

## 1 SENATE OF PENNSYLVANIA

## 2 COMMITTEE ON LOCAL GOVERNMENT

3  
4 In re: Debt Structure of Distressed Harrisburg  
Incinerator5  
6 Volume II - Pages 231-471

7 \*\*\*\*\*

8 Stenographic report of public hearing  
9 held in Room 8E-B, East Wing, Main Capitol,  
Harrisburg, Pennsylvania, on10  
11 Tuesday  
November 13, 2012  
12 9:30 a.m.

13 SENATOR JOHN EICHELBERGER, CHAIRMAN

14 MEMBERS OF LOCAL GOVERNMENT COMMITTEE

15 Sen. MIKE FOLMER Sen. JOHN BLAKE

16  
17  
18 ALSO PRESENT:19 K. Lee Derr, Executive Director  
20 Luc Miron, Chief of Staff, Senator Blake  
21 Kyle Mullins, Legislative Support, Senator Blake  
22 Fred Sembach, Chief of Staff, Senator Folmer23  
24 Reported by:  
Ann-Marie P. Sweeney  
25 Chief Official Reporter  
Senate of Pennsylvania

	<u>WITNESS</u>	<u>PAGE</u>
1		
2		
3	Jeff Haste, President, Board of Commissioners, Dauphin County	233
4	Robert Kroboth, Business Manager, City of Harrisburg Harrisburg	257
5		
6	Thomas Mealy, former Executive Director, Harrisburg Authority	273
7	Bruce Barnes, Excel Financial Advisors/Milt Lopus Associates	289
8		
9	James Losty, RBC Capital	315
10		
11	Andrew Giorgione, Esquire, Buchanan Ingersoll	355
12	Carol Cocheres, Esquire, Eckert Seamans	385
13	James Ellison, Esquire, Rhoads & Sinon	416
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
	David Unkovic, Esquire, former Receiver, City of Harrisburg	437

1                   CHAIRMAN EICHELBERGER: Okay, we'll call this  
2 hearing to order of the Local Government Committee. We don't  
3 have, neither Chairman Blake nor I, have opening statements  
4 this morning. We'd just like to welcome everybody and kind of  
5 jump right into the hearing. We have a full day scheduled,  
6 and we appreciate everybody's attendance and indulgence as we  
7 work our way through this and try to stick to the schedule as  
8 best we can.

9                   I would comment again that we're taking testimony  
10 under oath. Our first witness is Commissioner Jeff Haste from  
11 Dauphin County. Welcome.

12                  MR. HASTE: Good morning.

13                  CHAIRMAN EICHELBERGER: And if you'd like to raise  
14 your right hand and be sworn.

15                  (Whereupon, JEFF HASTE, was duly sworn.)

16                  CHAIRMAN EICHELBERGER: Okay, I know you have some  
17 prepared remarks. However you'd like to proceed.

18                  MR. HASTE: Good morning, Chairman Eichelberger,  
19 Chairman Blake, Senator Folmer. I want to thank you for this  
20 opportunity. As you mentioned, my name is Jeff Haste. I'm  
21 Chairman of the Dauphin County Board of Commissioners, and I  
22 was appointed to the Dauphin County Board of Commissioners in  
23 December of 2002. In April of 2003, I was elected by the  
24 board to become the chairman, and I've been Chairman since  
25 then.

1 I'm pleased to appear before you to assist in your  
2 examination of the Harrisburg incinerator project which has  
3 had serious adverse consequences for the city, the county, and  
4 the Commonwealth. Allow me to provide some background of the  
5 county's involvement in this project.

6 In 2000, the county's Act 101 plan directed all  
7 municipal solid waste to various regional landfills. Prior to  
8 2000, the county and the city had engaged in extensive  
9 litigation whereby the city attempted to have its incinerator  
10 included in the county plan. Although the county prevailed in  
11 its litigation, the city and the county did enter into a  
12 settlement agreement whereby the county agreed to consider  
13 directing waste flow to the city's incinerator in order to  
14 assist the city in financing a necessary retrofit of the  
15 facility.

16 From 2000 to 2003, the county took steps to amend  
17 its Act 101 plan to discontinue reliance on landfill disposal  
18 and to incorporate Resource Recovery into its plan. A major  
19 concern of the board of commissioners was the potential  
20 re-opening of the Dauphin Meadows Landfill in the northern  
21 portion of Dauphin County. Less alternative disposal methods  
22 were identified. And if anybody followed back then, there  
23 were a lot of environmental issues with the landfill, trash as  
24 well as transportation getting to and from that facility. The  
25 transportation network that led to there was not built for

1 heavy trucks, and there were many incidents of school buses  
2 and trucks having near misses and issues with that. So there  
3 were a lot of issues with that landfill.

4 By 2003, the incinerator was closed by  
5 environmental agencies, leaving \$104 million of existing debt  
6 guaranteed solely by the city. For several years, the city  
7 had been urging and requesting the county's assistance in  
8 financing the retrofit of the facility, suggesting that  
9 bankruptcy was an option if the retrofit could not be  
10 accomplished. The county responded by awarding a long-term  
11 disposal agreement of county municipal waste to the city  
12 incinerator subject to the successful completion of the  
13 retrofit. Ultimately, the county agreed to guarantee a  
14 portion of the debt in order to facilitate the financing for  
15 this project.

16 By 2003, the city had been working with Barlow for  
17 a number of years to develop and plan the project. The  
18 county, in its considering its guaranty, retained special  
19 counsel, consulting engineers, and PFM as financial advisors  
20 to review the project. Our consulting engineer conducted a  
21 review of Barlow's past projects, reviewed the  
22 self-liquidating debt certificate and the engineering report  
23 to city council. PFM reviewed the financial structure of the  
24 retrofit bonds to be guaranteed by the county and approved the  
25 related swaps, which were also guaranteed by the county. The

1 county's guaranty was secondary to the city's, and at the time  
2 the city represented to us that the county's risk would not  
3 exceed one-year's worth of debt service because the city, if  
4 unable to meet debt service in a given year, would appropriate  
5 and pay the deficiency from its next year's budget. This, of  
6 course, as we know, never happened.

7           The county knew that there were risk factors  
8 associated with this project, including Barlow's lack of  
9 experience with retrospect to projects of this size, the lack  
10 of a performance bond, and the necessity to size the project  
11 in order to cover repayment of the city's existing debt. With  
12 respect to the lack of performance bond from Barlow, the  
13 county reviewed and relied on the alternative security  
14 arrangements approved by the Authority, which included a  
15 guaranteed maximum price contract, deferred payment for  
16 certain equipment until delivery to the site, and a 20-percent  
17 retainage on Barlow's contract price and reserve amounts  
18 within the construction fund.

19           While the county reviewed and accepted these  
20 risks, it certainly could not have anticipated the  
21 catastrophic failure of the project, which we believe resulted  
22 from gross mismanagement and failed oversight of the project.

23           The project was to be completed in 2006. By the  
24 end of 2005, the Authority and the city had expended the  
25 entire construction fund, including the contingency and

1 reserve funds. At that point, the project was not near  
2 completion. The city and the Authority then borrowed an  
3 additional \$25 million from CTI, which the county was unaware  
4 of, and a year later, at the end of 2006, those funds were  
5 expended and the project was still uncompleted. The security  
6 measures which the Authority had put in place were never  
7 properly administered or enforced.

8 This collapse cannot be blamed simply on Barlow's  
9 failure. Where was the oversight? Who approved the overrun  
10 payments? Were certificates failed to be authorized? Were  
11 certain authorizations of the payments failed to be followed?  
12 None of these questions have been answered and were not  
13 addressed in the forensic audit.

14 The forensic audit reviewed the planning of the  
15 project, but there has been no examination of the actual  
16 execution of the project. The Authority's records concerning  
17 payment and administration of the project should be readily  
18 available for review. No matter how well a project is  
19 planned, if it is executed poorly, without adequate oversight,  
20 then disaster is likely to result. The county had no part in  
21 play in the execution of the project, and is now paying the  
22 cost of its failure.

23 We understand that you have received testimony  
24 concerning the Authority's forensic audit. For the record, we  
25 have appended to my prepared testimony a copy of the county's

1 response to those portions of the forensic audit which dealt  
2 with the county's guarantees.

3           Before concluding, I will address briefly some of  
4 the issues which we understand your committee has some  
5 interest in. The county guaranty fee. In 2003, we were  
6 advised that the city would be imposing a guaranty fee in  
7 order to provide funds to balance the then city's 2003 budget.  
8 We understood that the county's guaranty provided  
9 substantially more enhancement to the financing than the  
10 city's guaranty. We also believed in order to maintain  
11 balance between city taxpayers and the rest of the county  
12 taxpayers, the county should also receive a guaranty fee. The  
13 county's guaranty fee was applied to the payment of the county  
14 expenses associated with the issuance of these guarantees,  
15 including fees of the special counsel and our financial  
16 advisor. The balance of the fee was paid into the county's  
17 General Fund.

18           The 2007 financing. At the end of 2006, the  
19 Authority had terminated the city's management agreement and  
20 hired Covanta to replace Barlow. It was too little too late.  
21 I have to say though, Covanta has done a very good job. The  
22 city and the Authority then pressed the county to assist in  
23 additional financing to complete the project. Initially, the  
24 city requested the county to guarantee \$60 million of  
25 additional debt. The county was very reluctant to do so and

1 applied limitations on the amount of financing that the county  
2 would guarantee. However, in the end, we concluded that the  
3 bonds guaranteed by the county, which were of a higher  
4 priority than most of the other debt of the facility, could be  
5 paid only if the project was completed and fully operational.

6 Some questions on suggestion of legislation moving  
7 forward. Currently, DCED approves only the proceedings with  
8 respect to debt issuance, including revenue projects certified  
9 to be self-liquidating. There have been suggestions that  
10 DCED's review should be more substantial. Any such  
11 requirement will add substantial delay and cost to the  
12 financing of public projects. We question whether a more  
13 critical review by DCED would have averted the crisis in this  
14 case, which resulted, in our view, from mismanagement of the  
15 project.

16 A suggestion is that DCED be authorized to perform  
17 a critical review and analysis of those self-liquidating  
18 projects which are supported by a municipal guaranty where the  
19 amount of the financing represents a certain percentage of the  
20 municipality's available borrowing capacity. In other words,  
21 if that issuance, even though it's self-liquidating, would  
22 cause that municipality to go over its debt limit, those would  
23 be the ones that would be critically looked at. That way it  
24 would reduce the number that DCED would have to look at, but  
25 it would still look at those that are critical that could

1 place a municipality into the situation this one is in. That  
2 would limit the review to those critical projects which would  
3 place in jeopardy a municipality's financial health.

4 At this time, I would be happy to answer any  
5 questions.

6 CHAIRMAN EICHELBERGER: Thank you, Commissioner.

7 Senator Folmer.

8 SENATOR FOLMER: Thank you very much. And  
9 Commissioner, thank you very much for your testimony.

10 In 2003, the county retained the PFM group to  
11 assess how much the county should ask as a guaranty fee for  
12 issuing the bonds.

13 MR. HASTE: Correct.

14 SENATOR FOLMER: Was it normal practice for the  
15 county to seek a fee for issuing a guaranty, and why did you  
16 insist on the fee for this transaction?

17 MR. HASTE: If you remember, at that time -- the  
18 answer was I was a new commissioner in 2003. I didn't know if  
19 it was common for the county to do that or not. But in  
20 dealing with PFM, they claimed that it was not uncommon,  
21 particularly with the city. Apparently, the city had done a  
22 number of those. And in doing so, I think going back to 2003,  
23 the city was asking \$2.8 million of a guaranty. PFM had  
24 suggested the county should ask for \$1.9 million. And how  
25 they came up to that was just -- that was a bounty amount of

1 savings in the insurance by having the county's guaranty. And  
2 over the life of the bond in the repayments, the county's  
3 guaranty was worth somewhere around upwards of \$30 million  
4 worth of value to the project.

