from time to time enter into Agreements amending, modifying or supplementing this Agreement or changing the rights of Treasury or of the Department hereunder, and Treasury may from time to time grant waivers or consent to a departure from the due performance of the obligations of the Department hereunder, including amendments, modifications, supplements, waivers or consents having the effect of changing the Maturity Date in a manner or to a date or dates other than as provided hereby. Any such Agreement, waiver or consent must be in writing signed by Treasury and the Department and shall be effective only to the extent specifically set forth in such writing.
16. **Governing Law.** This Agreement shall be consumed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without giving effect to principles governing conflicts of law.
17. **Prior Understanding.** This Agreement supersedes all prior understandings and Agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein.

18. **Survival.** All representations and warranties of the Department contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement, any investigation by Treasury or the making of an Advance hereunder. All covenants and Agreements of the Department contained herein shall continue in full force and effect from and after the date hereof so long as it may request and accept Advances hereunder and until payment in full of any Advances, interest thereon and all other obligations of the Department hereunder.
19. **Counterparts.** This Agreement may be executed by the parties in four (4) counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
20. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect.
21. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Treasury, the Department and their respective successors and assigns, except that the Department may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Treasury, which consent may be withheld in Treasury's sole and absolute discretion.
22. **Obligations Unconditional.** So long as any Advance or any portion thereof or any interest thereon remains unpaid and outstanding, the obligations of the Department under this Agreement shall be absolute and unconditional and shall not be suspended, abated, reduced or otherwise modified in any manner or to any extent whatsoever, regardless of any right of setoff, recoupment or counterclaim that the Department might otherwise have against Treasury and regardless of any contingencies, act of God, event or cause whatsoever and notwithstanding any circumstance or occurrence that may arise or take place after the date hereof.
23. **No Third Party Benefits Created.** The parties do not intend for any of the benefits of this Agreement to inure to any third party. No portion of Treasury's commitment to make Advances shall, at any time, be subject to attachment or levy by any creditor of the Department or the Commonwealth of Pennsylvania, or by any contractor, subcontractor, materialman or supplier, vendor, or service provider hired or retained by the Department or the Commonwealth of Pennsylvania, or by any creditor of any such contractor, subcontractor, materialman or supplier, vendor, or service provider, or by any grantee of the Department. Notwithstanding any provision of this Agreement, or any other document executed in connection with this transaction, or any conduct or course of conduct by any of the parties to this Agreement, either before or after signing this Agreement or any of the other aforesaid documents, this Agreement shall not be construed as creating any rights, claims, or causes of action against the Department or the Commonwealth of Pennsylvania, in favor of any contractor, subcontractor, supplier of labor or materials or services, vendor, grantee or any of their respective creditors, or any other person or entity.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

FOR TREASURY:

FOR OFFICE OF THE BUDGET:

By: Joe Torsella

By: _____

Print Name: Joseph M. Torsella

Print Name: Randy C. Albright

Title: State Treasurer

Title: Secretary of the Budget

Date: 10/12/17

Date: _____

ACKNOWLEDGED:

By: Eugene A. DePasquale

Print Name: Eugene A. DePasquale

Title: Auditor General

Date: 10/12/17

APPROVED AS TO FORM AND LEGALITY:

[Signature]

Chief Counsel
Treasury Department of Pennsylvania

Date: 10-12-17

Chief Counsel
Office of the Budget

Date: _____

Office of General Counsel

Date: _____

Office of Attorney General

Date: _____

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

FOR TREASURY:

By: _____

Print Name: Joseph M. Torsella

Title: State Treasurer

Date: _____

FOR OFFICE OF THE BUDGET:

By: Randy C. Albright

Print Name: Randy C. Albright

Title: Secretary of the Budget

Date: 10-12-17

ACKNOWLEDGED:

By: _____

Print Name: Eugene A. DePasquale

Title: Auditor General

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Chief Counsel
Treasury Department of Pennsylvania

Date: _____

Christina D. Peltz
Office of General Counsel

Date: 10/12/17

Randy C. Albright
Chief Counsel
Office of the Budget

Date: 10/12/2017

Carol Elliott
Office of Attorney General

Date: 10/12/17