

**CITY OF HOBOKEN**  
**Department of Administration**  
**Office of Corporation Counsel**

**RAVINDER S. BHALLA**  
Mayor



**BRIAN J. ALOIA, ESQ.**  
Corporation Counsel

**ALYSSA WELLS, ESQ.**  
Assistant Corporation Counsel

**ANDREW CIMILUCA, ESQ.**  
Assistant Corporation Counsel

March 3, 2023

**Via Email & Regular Mail**

(Rick.DeNicola@jfcson.us)  
J. Fletcher Creamer & Son, Inc  
Rick DeNicola, Vice President of Operations  
2-70 McGregor Street  
Newark, NJ 07105

**Via Overnight Mail**

PSE&G  
Attention: Nicole Gagliardotto  
Manager – Insurance & Risk  
80 Park Plaza, T17  
Newark, NJ 07102

**RE: City of Hoboken v. J. Fletcher Creamer & Son and PSE&G**

Dear Mr. DeNicola and Ms. Gagliardotto:

Please accept this correspondence as formal notice that the City of Hoboken demands that you reimburse the City, businesses within the City, and residents for all damages incurred based upon your failure to take reasonable measures to ensure the City's water main was not compromised during the construction work you performed in the area of Madison Street between Observer Highway and Newark Street in the City of Hoboken. In that regard, the City is currently calculating damages and will notify you of the same by a separate demand letter that will be sent in the near future. This correspondence shall also serve as the City of Hoboken's Litigation Hold and Preservation of Evidence letter. As will be set forth in greater detail herein, please preserve and retain all evidence relative to the work performed on or around Madison Street between Observer Highway and Newark Street from the time planning for the work began up to and including the work performed on February 27, 2023, that resulted in a water main break at that location.

**City Hall**  
**94 Washington Street, Hoboken, NJ 07030**  
**Tel: (201) 420-2000 Ext. 1200 Fax: (201) 792-1858**

## **PRESERVATION OF EVIDENCE**

Consider this a non-spoilation demand that you preserve all evidence related to any and all planning for and construction activity that occurred relating to the project that resulted in the water main break on February 27, 2023, in the area of Madison Street between Observer Highway and Newark Street in the City of Hoboken and your response thereto (hereinafter referred to as "Construction"), including any electronic or written communication including construction plans, permit applications, permit approvals, diagrams, change orders, emails, letters, correspondence, memorandum, notes, journal entries, e-mails, text messages, audio or video recordings, photographs, invoices, checks, phone messages, voice mails, business documents, personnel files, financial records notes relating to said records, or any and all documents in general relating in any way to the planning of the project and the construction.

Should you intentionally, recklessly, negligently or inadvertently destroy, alter, amend, change, or adjust any of the above referenced documents, an additional claim for spoliation may be made against you. Due to the potential allegations submitted to you, please be advised that your failure to prevent spoliation of evidence can result in severe sanctions being imposed by the Court. Furthermore, your obligations to preserve documents and things for discovery in this case arise in law and equity independent of any Order of court or notice from our office. Please let this letter serve as notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail, cellphone photographs and video recordings that may be construed in any manner as potentially discoverable information in this litigation.

Through discovery we expect to obtain a number of documents and things, including files stored on your computers, computer storage media, employees' phone records, including but not limited to photographs and video recordings. Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, all documents in their electronic form along with information about those documents contained in the media must be produced in their native file format. Paper printouts are only acceptable for those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting, redactions, or are uniquely contained within a paper file) along with any paper documents for which no corresponding electronic files exist.

Additionally, any future discovery request will demand data from hard disks, floppy disks and backup media used in your computers, some of which data are not readily available to an ordinary computer user, such as "deleted" files and "file fragments." Even though a user may "erase" or "delete" a file, but unless overwritten with new data, a "deleted" file can be as intact on the disk as any "active" file you would see in a directory listing. Therefore, in order to avoid spoliation, do not overwrite or reuse any media prior

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to providing this data. You should not pack, compress, purge or otherwise dispose of files and parts of files unless a true and correct copy of such files is made.

The electronic data and storage media that may be subject to a discovery requests and that you are obligated to maintain and not alter or destroy, include but are not limited to: all digital or analog electronic files, including “deleted” files and file fragments, stored in machine-readable format on magnetic, optical or other storage media, including the hard drives or floppy disks used by your computers and their backup media (e.g., other hard drives, backup tapes, floppies, Jaz cartridges, CD-ROMs) or otherwise, whether such files have been reduced to paper printouts or not. More specifically, you are to preserve all of your e-mails, both sent and received, whether internally or externally; all word-processed files, including drafts and revisions; all spreadsheets, including drafts and revisions; all databases; all CAD (computer-aided design) files, including drafts and revisions; all presentation data or slide shows produced by presentation software (such as Microsoft PowerPoint); all graphs, charts and other data produced by project management software (such as Microsoft Project); all data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook or Lotus Notes); all data created with the use of tablets, smart phones, iOS and Android devices as well as any other smart device; all data created with the use of document management software; all data created with the use of paper and electronic mail logging and routing software; all Internet and Web-browser-generated history files, caches and “cookies” files generated at the workstation of each employee and/or agent in your clients’ employ and on any and all backup storage media; and any and all other files generated by users through the use of computers and/or telecommunications, including but not limited to voice mail. Further, you are to preserve any log or logs of network use by employees or otherwise, whether kept in paper or electronic form, and to preserve all copies of your backup tapes and the software necessary to reconstruct the data on those tapes, so that there can be made a complete, bit-by-bit “mirror” evidentiary image copy of the storage media of each and every personal computer (and/or workstation) and network server in your control and custody, as well as image copies of all hard drives retained by you and no longer in service, but in use at any time from January 2022 to the present.


You also must preserve and not destroy all passwords, decryption procedures (including, if necessary, the software to decrypt the files); network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view and (if necessary) reconstruct the electronic data we are demanding through discovery.

**NOTICE:** You are required to retain a true and accurate copy of this spoliation/hold letter. Should an issue of spoliation arise, this letter will be material to the issues of spoliation. The City of Hoboken will request a copy of the spoliation/hold letter at that time of the dispute to determine if you and your company (or any Law firm representing you) adequately and timely placed you on proper notice pursuant to this letter. Please be guided accordingly.

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**Finally, if you are represented by an attorney, please do not respond in this correspondence but provide the same to your attorney**

Very truly yours,

By:   
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Brian J. Aloia, Esq.  
City of Hoboken  
Corporation Counsel

cc: Ravinder Bhalla, Mayor  
City Council  
Jason Freeman, Business Administrator

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