5 Now, we initially were not going to ask for a  
6 guaranty. I remember this discussion well. But when the city  
7 insisted on having one out there, it, in our mind, was not  
8 fair for that to go to the city taxpayers and there not be  
9 some benefit to the county taxpayers as well.

10 SENATOR FOLMER: Okay. Your January 30, 2012,  
11 response to the forensic audit notes this, and I quote, "there  
12 is no doubt that the project was horribly executed by the  
13 Authority, the City and its agents." My question is, when did  
14 you grasp this, and what actions did you take to address these  
15 failures?

16 And the second part of that question is, did you  
17 push to fire, change, or otherwise sanction any of the  
18 professionals who were advising the county, the city, and/or  
19 the Authority?

20 MR. HASTE: If you look back over the county's  
21 history, there were, I don't remember the exact year, but  
22 sometime after '03 there was some uneasiness with some of the  
23 professional advisors that we had. If you look back to that,  
24 we did make a change. And in 2007, when -- actually, if you  
25 go back to that refinancing, it took a whole year for that

1 2007 refinancing to occur. They came to us I believe it was  
2 in December of '06, it wasn't until December of '07 it was  
3 initiated. And part of that, the reason it took a year to do,  
4 is there was a lot of going back and forth between the county  
5 and the city. There was an uneasiness at that time. And I  
6 remember this. The quote I made in one of our meetings was I  
7 felt like the Coast Guard rescue person. That we had jumped  
8 into the water, we were there trying to help the municipality,  
9 help one of the major municipalities in the county get there,  
10 and we either had to at that point in time decide that it was  
11 time to no longer try to help them and let them drown, or to  
12 try to continue to rescue them.

13           And we had a number of discussions back and forth.  
14 It went back and forth. They first came and asked for I think  
15 it was \$11 million, and we looked at them and said, be  
16 realistic; we know that's not adequate. What is adequate?  
17 And we couldn't get true budgets. I remember the first budget  
18 we got from them was written on a piece of paper, and we made  
19 them verify things and come back. There were a number of  
20 public meetings at the Commissioners' office.

21           And I remember having a discussion with the city,  
22 with the mayor, and some of the representatives, and said, you  
23 know, we're uneasy. What assurances do we have that this  
24 isn't going to go forward? And they looked through and they  
25 brought documents to show that if it was up and running, it

1 was producing revenue, it would be enough, there would be  
2 enough revenue to support and pay for the debt on the  
3 retrofit. They also said to us, listen, we understand and we  
4 don't take lightly the city's guaranty. We are second  
5 guarantor on this project. If in fact you as a county have to  
6 make a payment, have to come to our aid, we understand under  
7 Commonwealth law we have to have a balanced budget, and the  
8 next year we will address that in our budget and we'll  
9 continue to work forward. Unfortunately, that cooperation  
10 hasn't existed since then.

11 SENATOR FOLMER: Well, then that leads me to my  
12 next question.

13 MR. HASTE: Sure.

14 SENATOR FOLMER: Prior to issuing the county's  
15 2003 guaranty, what due diligence then did the county  
16 undertake to ensure the county and other parties would be  
17 protected? I.e. did you assess Barlow's technology? Did you  
18 assess Barlow's financial projections? Did you identify and  
19 assess any other issues of concern, or did you rely on the  
20 assessments of others?

21 MR. HASTE: Well, as I mentioned in my testimony,  
22 we hired a consulting engineer that looked at that. We had  
23 legal counsel that took a look at that. PFM was to take a  
24 look at it. We relied heavily on those professionals.

25 SENATOR FOLMER: Okay. You previously said that

1 you were concerned with the 2003 joint venture, and you said  
2 you insisted more protections be built into the agreements.  
3 However, an August 1, 2003, letter from Mr. Giorgione to Mayor  
4 Reed reporting on the meeting, the county's officials and  
5 subsequent meeting with you, he said, and I quote, "We  
6 cautioned Chairman Haste that the Resolution would cause a  
7 stir. His response was simply, any of those who would object  
8 to this transaction are not supporters of the County or City  
9 and would not support either administration. In sum, he  
10 expressed little concern and confirmed the County's support of  
11 this financing as being in the best interests of the County  
12 and City."

13           What made you so comfortable with the 2003 bond on  
14 August 1, 2003, and did none of the subsequent issues that  
15 were raised from either August until the bond was executed  
16 that December cause concern for you?

17           MR. HASTE: I would never say they didn't cause  
18 concern for us at all. We, again, if you go back to 2003,  
19 this project had actually started prior to me becoming a  
20 member of the board. The previous board had decided to, and I  
21 think rightfully so, to discontinue the ongoing battle between  
22 the county and the city over waste flow. That battle from the  
23 county and the city went back as early as the early '90s. And  
24 the county situation at that time, there was a landfill in  
25 northern Dauphin County that was very bad. It was closed.

1 And they had the ability to expand at that point in time. The  
2 county was sitting with a situation, we had one part of the  
3 county asking us to keep the facility closed, we had another  
4 municipality begging us to help them move forward. That they  
5 had a plan to put together that would help them out, and at  
6 that point in time the numbers appeared, and if you go back  
7 and look at it, the numbers that were put together by I  
8 believe it was PFM on the financial, the revenues are  
9 on-target. What fell apart from 2003 into 2006 and 2007 was  
10 the expenditure of those funds. And those were things we did  
11 not see at the time, and hardly even saw in 2006 when we were  
12 trying to do that.

13 But if you go back to it, the revenue projections  
14 were pretty close to where they were supposed to be. The  
15 failing part of this whole project is the expenditure side of  
16 it, and Senator, to my knowledge, those answers haven't been  
17 answered yet today.

18 SENATOR FOLMER: Okay, and that kind of brings me  
19 to my next question for you, and thank you for your answers.  
20 When did you learn the 2003 financing did not have a  
21 performance bond, and what did you do about it?

22 MR. HASTE: I don't remember the exact time, but I  
23 do know when that came up. Again, I had been county  
24 administrator and chief clerk for a number of years at the  
25 county from '88 till '96, before I went to the legislature.

1 And they were sort of a normal practice for us. And I  
2 remember raising that question. And there were a number of  
3 meetings, a number of things came through. There was a legal  
4 opinion and there were things put together where people said  
5 this alternative security would do the same thing and cost  
6 everybody a lot less. It was a little more risk in it, but  
7 everybody at that point in time made it sound like it was  
8 something that could be done.

9 And in fact, I'm not so sure if they'd have  
10 followed that plan if we hadn't seen some of this earlier,  
11 because part of that was there was supposed to be 20 percent  
12 of Barlow's money retained, there was supposed to be a  
13 security fund put in. I don't know that any of that followed  
14 through. And again, that goes to the expenditure side of this  
15 thing. Those answers, to my mind, still have never been  
16 answered. Those questions have still never been answered.

17 SENATOR FOLMER: Do you know when you took those  
18 actions?

19 MR. HASTE: It would have been prior to us  
20 agreeing to the 2003 financing.

21 SENATOR FOLMER: My last question for you, sir--

22 MR. HASTE: Sure.

23 SENATOR FOLMER: --is this: Were Mr. Lispi and  
24 Mr. Giorgione ever paid by the county as employees,  
25 contractors, or consultants? And if yes, what did they do for

1 the county? I mean, given their roles with the Authority and  
2 other entities, were you ever concerned that they may have  
3 conflicts of interest?

4 MR. HASTE: They were paid by the county. They  
5 were -- they had contracts with the county when I got there.  
6 Mr. Giorgione, I believe, was counsel to the Solid Waste  
7 Advisory Commission, and Mr. Lispi had a contract with our  
8 Solid Waste Department as well as some sort of a consultant.  
9 Early on again, they provided a lot of information. As I had  
10 said before, when we got uneasy with relationships, we ended  
11 those relationships.

12 SENATOR FOLMER: So, and maybe I missed it, and I  
13 apologize, were you concerned with the conflicts of interest  
14 possibility?

15 MR. HASTE: When we became aware and concerned  
16 with conflicts of interest, those relationships changed.

17 SENATOR FOLMER: Okay, thank you for that. One  
18 last question. I'm sorry. On November 21, 2007, you  
19 certified to the Department of Community and Economic  
20 Development in an 8110(b) certificate that the existing  
21 incinerator debt was self-liquidating. Why did you sign this?  
22 Did you believe the debt to be self-liquidating? Who advised  
23 you to sign? Who did the financial due diligence to insure  
24 the debt was indeed self-liquidating, and are these  
25 individuals still employed by the county and/or under contract

1 by the county?

2 MR. HASTE: Again, at that point in time I believe  
3 the certification was dealing with the self-liquidation of the  
4 retrofit bonds going back forward. At that point in time, we  
5 were somewhat assured that if the project completed on time,  
6 that there would be enough revenue to make those debt  
7 payments. If you look at it, in 2008, when there was another  
8 certification that we had to give, we no longer had that same  
9 view and did not list them as self-liquidating.

10 SENATOR FOLMER: All right.

11 Senator, I'm through, and thank you.

12 CHAIRMAN EICHELBERGER: Thank you.

13 Senator Blake.

14 SENATOR BLAKE: Thank you, Mr. Chairman. Thank  
15 you, Commissioner, for your testimony. A lot of what I was  
16 planning to ask Senator Folmer has addressed, but I'm trying  
17 to get some clarity on a few important issues, some of which  
18 emanate from your testimony and some from your responses to  
19 the Senator's questions. The issue I guess associated with  
20 due diligence, Commissioner, and whether or not you felt that  
21 the risk that was being taken on the backs of the county  
22 taxpayers was appropriate. "The PFM report is concerned  
23 primarily with an analysis," this is, again, from the forensic  
24 audit, "concerned primarily with an analysis of financial  
25 terms and structure of the 2003 D, E and F bonds to provide

1 the county with guidance with respect to a 'reasonable'  
2 guarantee fee. With that said, the September 30, 2003 version  
3 of the Barlow projections were attached to the PFM report,  
4 suggesting that there may have been some level of evaluation.  
5 It is not clear whether PFM reached any conclusions with  
6 respect to the projections...." While the only thing that was  
7 stated in the executive summary is that they make no  
8 recommendations "as to the reasonableness of the contemplated  
9 project, we do find the preliminary debt service schedules and  
10 assumptions for the Retrofit Bonds reasonable."

11 All I'm saying here, Commissioner, is that you  
12 were making decisions to put the county taxpayers on the hook.  
13 The assessment of PFM was for the reasonableness of a fee, and  
14 forgive me, Commissioner, because I think part of what was  
15 stated by Mette Evans in your response is the county -- this  
16 is their representation on your behalf, "The County initially  
17 objected to the City's guaranty fee and was advised that the  
18 City required the fee proceeds in order to balance its 2003  
19 budget. The County then requested a guaranty fee simply to  
20 maintain some" level of "parity with the City."

21 Commissioner, with all due respect to the fairness  
22 issue that you make an argument for, it seems opportunistic.  
23 So I'm trying to understand the due diligence process that  
24 related to your measure of risk associated with this and  
25 whether or not you felt you had sufficient data at that time

1 to put the county taxpayers on the hook for this guaranty.

2 MR. HASTE: In 2003?

3 SENATOR BLAKE: Yeah.

4 MR. HASTE: We did. As I said, this had been  
5 going on from about 2000, between the county and the city. I  
6 came on board in January of 2003, reviewed all the  
7 documentation that was given to the county. We had a number  
8 of meetings on this. In no way was this ever taken lightly.  
9 And to be honest with you, Senator, part of it was trust  
10 between the municipality and the county. And there were a  
11 number, and you have to remember, that was not easy to get to,  
12 because prior to that time there wasn't a lot of trust between  
13 the county and the city. This was a project where that trust  
14 could be strengthened and the municipality and the county  
15 could move forward on working together. And for a while it  
16 appeared that that had worked.

17 As far as due diligence, we had an engineer look  
18 at it, we had finance people. There were more than one legal  
19 firm looked at it. There were times that we were not sure  
20 that it was the right thing to do. But at the end, after all  
21 the analysis that was done, a fair amount of discussion among  
22 all three board members, people in the community, it was felt  
23 -- in fact, the media at that time actually gave us kudos for  
24 putting the rift aside and actually moving forward. The  
25 county was in a position where we were able to help two major

1 parts of the county in one project. And it appeared, if  
2 everybody had kept their word and done everything, that it  
3 would have been a very good project. Unfortunately, it didn't  
4 turn out that way.

5           SENATOR BLAKE: Understood, Commissioner, and  
6 you've made representation that you could not possibly foresee  
7 the catastrophic failure of the project, but there's a couple  
8 of things I want to comment on, and it will lead to another  
9 question. Part of what your legal counsel said and part of  
10 what your own testimony says is that the forensic audit only  
11 looked at the planning and the financing transactions and did  
12 not look, to your statement, at the actual implementation of  
13 the execution of the construction. I would argue that the  
14 actual performance of the project would have informed any  
15 follow-on financing. That it should have been a  
16 consideration, and it's your own testimony that you were  
17 concerned that you weren't getting data from the Authority or  
18 from the city that gave you an appropriate reassurance about  
19 the performance of the project, with respect to construction  
20 and its--

21           MR. HASTE: No, that was the follow up.

22           SENATOR BLAKE: Yeah.

23           MR. HASTE: We didn't hire them, because the  
24 Authority and the city had already hired expertise and put all  
25 that together. We reviewed that and we had our experts take a

1 look at it. And those folks felt reasonable enough with that  
2 that they could recommend to the county to support it. It's  
3 the execution of the plan that we weren't getting information  
4 on. It's the execution of the plan I still don't know, to  
5 this day, what all happened there.

6 The plan itself, the Authority and the city had  
7 studies, they had brought things together. We even involved,  
8 I forget if it was DEP, DER, at that time, and DCNR and folks  
9 at the State on whether even moving to Resource Recovery was  
10 the way for the county to go as opposed to landfill. Because  
11 as you know, in this area there's a lot more landfills than  
12 that, and it was in partnership with the State we took a look  
13 at and said that this is the best way to move forward. So  
14 there was a fair amount of analysis done in this.

15 Now, did some people not give us the whole story?  
16 It appears that's the case.

17 SENATOR BLAKE: Well, but again, following on  
18 Senator Folmer's remarks, the transaction in 6 and 7, again,  
19 we're dealing with a facility that was either not functioning,  
20 not cash flowing, or at a very limited capacity.

21 MR. HASTE: Correct.

22 SENATOR BLAKE: And yet a transaction to double  
23 down, in effect, on the deal.

24 MR. HASTE: And that was not taken lightly either.  
25 As I said, my feeling at that point in time is I felt like

1 that Coast Guard rescue person. We were in. And we knew we  
2 could have pulled the plug at that point in time and the city  
3 would have been in bankruptcy. They had made it clear to us  
4 that was the case. We decided to -- you can call it double  
5 down, or we can say we took their word for it and we wanted to  
6 continue that partnership, and we wanted to try to help that  
7 municipality, a major municipality, the City of Harrisburg,  
8 move forward. We knew it was not as ideal as we would like it  
9 to be, but we also knew it was better than allowing them to go  
10 bankrupt at that point in time.

11           You know, we still aren't at bankruptcy. Maybe  
12 we'll get there, but are we to be penalized for delaying that?  
13 I think at that time point in time, I still think working with  
14 a major municipality within the county, helping them out with  
15 their plan and avoiding bankruptcy was still a good thing to  
16 do. Was it a little risky? It was, but you know what? There  
17 are risky things we have to do every day. Some work, some  
18 don't. And it was not taken lightly at any point in time, and  
19 there was lot of public debate about it, there was a lot of  
20 public angst about it, and at the bottom line it was decided  
21 we would continue that partnership as opposed to ending it at  
22 that point in time.

23           SENATOR BLAKE: Understood, Commissioner. Just a  
24 couple of things that I'm not sure whether or not you'll have  
25 the ability to answer these questions, but what's your current

1 credit rating or bond rating for the county? Do you know?

2 MR. HASTE: A minus.

3 SENATOR BLAKE: And was it adversely affected by  
4 your guaranty here?

5 MR. HASTE: We were put on watch for one year, and  
6 we were taken off watch the next year because the credit  
7 rating agency gave us kudos for the way we've handled the  
8 situation.

9 SENATOR BLAKE: I see. And do you know the dollar  
10 or the percentage of the overall county debt attributable to  
11 this guaranty, in terms of your debt limit?

12 MR. HASTE: The percentage?

13 SENATOR BLAKE: Yeah.

14 MR. HASTE: Well, we're on the hook for about 145,  
15 and our debt limit is about 956.

16 SENATOR BLAKE: Okay. All right.

17 Thank you, Mr. Chairman. Thank you, Commissioner.

18 MR. HASTE: Sure.

19 CHAIRMAN EICHELBERGER: Commissioner, one  
20 follow-up question to what Senator Folmer asked you about.  
21 The 8110(b) form, do you remember who advised you to sign  
22 that, specifically?

23 MR. HASTE: 8110(b), is that the--

24 CHAIRMAN EICHELBERGER: That's the  
25 self-liquidating form.

1 MR. HASTE: I don't know. It would have been our  
2 professional team.

3 CHAIRMAN EICHELBERGER: What I'm trying to get at  
4 is, I know you make difficult policy decisions every day--

5 MR. HASTE: You're talking about in '07 still?

6 CHAIRMAN EICHELBERGER: No, in '03.

7 MR. HASTE: '03. Okay.

8 CHAIRMAN EICHELBERGER: But, you know, there's got  
9 to be a system in place and some legal protections for the  
10 taxpayers. Who was the one that gave you the legal opinion  
11 that the alternative security package was okay, instead of the  
12 performance bond?

13 MR. HASTE: And I believe, and I could be wrong on  
14 this, my recollection is there were a number of folks, for  
15 instance Mr. Giorgione on behalf of the city spoke about that,  
16 and I believe there was also a document from Rhoads & Sinon.  
17 Now, I may be in error on that, but that's my recollection.

18 CHAIRMAN EICHELBERGER: You had also mentioned  
19 earlier that you had conditions in your agreement with  
20 discussions about the guaranty. Wasn't one of those  
21 conditions that the money would not be used for the purchase  
22 of artifacts for the city?

23 MR. HASTE: Yes.

24 CHAIRMAN EICHELBERGER: Were you aware of the  
25 precarious nature of the financing so that the cash flow from

1 the project could not pay for the bonds, so that when they  
2 marketed the bonds, the critical component to investors was  
3 the county's guaranty and the city's guaranty? You were aware  
4 of that?

5 MR. HASTE: I'm aware. They made that very clear  
6 to us.

7 CHAIRMAN EICHELBERGER: Maybe one last one here.  
8 Just a general area of talking about some conflicts of  
9 interest that also was brought up earlier. Do you know how  
10 much money you've spent on lobbyists and attorneys so far in  
11 this -- on this general issue of financing?

12 MR. HASTE: I don't, but I could get it for you.

13 CHAIRMAN EICHELBERGER: And it's interesting as  
14 well that the lobbyist that you've used is the same lobbyist  
15 that the city's used.

16 MR. HASTE: Who's that? I don't believe our  
17 lobbyist works for the city.

18 CHAIRMAN EICHELBERGER: We're having a little  
19 discussion up here about it. It's not the city. I misspoke.  
20 It wasn't the city. It was the bond insurers.

21 MR. HASTE: Sure. They had been our lobbyist for  
22 years. The bond insurers, it's my understanding, interviewed  
23 a firm from Philly and interviewed them. They actually -- the  
24 bond insurers saw who we were using and they interviewed them  
25 and they interviewed a firm from Philly and decided to go with

1 that firm. You'd have to ask the bond insurers why, but I  
2 think there are a number of very successful people in this  
3 area that have used that same lobbying firm.

4 CHAIRMAN EICHELBERGER: So you had them first.

5 MR. HASTE: We've had them for years, yes.

6 CHAIRMAN EICHELBERGER: And do you know if they  
7 work for the city? We still have some confusion whether they  
8 ever worked for the city.

9 MR. HASTE: If they did, I have no knowledge of  
10 that. In fact, I would -- I do not believe they have. They  
11 may have, but I don't know that.

12 CHAIRMAN EICHELBERGER: I don't expect you to know  
13 that off the top of your head.

14 (To the panel:) Are we okay?

15 All right, I know you have other meetings to get  
16 to, so we appreciate your time this morning.

17 MR. HASTE: Thank you.

18 CHAIRMAN EICHELBERGER: Thank you.

19 The next witness is Robert Kroboth, who is the  
20 Business Manager for the City of Harrisburg.

21 Good morning.

22 MR. KROBOTH: Good morning, esteemed Senators and  
23 panel. My name is Robert Kroboth. I am currently the city's  
24 Finance Director. During this time of inquiry, I was the  
25 Deputy Business Administrator for 1998 to 2007, and in 2008

1 became the Business Administrator. My role during this period  
2 1998 to 2008 was primarily a role related to the management  
3 agreement that the city had with the Harrisburg Authority to  
4 operate the Resource Recovery Facility until December 31,  
5 2006, when Covanta Energy came in to operate the facility. At  
6 that point, the city was terminated under the management  
7 agreement.

8 My primary responsibilities during this time  
9 period were three-fold as it related to the incinerator. I  
10 helped monitor cash flow, which essentially meant processing  
11 the incinerator bills. I also helped monitor operating  
12 budgets, since the city had to operate the facility through  
13 2007. I also provided support to the development and update  
14 of what is called the Appendix A, which is a supplement to all  
15 bond and note issuances of bond offering statements, if you  
16 will, of the Harrisburg Authority's Resource Recovery Facility  
17 bond issues that the city guaranteed.

18 That is essentially my role, and I'm open for  
19 whatever questions that the committee has.

20 CHAIRMAN EICHELBERGER: Okay, thank you.

21 MR. KROBOTH: You're welcome.

22 CHAIRMAN EICHELBERGER: Do you want to start,  
23 Senator Folmer?

24 SENATOR FOLMER: Why not? Definitely. Thank you.

25 Thank you, Senator. Thank you, Mr. Kroboth.

1 Would you explain the guaranty fees the city received under  
2 the incinerator bonds? Who decided the city would charge such  
3 guaranty fees? How were the amounts of the guaranty fees  
4 calculated?

5 MR. KROBOTH: The guaranty fee amounts were  
6 determined in part by the mayor and in part by whatever the  
7 projected proceeds of whatever financing was to take place.  
8 My role was to provide information to the mayor. For example,  
9 information such as current cash flow reports or mid-year  
10 fiscal reports, or depending upon the timing, perhaps the  
11 subsequent year's budget preparation. Those guaranty fees  
12 were used then to reimburse the city for any working capital  
13 loans and advances that were provided on behalf of the  
14 Resource Recovery Facility. And then there was a net, for  
15 example, of the \$4.3 million guaranty fee for the 2003 bonds,  
16 I believe \$1.5 million was for that reimbursement for advances  
17 and working capital loans, and \$2.8 million was actually  
18 deposited to the city's General Fund.

19 The guaranty fees that the city did receive net of  
20 reimbursement for loans was actually a revenue line item in  
21 the city's General Fund, and it helped to support General Fund  
22 operations.

23 CHAIRMAN EICHELBERGER: Can I interrupt here? I  
24 forgot to swear in the witness. I apologize.

25 (Whereupon, ROBERT KROBOTH, was duly sworn.)

1 MR. KROBOTH: And it applies to the statements I  
2 made prior to now.

3 CHAIRMAN EICHELBERGER: Thank you.

4 MR. KROBOTH: You're welcome, Senator.

5 SENATOR FOLMER: Mr. Kroboth, my second question,  
6 and it will be my last question for you, the forensic audit,  
7 page 48, talks about the 2003, quote, unquote, "City Council  
8 Fund." You were referenced in the forensic audit about the  
9 use of these moneys, on page 49, and I quote, "Kroboth says we  
10 are going to needs [sic] funds asap." What can you tell us  
11 about this fund? How was it set up? How much was in it? Who  
12 had access to it? How were the moneys disbursed?

13 MR. KROBOTH: All right, could I ask you to ask --  
14 could you please repeat the question one more time?

15 SENATOR FOLMER: Sure, and I'm sorry.

16 MR. KROBOTH: That's okay.

17 SENATOR FOLMER: Sometimes I'm very fast-talking,  
18 so I apologize. The forensic audit, on page 48, talks about a  
19 2003 City Council Fund.

20 MR. KROBOTH: Okay.

21 SENATOR FOLMER: You are referenced in the  
22 forensic audit about the use of these moneys on page 49, and I  
23 quote a section of that, a portion of that, says, and I quote,  
24 "Kroboth says we are going to needs [sic] funds asap," end of  
25 quote. My question to you is, what can you tell us about this

1 fund? How was it set up? How much was in it? Who had access  
2 to it? How were the moneys disbursed?

3 MR. KROBOTH: Okay, my recollection was that the  
4 2003 bonds financed approximately \$270,000 for this account.  
5 The account was established, I believe, under terms of the  
6 financing. The money was used entirely by Harrisburg City  
7 Council, and the amounts were divided, if I recall, equally  
8 amongst all seven council members. The council members were  
9 to submit suggestions for the use of the money, and I believe  
10 council themselves had public hearings and they reviewed the  
11 requests, and I believe they were approved by resolution of  
12 council. So the funding that was provided came into the  
13 city's General Fund, it was appropriated in the city's General  
14 Fund during 200-- probably 2004 into 2005, because that  
15 financing was later in 2003, I think. That's my recollection  
16 of how it all was received, administered, and used.

17 SENATOR FOLMER: Okay, thank you for answering  
18 that, sir. I'm through.

19 CHAIRMAN EICHELBERGER: Chairman Blake.

20 SENATOR BLAKE: Thank you, Mr. Kroboth, for your  
21 testimony here today, and for your time. I guess just  
22 following from your testimony, my first question has to do  
23 with the city's General Fund budgets. I guess you were  
24 finance director under Mayor Reed. I guess you retired from  
25 that and they called you back because you pretty much knew the

1 business well enough, or as good as anyone, and were called  
2 upon for your expertise again. But from a historical  
3 standpoint, the city's General Fund budgets, how were they  
4 balanced year over year? Talk about the mix of revenues upon  
5 which you relied in that regard, and I think it's your  
6 testimony that you actually set up a guaranty fee line item as  
7 a revenue line item in your General Fund budget. Did I hear  
8 that correctly?

9 MR. KROBOTH: Yes, we did.

10 SENATOR BLAKE: Okay, I guess I'm trying to get a  
11 handle on how he balanced these budgets year over year using  
12 what I think are one-time resources and perhaps a dependence  
13 upon these one-time resources that would have, in my  
14 estimation, been an impetus for future borrowing?

15 MR. KROBOTH: My recollection, Senator, was that  
16 the city, indeed, we wanted to set up a line item for guaranty  
17 fees because that was the appropriate thing to do. Anything  
18 that was in an excess of an advance or a short-term loan would  
19 require appropriation of Harrisburg City Council. So we did  
20 set up a guaranty fee line item in the General Fund.

21 In 2003, for example, we recorded I believe \$2.8  
22 million revenue. In 2003, of course the total guaranty fee  
23 was \$1.4 million, so the difference, I believe, was a  
24 reimbursement for working capital loans and advances that were  
25 short-term in nature to the incinerator. I also believe we

1 had another \$600,000, and I don't recall what the financing  
2 source was in the following year, 2004. And we may have had a  
3 guaranty fee early on. But that was the last that the General  
4 Fund recorded guaranty fees.

5 SENATOR BLAKE: I guess I'm curious in the role  
6 you played in your capacity as finance director with respect  
7 to deliberations suggesting the debt was self-liquidating on  
8 this facility. Did you weigh in on this at all?

9 MR. KROBOTH: No, that was not my role at all.

10 SENATOR BLAKE: Okay. The issues, I guess, again,  
11 sitting as finance director, the city guaranteed payment of  
12 the 1998 bonds, guaranteed the 2000 notes, guaranteed the 2002  
13 notes, guaranteed the 2003 retrofit debt, 2003 A, B, C notes,  
14 the 2003 D, E, F bonds, and then guaranteed the Covanta loan  
15 in 2007. Now, the city had a \$64 million budget when you were  
16 in your last year, I guess, in 2009. I guess I'm wondering,  
17 sitting there as the finance director, how you would have  
18 communicated with the council and the mayor on this level of  
19 debt on this set of taxpayers. Did it not alarm you? Did you  
20 think that this was risk worth taking by the elected officials  
21 of the city? Or the appointed officials of the city?

22 MR. KROBOTH: At my level, my role was to provide  
23 data. My role was to provide financial information on  
24 performance through 2007 relative to the Resource Recovery  
25 Facility, because the city operated it. My role was to

1 monitor the cash flow so that -- I mean, obviously, the  
2 incinerator has had cash flow issues for as long as I was  
3 employed by the City of Harrisburg, and the General Fund has  
4 had to, many times over those years, advance short-term loans.  
5 So to the extent there were guaranty fees charged, they were  
6 usually used to reimburse the city over those years for those  
7 loans.

8           Of course, as finance director, I was concerned  
9 for the operation, because the operation needed to generate  
10 revenue in order to pay its debt and in order that the city's  
11 General Fund would not be impacted. So from that perspective,  
12 I was concerned. But my role was to provide data for the  
13 financial advisors and the underwriters and bond counsels to  
14 utilize that data and determine how best to proceed forward.

15           Now, when it came to the 2003 financings and the  
16 construction project and the financings to complete the  
17 construction project, my role was very, very minimal. Very  
18 minimal. Of course, we all had concerns about the facility  
19 being successful. In the end, I do recall that the bottom  
20 line to the entire financing structures and financings and  
21 refinancings that took place, that the goal, the end game, if  
22 you will, as I recall was to make sure that we had a well-run,  
23 well-running facility so that in the end, the facility could  
24 be sold to pay off all of the debt that was incurred to get it  
25 to that point. That was the end game. But my input all the

1 way through that was simply to provide data.

2 SENATOR BLAKE: Understood. And I guess this begs  
3 one other question, and I raised this question to the mayor  
4 when he appeared before this panel in the last hearing on  
5 October 4, is did the city -- did the mayor and city council  
6 have sufficient data in order to make the judgment about the  
7 decisions that were being made with respect to these  
8 financings, and to some extent I think there was a reliance  
9 upon your data.

10 MR. KROBOTH: Well, my data, again, was more  
11 performance data. I did not develop any data of a nature for  
12 inclusiveness into any of those, 2003 or subsequent  
13 financings. I would not have known the capacity of a  
14 retrofitted facility. I mean, I was more retrospective,  
15 prospective to the point that we operated the facility, but  
16 after December 31, 2006, it was Covanta's game. I mean, we  
17 had no history under Covanta. The facility got constructed,  
18 delays in construction. Everyone relied very heavily on the  
19 engineers, the financial advisors to interpret the data that  
20 was being developed as the facility was being retrofitted and  
21 came online. So really from the construction until now, I had  
22 very, very limited, except, like I said, for development of  
23 financial data, current financial data and demographics to  
24 support the bond offering documents for the financings.

25 SENATOR BLAKE: Understood. I appreciate that.

1 MR. KROBOTH: You're welcome, sir.

2 SENATOR BLAKE: Again, I think at the end of the  
3 day what the evidence implies is that the financings on this  
4 were in great measure the means by which holes in the  
5 Harrisburg City budget were plugged. I think that's a fair  
6 assessment, looking in retrospect.

7 MR. KROBOTH: There were, that I recall, one big  
8 hole, and that was in the 2003 financing where the city was  
9 reimbursed for loans and advances and an actual \$2.8 million  
10 that was plugged in as operating revenue for the General Fund.  
11 That is the one that I recall.

12 SENATOR BLAKE: Understood. Thank you, Mr.  
13 Kroboth.

14 MR. KROBOTH: You're welcome, sir.

15 CHAIRMAN EICHELBERGER: Mr. Kroboth, weren't you  
16 part of the financial team though that was working through a  
17 lot of these decisions?

18 MR. KROBOTH: I was part of the team, yes.

19 CHAIRMAN EICHELBERGER: Because some of the  
20 correspondence that I've read through e-mails and other memos,  
21 it appears that you did a little bit more than just provide  
22 data. I mean, you offered solutions and made recommendations  
23 to borrow more money or fill holes in the project and how  
24 funds would be handled. Isn't that a little bit more  
25 accurate?

1 MR. KROBOTH: Any recommendation I would have made  
2 would have been based on whatever current financial projection  
3 I would have had. For example, if we were to do a new money  
4 deal or a refinancing deal, of course my recommendation would  
5 be to make the General Fund whole. That was my role. Other  
6 than that, it was decisions that the mayor would make based on  
7 professional team members that provided their input.

8 CHAIRMAN EICHELBERGER: I agree, but I've seen  
9 correspondence to the mayor from you that was made, you know,  
10 where you had made recommendations, and I think that's kind of  
11 the battle that we're hearing up here is that the elected  
12 officials blame the professionals, and you're one of the  
13 professionals, so, you know, the buck's got to stop somewhere.  
14 And we've heard that consistently from the elected folks that  
15 they're relying on professional advice, and you're the first  
16 line of that, I think, to the mayor.

17 MR. KROBOTH: Sure. I mean, as I said, up until  
18 the point where the city operated the incinerator, of course I  
19 had input. But at the point where the facility no longer was  
20 operated by the city, my role was to keep the mayor and  
21 financing team informed about what the financial liabilities  
22 were, operating liabilities of the Resource Recovery Facility.  
23 And we monitored those well into 2008, if memory serves. But  
24 we would put together biweekly reports of all of the 2006  
25 arrearages that the Resource Recovery Facility had, 2007 all

1 the arrearages, and that meant health benefits, it meant  
2 salaries and wages, Covanta Energy bills for operating, debt  
3 service guarantees, and we monitored that closely 2006, 2007,  
4 well into 2008. And it was my responsibility to provide that  
5 information on a very detailed basis, on a biweekly basis, to  
6 the entire team. And that was a primary document used in  
7 determining what level of reimbursement could be supported.

8 Now, that full level of expenditure loans and what  
9 not did not get fully reimbursed, but it was used as the  
10 basis. That is what I provided. Unless you can be more  
11 specific to--

12 CHAIRMAN EICHELBERGER: Well, I have several  
13 examples here, but one would be a memo that you wrote August  
14 9, 2007, to Mayor Reed.

15 MR. KROBOTH: Okay.

16 CHAIRMAN EICHELBERGER: And you talked about  
17 "Political considerations notwithstanding, the situation is  
18 simply this: the incinerator cannot even generate enough  
19 revenue to meet its \$360,125 biweekly obligation to Covanta,  
20 evidenced by the fact that THA still owes Covanta \$3.3  
21 million. There is nothing short of a financial miracle that  
22 would change this circumstance until after the 3rd unit is up  
23 and generating revenue." You conclude by saying, "Finally, to  
24 just not honor the City's guarantee fund, the Harrisburg  
25 Authority's debt service shortfall is ill-advised due to the

1 ramifications of not being able to borrow at affordable  
2 interest rates in future years."

3 MR. KROBOTH: And I recall that memo, and that  
4 memo was based on the current financial position of the  
5 General Fund and the Resource Recovery Facility Fund while we  
6 operated it. That is correct. I recall that. It's my role  
7 to provide my professional recommendation, but that's from an  
8 operating perspective as far as a financial position of the  
9 city and its ability to continue to provide working capital  
10 loans and continue to provide, by August of 2007, we would  
11 have honored our first guaranty draw, if I recall, the June 1  
12 payment, and it looked like we were going to have to do it  
13 again September 1, and it was in that vein that I indicated  
14 that something had to be done, because the city's General Fund  
15 wasn't going to have the cash flow to support continued  
16 operations.

17 So yes, that memo to the mayor was my  
18 recommendation based on the cash flow information that I had  
19 available to me. Of course, he's the CEO of the city. He's  
20 the elected official. He has to make the decision based on  
21 the data that I provide him, and that's what he did.

22 CHAIRMAN EICHELBERGER: I understand that. Who  
23 advised you that the city, or maybe you made that decision on  
24 your own, that the city could recover guaranty payments from  
25 the 2007 financings before creditors or projects, construction

1 dollars that the city took money out?

2 MR. KROBOTH: As the city's finance director I was  
3 aware of this: I was aware that the city was on the hook to  
4 honor its guarantees to the extent the Resource Recovery  
5 Facility could not. And along with that Guaranty Agreement,  
6 which is a formal document, and all of the borrowings, all the  
7 indentures, there's also a reimbursement agreement for each  
8 and every one of those bond issues. My thought processes  
9 centered completely around the reimbursement agreement. I  
10 said, if the city is in a position -- we have to honor these  
11 bonds if the Harrisburg Authority can't, and we actually draw  
12 on the guarantees, then the city is entitled to be reimbursed  
13 pursuant to the reimbursement agreement. And that was my  
14 argument all the way through.

15 CHAIRMAN EICHELBERGER: So can I interrupt you  
16 here?

17 MR. KROBOTH: Sure.

18 CHAIRMAN EICHELBERGER: So there was a  
19 reimbursement agreement that was a Guaranty Agreement?

20 MR. KROBOTH: Yes, Guaranty Agreement and a  
21 reimbursement agreement for each bond issue.

22 CHAIRMAN EICHELBERGER: That was a separate  
23 document from the bond indenture?

24 MR. KROBOTH: That is correct.

25 CHAIRMAN EICHELBERGER: Okay. I'm sorry, I just

1 want to make clear.

2 MR. KROBOTH: And it was based on that logic that  
3 I said, well, okay, we have a situation where the General Fund  
4 is running out of cash, we've done the best we could to honor  
5 the guarantees, but we're projecting, under current  
6 circumstances, that we're not going to be able to continue to  
7 do that unless something changed, and that was my argument at  
8 that point. I said, my logic was, and I'm not speaking as an  
9 attorney, I'm speaking as finance director, we have a formal  
10 reimbursement agreement. Why can't the city be reimbursed?  
11 That was my argument to the mayor. But from there it goes to  
12 the bond counsel, it goes to underwriter's counsel, it goes to  
13 the attorneys to make a decision whether or not that can or  
14 cannot be done.

15 I'm not an attorney, never proposed, never  
16 pretended to be. I just saw a Guaranty Agreement which we  
17 honored, and a reimbursement agreement that we were looking to  
18 be made whole from. And that was my take on it. But from a  
19 legal perspective moving forward, I would -- if bond counsel  
20 or underwriter counsel, either/or, would have thought that  
21 that wasn't appropriate, I couldn't imagine that the 2007  
22 financing notes would have been allowed to occur.

23 CHAIRMAN EICHELBERGER: On a different matter, as  
24 the finance director at that time, how involved were you with  
25 this decision about not providing a performance bond?

1 MR. KROBOTH: I was not even aware that there  
2 wasn't a performance bond until well, well, after project  
3 completion. Because I wasn't -- I was not part of the team,  
4 the construction team, I was not part of the construction  
5 decisions. I was not involved in sizing the retrofit project  
6 size or any of that. I was not aware at all that there wasn't  
7 a performance bond until well into the project financing when  
8 Covanta went belly up, actually. So.

9 SENATOR BLAKE: Just one more.

10 CHAIRMAN EICHELBERGER: Yes. Senator Blake.

11 SENATOR BLAKE: Just one quick follow-up, and if  
12 this is redundant, I apologize, but I'm trying to get clarity  
13 on representations made. In 2007, when that financing was  
14 taking place, there was -- I guess I'm wondering the extent to  
15 which you were either applying as finance director on this  
16 issue of self-liquidation and the certification by the city  
17 that this was self-liquidating debt, did you have a role in  
18 that assessment, or was this completely done by the  
19 independent, third-party advisors?

20 MR. KROBOTH: From a self-liquidating debt  
21 perspective, I would not have been, to my recollection, I  
22 would not have been the individual who opined on that.

23 SENATOR BLAKE: Okay.

24 MR. KROBOTH: No.

25 SENATOR BLAKE: Thank you.

1 MR. KROBOTH: You're welcome.

2 CHAIRMAN EICHELBERGER: Okay, thank you for your  
3 time today.

4 MR. KROBOTH: You're very welcome, Senators.  
5 You're very welcome.

6 CHAIRMAN EICHELBERGER: Next up is Thomas Mealy,  
7 former director of the Harrisburg Authority.

8 (Whereupon, THOMAS MEALY, was duly sworn.)

9 CHAIRMAN EICHELBERGER: Would you like to start?  
10 Do you have any remarks for us?

11 MR. MEALY: Well, I'll just introduce myself. My  
12 name is Thomas Mealy, former Executive Director for the  
13 Harrisburg Authority. I left that position in the fall of  
14 2006. I would ask for your indulgence today. Since I left  
15 Harrisburg, I haven't been involved in any particular  
16 activities. I was not asked to participate in the financial  
17 audit that is before you. There's only been one or two  
18 occasions in the past six years that I've even discussed the  
19 matter of any Harrisburg activities, and those were primarily  
20 in proceedings like today.

21 Well, with that, I'm happy to answer any  
22 questions. I do so with perhaps a failing memory, but I'll do  
23 the best I can do for you today.

24 CHAIRMAN EICHELBERGER: Mike.

25 SENATOR FOLMER: Yes, thank you.

1                   Mr. Mealy, am I correct that you served both as a  
2 city employee and as executive director of the Harrisburg  
3 Authority?

4                   MR. MEALY: Yes, I did.

5                   SENATOR FOLMER: Isn't this a conflict of  
6 interest?

7                   MR. MEALY: It didn't appear to be at the time.  
8 My duties were divided. I worked for the wastewater treatment  
9 facility, was deputy director for the Department of Public  
10 Works, as well as executive director.

11                  SENATOR FOLMER: Who did you report to? Did you  
12 take direction from Mayor Reed?

13                  MR. MEALY: If I was working for the city, I would  
14 report to the director of Department of Public Works, and then  
15 above him would be certainly the mayor, Mayor Reed. For the  
16 Harrisburg Authority, I reported to the board of the  
17 Harrisburg Authority.

18                  SENATOR FOLMER: Now, Mayor Reed told us that the  
19 Special Projects Fund was under the control and direction of  
20 the Authority. Who set up, to the best of your knowledge, who  
21 set up this fund? How was it operated? What was the process  
22 to disburse the moneys from the funds? And was Mayor Reed  
23 directly making the decisions regarding the uses of these  
24 funds?

25                  MR. MEALY: Well, it was set up through board

1 activity. I think the record can be produced that will show  
2 that there's a motion that was by the board that created the  
3 special funds. That motion, I believe, listed the details  
4 that you're asking for, the protocol that would be used. And  
5 the best of my recollection is that requests would come in  
6 from the mayor to fund certain projects. The board would  
7 consider those, through board action would approve those  
8 expenditures, and the Authority would produce the check that  
9 would pay for those items.

10 SENATOR FOLMER: Okay, thank you. Did you read  
11 Buchart Horn's 2003 incinerator study?

12 MR. MEALY: I'm sorry, I don't recall that.

13 SENATOR FOLMER: Okay, because my next portion of  
14 that was how did the Authority and the city come to terms with  
15 Buchart Horn's comment that the project was \$50 million short  
16 in handling existing debt plus new debt?

17 MR. MEALY: Again, I don't recall the report. I  
18 don't deny its existence, I just don't recall.

19 SENATOR FOLMER: Okay. In 2003, there were  
20 questions about potential conflicts of interest from members  
21 of the Authority board, J. Bruce Walter of Rhoads & Sinon sent  
22 you a June 26, 2003, letter about the conflicts of interest.  
23 What did you do with this letter? Did you share this letter  
24 with members of the Authority board, in particular, Fred  
25 Clark, as the forensic audit states he had a conflict of

1 interest?

2 MR. MEALY: Senator, again, I don't recall the  
3 particulars of what you're talking about. Knowing myself the  
4 procedures would be that--

5 SENATOR FOLMER: We have a copy for you that we'll  
6 bring down for you.

7 MR. MEALY: (Witness reviewing document.)

8 SENATOR FOLMER: At the bottom of this it says,  
9 copy, it's handwritten, and then it says--

10 MR. MEALY: Those are my writing. It says copied  
11 to the board members.

12 SENATOR FOLMER: Okay. So Fred Clark did get a  
13 copy?

14 MR. MEALY: Yes. Whoever the board members were  
15 during that period of time.

16 SENATOR FOLMER: Okay. Thank you. How did Barlow  
17 come to the Authority? And let me just amplify that. I'm  
18 especially interested in the board's involvement in the  
19 selection of Barlow as we can find just one public action of  
20 the board, the November 16, 2000, approval of a \$300,000  
21 contract. However, we can find no formal public board  
22 approval for Barlow work that were paid well over \$300,000.  
23 It appears you authorized this additional work and  
24 expenditures in your capacity as executive director. If yes,  
25 on what authority?

1 MR. MEALY: Well, first of all, your first  
2 question, who brought Barlow to the Harrisburg Authority, I  
3 believe that would be Andy Giorgione and Dan Lispi are the  
4 ones that connected that. In regard to the actual  
5 expenditures, I, sir, do not have authority to make payments  
6 of any amount unless it has been approved by the board, either  
7 through a budget or through a requisition process.

8 SENATOR FOLMER: So you're saying that the  
9 expenses were approved by the board, and that's where you got  
10 your authority to do so?

11 MR. MEALY: Correct.

12 SENATOR FOLMER: Okay. Was that made public?

13 MR. MEALY: I don't recall the particulars. I'm  
14 sorry.

15 SENATOR FOLMER: Okay. How do you explain the  
16 lack of a performance bond in 2003? I mean, doesn't State law  
17 require performance bonds for construction projects?

18 MR. MEALY: Yes, it does. That was a point of  
19 contention among the professionals. We relied upon the  
20 professionals to make a determination that one was not  
21 required in this particular situation, and I'm not the  
22 attorney that made those decisions, but we relied upon their  
23 judgment.

24 SENATOR FOLMER: Who in particular?

25 MR. MEALY: It was Andy Giorgione and Rhoads &

1 Sinon as our solicitor.

2 SENATOR FOLMER: Did the Harrisburg Authority have  
3 other projects for which it didn't require a performance bond,  
4 and who advised you that a performance bond wasn't necessary  
5 for this project?

6 MR. MEALY: I believe, to the best of my  
7 knowledge, this was the only project we did not have a  
8 performance bond.

9 SENATOR FOLMER: Did you believe any of the  
10 Authority's bonds were self-liquidating? If not, did you  
11 share this with anyone?

12 MR. MEALY: Are any of the bonds self-liquidating?  
13 I believed that all our bonds were self-liquidating. The  
14 Harrisburg Authority not only dealt with the Resource Recovery  
15 Facility, which is what we're here for today, but also was the  
16 owner of the Harrisburg water as well as wastewater systems.

17 SENATOR FOLMER: Okay. Then who drafted the bond  
18 documents? Did you discuss any concerns with them as whether  
19 the bonds were truly self-liquidating, and did you believe  
20 revenues would exceed expenditures?

21 MR. MEALY: We relied upon professionals in  
22 putting those documents together.

23 SENATOR FOLMER: Anyone in particular?

24 MR. MEALY: Well, you had the financial advisor,  
25 you had Dan Lispi, who was at one point a city employee but

1 later a consultant to the Authority.

2 SENATOR FOLMER: Okay.

3 MR. MEALY: You had Andy Giorgione, who was  
4 ultimately involved in many of the decisionmakings. You had  
5 bond counsel, and other professionals.

6 SENATOR FOLMER: And my last question for you,  
7 sir, and thank you for your patience, what was it like to run  
8 the Harrisburg Authority while these financial transactions  
9 were being undertaken? Did you feel you were in control? Did  
10 you feel the board was in control? And why did you leave?

11 MR. MEALY: Interesting. Let me answer the last  
12 one first. Maybe that gives you the best explanation.

13 SENATOR FOLMER: Sure.

14 MR. MEALY: I did not feel that the Authority was  
15 going in a direction that was suitable to my beliefs and  
16 understanding. Rather than continue to battle and fight, and  
17 for the benefit of my health and well-being, I chose to leave.

18 SENATOR FOLMER: Okay. And did you feel like you  
19 were in control?

20 MR. MEALY: No.

21 SENATOR FOLMER: And did you feel the board was in  
22 control? And if you didn't feel like the board was in  
23 control, who was in control? Because we're just trying to get  
24 down to the--

25 MR. MEALY: Technically, you could say that the

1 board was in control because the board has to approve the  
2 appropriate motions and so forth, but truly, there was --  
3 there was discussions with the city, between the city, the  
4 professional team, and the Harrisburg Authority board.

5 SENATOR FOLMER: Okay. Thank you. I'm through.  
6 Thank you, Mr. Mealy.

7 CHAIRMAN EICHELBERGER: Thank you, Senator.  
8 Chairman Blake.

9 SENATOR BLAKE: Thank you, Mr. Mealy. And I think  
10 Senator Folmer has probably addressed many of the concerns  
11 that I had. In my prior life, I served as an executive  
12 director of a redevelopment authority and used to have to go  
13 before my board and there was considerable dependence on me  
14 with respect to the votes that they had to take, and on the  
15 basis of your testimony here, I think that there were an awful  
16 lot of forces at work in addition to your own as executive  
17 director of the Authority that influenced the final outcome of  
18 the votes taken by the board. Is that a fair assessment?

19 MR. MEALY: Yes.

20 SENATOR BLAKE: Tell me a little bit -- I know  
21 that you yourself were on the record, and it was actually  
22 during the CIT trial that you testified you had some concerns  
23 about the aspects of the incinerator transaction, red flags,  
24 as you said. Could you elaborate what your concerns were?

25 MR. MEALY: Well, I wasn't comfortable with the

1 arrangements with that finance. They were not typical or  
2 customary to an authority. I was trying to push -- if  
3 additional moneys were required for the project, I would  
4 prefer to go the more conventional route with the bond issue  
5 and going through much like the other bonds of the Harrisburg  
6 Authority, as opposed to the manner in which the CIT loan was  
7 presented.

8 SENATOR BLAKE: I see. The issue of guaranty fees  
9 and all the other transactions done under your tenure at the  
10 Authority, was this typical of the bond issues that were  
11 conducted by the Authority to have these kinds of guaranty  
12 fees going to the -- what I would call the elected authorities  
13 that were providing those guarantees?

14 MR. MEALY: To the best of my recall, it was not  
15 uncommon for the Resource Recovery bonds to have guaranty fees  
16 in them.

17 SENATOR BLAKE: But only those?

18 MR. MEALY: That's why I say to the best of my  
19 recollection. I don't recall whether there was any associated  
20 with water or wastewater.

21 SENATOR BLAKE: Senator Folmer already raised this  
22 issue regarding Barlow and there was no competitive  
23 procurement process, there was no process to allow an  
24 objective opportunity for anyone else to come into the  
25 picture. The issues that evolved in dealing with Barlow under

1 your tenure had been evolving from one role to another role to  
2 another role. At any point did you express concerns to the  
3 board about, I guess, the all-encompassing nature of that  
4 engagement with Barlow?

5 MR. MEALY: I think I can address that in two  
6 statements. First, I believe that Barlow as an organization  
7 underestimated the complexity of the project when it bid, and  
8 this is the benefit of hindsight. During the course of the  
9 construction of the project, I know I voiced my concerns  
10 regarding their ability to manage the project.

11 SENATOR BLAKE: Understood. I think you've  
12 already made representations that there was an awful lot of  
13 external consultation regarding this issue of self-liquidating  
14 debt. The bond issued in early 2003 restructured the debt.  
15 Was there a discussion about whether or not these bonds could  
16 be considered self-liquidating, since at that point the  
17 facility had not been operating, or it was certainly operating  
18 at a greatly reduced capacity. Was there dialogue among board  
19 members about the representation that was going to be made to  
20 DCED about the self-liquidating nature of this debt?

21 MR. MEALY: I don't recall.

22 SENATOR BLAKE: Mr. Chairman.

23 CHAIRMAN EICHELBERGER: Thank you.

24 So as a general follow-up to some of this, was the  
25 mayor calling the shots with the Authority?

1 MR. MEALY: The mayor would meet on occasion with  
2 the members of the board to have certain discussions. So  
3 there was certain dialogs that would take place. Certainly,  
4 Mayor had certain influences, but ultimately the board had to  
5 make -- take the appropriate votes.

6 CHAIRMAN EICHELBERGER: Did he communicate things  
7 through you? Because when we had Mr. Clark here, he said all  
8 information came to the board through you.

9 MR. MEALY: I don't think that's a fair  
10 assessment. Oftentimes board members would attend the same  
11 meetings that I attended with the mayor. In fact, I would  
12 have to say there was very few meetings that we had with the  
13 mayor that I was present that a board member, the chairman or  
14 some other representative of the board, would be in that room.

15 CHAIRMAN EICHELBERGER: How about a percentage  
16 here then? How influential do you think the mayor was with  
17 the Authority, on a scale of 1 to 10, let's say?

18 MR. MEALY: Oh, I think he had a great deal of  
19 influence onto the board of the Harrisburg Authority.

20 CHAIRMAN EICHELBERGER: 7 or 8, something like  
21 that?

22 MR. MEALY: Yes.

23 CHAIRMAN EICHELBERGER: Do you know where the  
24 statutory authority came from to develop this fund that was in  
25 the Authority's -- was in the Authority's control but used by

1 the mayor?

2 MR. MEALY: Special Projects Fund, are you  
3 referring to?

4 CHAIRMAN EICHELBERGER: Yeah.

5 MR. MEALY: I don't recall the statutory  
6 provisions that were there, but it was -- I'm certain that it  
7 was investigated by our solicitor at the time of its creation.  
8 I would point this board to go back to the motions that were  
9 adopted by the Harrisburg Authority at the time of the  
10 creation of that. Perhaps that would lead to any further  
11 records that may be on file with the Harrisburg Authority.

12 CHAIRMAN EICHELBERGER: To follow up on a question  
13 Senator Folmer asked about with the Rhoads & Sinon legal  
14 opinion that you were brought, my immediate concern when I  
15 read that, and we had Mr. Clark here at the last hearing and I  
16 asked him directly about that, he said that he had legal  
17 advice that said it was okay to do that. Have you seen any  
18 legal advice that said it was okay to vote that way, to vote  
19 on that contract with his affiliation with the Reynolds  
20 Company?

21 MR. MEALY: I apologize. I don't recall. I don't  
22 know one way or another.

23 CHAIRMAN EICHELBERGER: If the secondary issue is  
24 given that opinion, if Mr. Clark did what he did, how was the  
25 Authority permitted to vote on this? I mean, if he voted on

1 it, that was one issue. The second issue is if the legal  
2 opinion says that a contract would be null and void if it was  
3 entered into as long as a member of the Authority was part of  
4 that, was in that position of conflict, why would the  
5 Authority go ahead then and make that decision, knowing that  
6 it was the wrong thing to do?

7 MR. MEALY: I can't answer specifically your  
8 question, but I would say that if there was a conflict, I  
9 would expect that that conflict would have been exposed by the  
10 city's solicitor. Or excuse me, the Authority's solicitor.

11 CHAIRMAN EICHELBERGER: The Authority's solicitor.  
12 Okay.

13 I guess one other quick item here is Mayor Reed  
14 wrote in a personal note that he directed to ask somebody if  
15 you had money hidden elsewhere. Do you know what he would  
16 have been talking about?

17 MR. MEALY: Could you repeat that, please?

18 CHAIRMAN EICHELBERGER: Mayor Reed wrote in a  
19 personal note that he directed someone to ask you if you had  
20 money hidden somewhere.

21 (Document handed to witness. Witness reviewing  
22 document.)

23 MR. MEALY: Okay, well, I've never seen this  
24 document before. The mayor always accused me of trying to  
25 hide money from him. It was kind of a joke, but in some

1 places it was a reality. The only place that I know this  
2 would apply is there were certain bond issues that the  
3 Authority undertook -- I apologize for not knowing the precise  
4 name of the transactions, but had to deal with variable rates  
5 -- and the Harrisburg Authority, because they were variable  
6 rate bond issues, understood the risk that they were getting  
7 involved with. So the Authority created a pool of money to  
8 use only for the payment of debt should rate increases  
9 increase above what would be budgeted during a normal period  
10 of time. That's the only tie I can make to this comment. And  
11 the board took certain action on that at a meeting, and the  
12 money was restricted only to be used to make debt service  
13 payments.

14 CHAIRMAN EICHELBERGER: Senator Folmer had another  
15 question.

16 SENATOR FOLMER: Just one follow-up question.  
17 Thank you, Mr. Mealy. It's my understanding that Dan Lispi  
18 also served for a period of time as a city employee while also  
19 working for the Harrisburg Authority. Is that true?

20 MR. MEALY: Not in -- my recollection is no in the  
21 way that you described it. Dan Lispi was an employee of the  
22 City of Harrisburg. He worked heavily -- was heavily involved  
23 with the Resource Recovery Facility and was advisor to the  
24 Harrisburg Authority. When he left the employment of the City  
25 of Harrisburg, started his own consulting practices, then he

1 became a hiree of the Harrisburg Authority.

2 SENATOR FOLMER: Did you support Mr. Lispi's 2004  
3 hiring? If not, how did he get hired?

4 MR. MEALY: I don't recall the details of the  
5 hiring and how it came down. Mr. Lispi was perhaps -- he was  
6 one individual that knew the most about that particular  
7 facility.

8 SENATOR FOLMER: Did you support his hiring?

9 MR. MEALY: I can't say I supported it, but I  
10 can't say I opposed it as well.

11 SENATOR FOLMER: Okay.

12 SENATOR BLAKE: Mr. Mealy, thank you again for  
13 your time today. Just looking back on some other research  
14 that my staff did, and I'm trying to get a handle on the city  
15 council's Special Projects Fund. There have been a couple of  
16 correspondences back and forth. Can you talk a little bit  
17 about that? This was done I think by resolution. We heard in  
18 previous testimony they set up essentially a fund that was  
19 built and managed by the finance director with respect to city  
20 council's actions and the distribution of dollars, and I guess  
21 I'm just trying to get a look at your understanding of the  
22 transactions between the Authority and the city vis-a-vis the  
23 city council Special Projects Fund. Could you talk a little  
24 bit about your memory of those transactions?

25 MR. MEALY: I don't think I can. You're making

1 reference to city council's special fund?

2 SENATOR BLAKE: That's correct, but it was  
3 Authority proceeds. Am I incorrect on that?

4 MR. MEALY: It may have been through -- I'm not  
5 sure how the funds got to the city, but I can't speak on  
6 behalf of the city and the city's Special Projects Fund and  
7 how those funds were used. I did not play a role in that.

8 SENATOR BLAKE: Okay, thank you, Mr. Chairman.

9 CHAIRMAN EICHELBERGER: I had a follow-up to one  
10 of Senator Folmer's questions originally. He talked about the  
11 competitive bidding, I believe. Didn't you bring that up,  
12 Mike? How is it -- how did that come about that there wasn't  
13 competitive bidding for that project and that Barlow was just  
14 awarded the project? What was the discussion like at the  
15 time?

16 MR. MEALY: I believe professional services were  
17 probably introduced into the discussion. But beyond that, I  
18 can't state here today how it developed from there.

19 CHAIRMAN EICHELBERGER: You don't recall whether  
20 there was a breakdown of the definition of professional  
21 services between engineering and the contract and the  
22 construction portion?

23 MR. MEALY: I believe we relied upon the  
24 professionals to make that determination, and I believe they  
25 would be the more appropriate party to ask.

1 CHAIRMAN EICHELBERGER: Okay.

2 We're a little ahead of schedule. We thank you  
3 very much for your time.

4 We would ask if Bruce Barnes is here? He is. If  
5 you wouldn't mind coming up a little early, we'll probably  
6 have an early lunch break. That will compensate for the late  
7 lunch break we had at the first day of hearings.

8 (Whereupon, BRUCE BARNES, was duly sworn.)

9 CHAIRMAN EICHELBERGER: Do you have any remarks  
10 for us before we pepper you with questions?

11 MR. BARNES: Well, maybe a little background of  
12 where I came from, how I got here. I was finance director for  
13 the City of Harrisburg from 1980 to 1985. I see somebody  
14 checking a date there. It's -- I was hired by Paul E.  
15 Doutrich, Jr., when he was mayor. So I'd been there for a  
16 number of years, two years before the mayor took office, Mayor  
17 Reed took office. I spent five years there.

18 After that, I went to work for Milt Lopus. Had a  
19 firm called Financial Management Services, which later became  
20 -- was acquired by or merged with, I like to say, Public  
21 Financial Management, and where I stayed for another 10 years,  
22 until I left there to go back to work for Milt Lopus  
23 Associates. Milt Lopus was a former Secretary of Revenue who  
24 had done financial advisory work back in the '80s. Even when  
25 I was finance director, he served as the financial advisor to

1 the Harrisburg Authority. I went to work for him and I  
2 assumed some of those jobs relating to the Authority. I'm  
3 basically a numbers guy.

4 In 2001, Milt suffered a series of strokes and  
5 retired. I took over the business. I started a separate  
6 company, it is Excel Financial Advisors, formerly doing  
7 business as Milt Lopus Associates. So I worked for the  
8 Authority in 2003 through 2007, at which time I was let go by  
9 the Authority and haven't really had much to do with anything  
10 at the city for the past six or seven years now. I'm sorry,  
11 about five years, I guess it's been, since I left the  
12 Authority, a little over five years.

13 I'll gladly answer any questions you have about  
14 anything. It's a big expanse of time, but I'll do my best to  
15 answer your questions.

16 CHAIRMAN EICHELBERGER: Thank you.

17 Senator Folmer, do you want to start?

18 SENATOR FOLMER: I have a few questions, sir. Mr.  
19 Barnes, thank you very much for being here.

20 Your name and your firm are listed in the very  
21 front of the forensic audit which notes your firm was the  
22 financial advisor to the Authority during the period of 1990  
23 through the summer of 2007, and you were previously employed  
24 as a staff person at the city under Mayor Reed. As this gives  
25 you a unique perspective on many of the financial deals of the

1 city and the Authority, describe the Authority's Special  
2 Projects Fund. Who set up the fund? How was it operated?  
3 What was the money used for? Did Mayor Reed directly make the  
4 decisions regarding the use of this fund?

5 MR. BARNES: As financial advisor to the  
6 Authority, my involvement with them was mainly transaction  
7 based. I learned more about the Special Projects Fund through  
8 the forensic audit and the discussion here today than I knew  
9 about it then. I didn't really have any type of involvement  
10 with the Special Projects Fund.

11 SENATOR FOLMER: Okay. Did Mayor Reed control the  
12 Authority board and staff?

13 MR. BARNES: The Authority board was appointed by  
14 the mayor and confirmed by council, until that was litigated I  
15 believe in 2006. The mayor was certainly a strong mayor in  
16 the city, made a lot of decisions and recommendations to the  
17 board, I'm sure. But the board was their own entity. I  
18 attended almost every board meeting, heard a lot of the  
19 discussion in public of most of the matters that are being  
20 discussed today, and the board was the financial say in what  
21 went on there.

22 SENATOR FOLMER: Did Mayor Reed determine which  
23 finance professionals would be hired by the Authority? For  
24 instance, did James Losty provide financial advice to the  
25 Authority and the city regarding the structuring of the

1 incinerator bonds and swaps?

2 MR. BARNES: Yes, the mayor appointed officials to  
3 the financing team through the various boards and councils,  
4 but I would say, yeah, most of the decisions and  
5 recommendations were made by the board -- most of the  
6 recommendations were made by the mayor, and most of the  
7 recommendations were adopted by the board.

8 SENATOR FOLMER: Mr. Barnes, did you believe it  
9 was a good idea for the Authority to enter into the  
10 incinerator swaps? And how did the Authority choose RBC as  
11 the counterparty to do the swaps, and how much money did your  
12 firm make on the swaps?

13 MR. BARNES: Which swaps are you specifically  
14 talking about? We've done a lot of swaps for the city. The  
15 city was one of the first entities--

16 SENATOR FOLMER: Let's narrow it down to the 2003.

17 MR. BARNES: To be honest with you, Senator, I  
18 mean, it's been many years since I've, you know, looked at  
19 that. It was 10 years ago, 9 years ago. The swaps that we  
20 did then I'm sure I believed in the process of the swaps and  
21 the outcome of the swaps. A couple of the swaps that we did  
22 were very favorable to the city. And swaps are not  
23 necessarily as bad, even though they have the bad reputation  
24 they have. One of the swaps fixed the cost to the city at  
25 3.35 percent. That's a successful financing rate in anybody's

1 book.

2 SENATOR FOLMER: What do you remember about the  
3 swaps?

4 MR. BARNES: What do I remember about the swaps?  
5 I remember that we did the swaps--

6 SENATOR FOLMER: Were they unique? I mean, was  
7 it--

8 MR. BARNES: Some of the swaps were unique. Most  
9 of the swaps that we did and when we did them were done for a  
10 reason. Some of the swaps were done to generate additional  
11 funds for the project because they desperately needed cash to  
12 finish the project. Some of the swaps were done short-term  
13 gain for long-term pain. I don't necessarily have the  
14 approval right. Again, I gave financial advice to the  
15 Authority. I didn't make the financial decisions. The swaps  
16 that were done later on, and particularly unwinding some of  
17 them, were to raise capital. And I think most of the swaps we  
18 had were reasonable at the time under the conditions that we  
19 had.

20 SENATOR FOLMER: Have you seen similar other ones,  
21 other projects that did similar swaps?

22 MR. BARNES: Yes.

23 SENATOR FOLMER: Okay. Is it unique?

24 MR. BARNES: No. Swaps were fairly widely used.  
25 There were a number of swaps that were done around that

1 period. As the market permitted, it was beneficial. You  
2 could actually borrow money at a variable rate and enter into  
3 a swap at a fixed rate that was considerably below where the  
4 market was for conventional financings. A lot of those swaps  
5 were advantageous for that purpose.

6 SENATOR FOLMER: And as a second portion of my  
7 questions about the swaps, I don't know, if you answered this,  
8 I apologize, but I don't think I heard the answer. How much  
9 money did your firm make on the swaps?

10 MR. BARNES: I don't recall that my firm, the fee  
11 was broken out, or what it was.

12 SENATOR FOLMER: Is this information available?

13 MR. BARNES: I can certainly try to find it for  
14 you. The information that I was paid for the swaps would have  
15 been in the interest rate management plan adopted by the city  
16 that was done at the time. So yes, that information is  
17 available in the interest rate management plan after the  
18 amendment of the Local Unit Debt Act that permitted swaps in  
19 Pennsylvania.

20 SENATOR FOLMER: Would you be able to get us that  
21 information?

22 MR. BARNES: Yes.

23 SENATOR FOLMER: Okay, thank you. Now, my last  
24 question. Earlier today I asked Commissioner Haste about the  
25 guaranty fees the county charged, and he said PFM said such

1 fees were not uncommon. Would you comment on such fees?

2 MR. BARNES: It was not unusual for the city to  
3 charge a guaranty fee for a number of authorities, not just  
4 the Harrisburg Authority, but the Harrisburg Parking Authority  
5 also paid guaranty fees for the city. But I don't recall  
6 seeing it with any of my clients outside of the city.

7 SENATOR FOLMER: Okay, you answered that. I was  
8 going to ask that, did it extend outside the city.

9 Thank you. I'm through with my questions.

10 CHAIRMAN EICHELBERGER: Thank you.

11 Senator Blake.

12 SENATOR BLAKE: Thank you, Mr. Chairman.

13 Thank you, Mr. Barnes, for your testimony and your  
14 presence here today. Senator Folmer again talked about a few  
15 of the issues that I was going to bring up, but there's really  
16 only two things that I want to get a handle on in your  
17 capacity as financial advisor to the Authority. I guess there  
18 are some pretty powerful assertions made in the forensic  
19 audit, and some of those assertions, you know, on their own  
20 may have merit. I think others might, under additional  
21 scrutiny, and at least on the basis of some of the responses I  
22 saw from legal counsel for the county, there are some things  
23 that I think require a deeper look.

24 But two things. The issue of I guess whether or  
25 not you in your representation of the Authority or as a

1 financial advisor to the Authority attempted to vet or  
2 challenge the projections of Barlow. There doesn't seem to be  
3 anything that kind of questioned the validity of those  
4 representations, and do you recall, I understand you're going  
5 back a long time, but do you recall looking at those and  
6 having reservation about those reputations upon which these  
7 bond issues were based?

8 MR. BARNES: You brought up a number of things  
9 there, the one being the audit that was done. My involvement  
10 with the audit consisted of about an hour of sitting down with  
11 two of the people and sitting in my office and talking about  
12 it. You know, I offered to get more information when they  
13 wanted it and never heard about it again. It's one of those  
14 things that, you know, you sit back and look at and see that  
15 it is, in fact, lacking, the audit. And I realize that the  
16 Authority had limited resources to undertake something like  
17 this, and it was very complicated.

18 And as far as the self-liquidating debt  
19 certificate issued by the engineer, that's what's called for  
20 in the Local Government Unit Debt Act. I would say I spent a  
21 lot of time reviewing revenues, revenue projections, assessing  
22 them with the Authority. At one point we had the information  
23 from Barlow that Barlow is generating, and then we had the  
24 Authority's numbers, and then we had Covanta's numbers, and we  
25 would try to come to a good, you know, balance of it.

1           In 2003, there was really very little to do. It  
2 was all based on projections that are done by the engineer and  
3 how it fit into the financing. We provided financing numbers,  
4 projections, debt service costs that we projected to do, those  
5 self-liquidating debt certificates. The underwriter supplied,  
6 you know, information that the engineer put into a certificate  
7 and put together. I am not an engineer. However, did I  
8 question them? Yes, I did question them over the years. At  
9 that time, I also recommended to city council that they get a  
10 second opinion, and they did so. The Buchart Horn report was  
11 done. I never actually got to see the Buchart Horn report  
12 that was done. And the county also had, you know, their own  
13 group of professionals look at it.

14           The self-liquidating debt certificate is something  
15 that was included and done, but, you know, I really had very  
16 little to say about it.

17           SENATOR BLAKE: Understood. Thank you, Mr.  
18 Barnes.

19           The last point I want to bring up, and you've  
20 already addressed this in your testimony here regarding the  
21 nature of these synthetic variable rates, the issue of the  
22 swaps and the issue of they weren't uncommon during this  
23 period of time as a means to deal with interest rate risk or  
24 to raise capital, to your point. If you can bear with me,  
25 there's two things that I'm trying to raise. There's an issue

1 in the forensic audit, and I'm just going to, if you'll bear  
2 with me, I'm going to say what it says.

3           It says, "Taken individually, many of the swaps do  
4 not make sense as a means of managing interest costs and/or  
5 protecting against rising interest rates. Collectively, the  
6 number of swap transactions alone raises questions regarding  
7 their relationship to a plan to manage interest rate risk or  
8 costs. Further, some of the swaps were inconsistent with each  
9 other and with principles of the interest rate management.  
10 One swap reversed another that had just been entered into a  
11 short time earlier. In several instances, it appears the  
12 professional advisors were encouraging the Authority to take  
13 actions aimed primarily at raising short-term funds  
14 irrespective of whether the transaction was prudent...."

15           Listen, those are harsh assertions, and I think  
16 that you've already said that there was an issue of short-term  
17 obligation to do something that was important and of merit at  
18 least on the basis of there were independent reviews that were  
19 being relied upon for the Authority's decisions, but in  
20 retrospect, you look back at these and you find out, and even  
21 in the representations made by Mette Evans for the county,  
22 that some of these transactions should have been dealt with  
23 differently by the Authority. And I guess I'm trying to get a  
24 handle on this issue of what advice was offered to the  
25 Authority about these transactions, and if you can speak a

1 little bit in your memory about what that was like for the  
2 board, making decisions on these complex transactions.

3 MR. BARNES: Well, there were a number of swaps  
4 that were done by the city previous to this swap. They had  
5 done some swaps of some general obligation debt. The  
6 Harrisburg Authority, the Harrisburg Parking Authority had  
7 also done a number of swaps. The structure that was put  
8 together for the incinerator specifically when we went from a  
9 fixed rate to a variable rate, and then back into a fixed  
10 rate, was primarily engineered and structured by RBC. The --  
11 a lot of times it's a marketing call of what can get you the  
12 lowest effective rate.

13 2002-2003 was a time of dropping rates, and when  
14 we went with the fixed rate -- we went with a fixed rate that  
15 was swapped to variable because it generated additional funds  
16 at the time and lowered the true interest costs to the  
17 Authority on the project. That variable rate financing was  
18 later fixed when the market conditions came down and we could  
19 lock in some of the variable rate debt at a fixed rate. And  
20 as I recall, the fixed rate was 3.35 percent that we did.

21 After the project blew apart, blew apart, the  
22 engineering didn't meet the requirements of the financing, the  
23 engineering didn't come true. It was -- the implementation of  
24 that plant was disastrous -- of the project was disastrous.  
25 The Authority was aware that they needed an additional \$12

1 million to do projects. They needed \$5 million immediately to  
2 pay off some of the contractors that were involved.

3 Terminating part of that swap and eliminating that cap of 3.3,  
4 that fixed rate of 3.35 percent generated somewhere in the  
5 area of \$4 million. Even though it wasn't a good idea to do,  
6 because I liked the 3.35 percent cap, it was up to the  
7 Authority to decide whether they wanted the \$4 million  
8 instead. And they needed the \$4 million instead,  
9 unfortunately.

10 SENATOR BLAKE: Understood. You mentioned, "The  
11 interest rate management plan entered into in connection with  
12 the 2003 swaps and caps stated: 'The Authority shall review  
13 the long-term implications associated with entering into such  
14 Agreements....'" So again, I think maybe what you've just  
15 represented is part of that process in terms of their need for  
16 capital and what instruments they held, what contracts that  
17 they were obliged to honor.

18 MR. BARNES: Yes.

19 SENATOR BLAKE: Thank you, Mr. Barnes. I  
20 appreciate your testimony.

21 CHAIRMAN EICHELBERGER: Senator Folmer had a  
22 follow-up to one of your questions, Senator Blake.

23 SENATOR FOLMER: On your previous comments, and  
24 try to bear with me on this, because I think the point of this  
25 hearing is that so far what we've heard is that the elected

1 officials relied on the professionals, and I think what you're  
2 saying is that some of the professionals didn't come through,  
3 and my question to you is this, is that you're saying that the  
4 engineering firms that did the certification, and the county  
5 did one as well, who was the engineering firm? See, we're  
6 trying to get to those professionals that would be held  
7 responsible. Because here we have all this debt, and so far  
8 through this hearing and the previous hearing, I'm still  
9 hearing the same thing is that there's nobody to blame, but we  
10 have all this debt. And we're just trying to get down to it.

11 MR. BARNES: My involvement is financing the  
12 project. And I know there's a lot of people that will look  
13 back now and say, you know, the project financing was not  
14 good. The project financing was a very good financing. They  
15 had a very successful financing. The problem was with the  
16 implementation of the project, the actual management of the  
17 construction that was done at the incinerator. The estimates  
18 that were done, the cost estimates were done--

19 SENATOR FOLMER: But who?

20 MR. BARNES: Barlow.

21 SENATOR FOLMER: Okay.

22 MR. BARNES: I mean, that's my opinion.

23 SENATOR FOLMER: Okay.

24 MR. BARNES: Of what went wrong.

25 SENATOR FOLMER: Okay. All right.

1           CHAIRMAN EICHELBERGER: Mr. Barnes, you had said  
2 that the swaps weren't unique particularly during that period,  
3 but aren't six in two years somewhat unique?

4           MR. BARNES: Again, it was, you know, a very  
5 volatile time in the market, and we were facing a project that  
6 needed some changes to be made. Incidentally, I mean, one of  
7 the things that, you know, coming here, there were other  
8 ideas. You know, the Harrisburg Authority didn't grab every  
9 idea that came along and run with it. There was a number of  
10 them that were done, some people brought up -- it brought up  
11 in the forensic audit mentions the off-market swap that was a  
12 recommendation and killed. You know, there were other things  
13 that the city and the Authority and the county looked at, and,  
14 you know, did not do. Six swaps in two years?

15           CHAIRMAN EICHELBERGER: Right.

16           MR. BARNES: For three sets of bonds, the A, B,  
17 Cs, being one in my-- the D, which is the retrofit, and the E  
18 and the Fs. Most of the swaps had to do with the series D  
19 bonds, and that was the project funds. Six swaps in two years  
20 is unusual, yes.

21           CHAIRMAN EICHELBERGER: Well, you know, to kind of  
22 strengthen what Senator Folmer asked, I mean, I talked to a  
23 person during this hearing, the time we've been working on  
24 these hearings, and he said to me, with all these people  
25 involved, these deals just didn't pass the smell test. And

1 it's hard to believe that with all the people involved in this  
2 process, all the professional people, all the elected  
3 officials, that somebody just didn't say, you know, this isn't  
4 a good deal. We have to cut our losses and stop. And I don't  
5 know why yourself, the attorneys involved, the solicitors, the  
6 management, people advising the mayor, the Authority members  
7 and so on, somebody didn't say, you know, this stuff just  
8 doesn't add up.

9           And that's part of the problem we have with all  
10 these certifications that went to the State, to DCED, is that  
11 everybody signed off on everything, everybody said everything  
12 was fine. And it's hard for me to believe that somebody  
13 didn't recognize that these were very poorly structured deals,  
14 that this was a house of cards.

15           When you look at that chart that's on the tripod  
16 over here you see that this project never cash-flowed, ever.  
17 I mean, how do you justify that you can go ahead and continue  
18 to borrow on something like that? And, you know, I have a  
19 five-page memo from you to the Authority, and Mayor Reed was  
20 copied on it, you explained -- this was dated May 29, 2007 --  
21 you explained a lot of information about money and refinancing  
22 things, the retrofit project, where they were at the time, the  
23 CIT agreement, and so on. You had one paragraph in here on  
24 swaps, out of that five pages, and it was pretty much an  
25 explanatory paragraph. You cautioned in the paragraph about

1 some of the structure of short-term debt issue, which was  
2 their other alternative, and it made it seem to me, as reading  
3 it as a layman, that this was relatively a harmless avenue for  
4 them to pursue, another swap deal.

5 So, I mean, I'm just concerned that people in your  
6 position weren't being honest with their clients and with the  
7 public through this process. Can you respond to that?

8 MR. BARNES: Well, the document you're referring  
9 to was a study that was requested to do, for me to come up  
10 with an idea. When I opposed the off-market swap that they  
11 wanted to do to generate additional money, and they said, you  
12 know, what else can we do? The one thing about, you know, any  
13 good project, before you take shots at the existing plan, you  
14 ought to come up with an alternative plan, and this was a way  
15 to come up with alternative plans.

16 I am not a -- I'm a very conservative person. By  
17 2007, when that was written, the swap market had basically  
18 deteriorated, in my mind, that the opportunities of, you know,  
19 2001 to 2003, you know, were no longer there. That the swap  
20 market had become, you know, befuddled. I think the paragraph  
21 in there, and the meeting and discussion of different plans  
22 brought that out a little bit more, that we weren't looking at  
23 doing swaps because the market had softened.

24 Again, the financing we had in place, we did the  
25 best we could with what we had at the time. The problem, and

1 this is where it fell apart, is in the construction. If you  
2 look at those revenues and those spreads right now, you'll see  
3 that the plant is now generating the revenues that it was  
4 projected to have in their report.

5 One of the big problems has been in the expenses  
6 and the management of the expenses of the plan. And, you  
7 know, the Covanta contract, I don't know how that worked.  
8 That was after my time. When all this started falling apart  
9 in 2007, I had some serious concerns, and as a result of that,  
10 I'm no longer employed by the Harrisburg Authority. We took  
11 it that far.

12 CHAIRMAN EICHELBERGER: When you started your  
13 answer, you had said about them considering another swap, and  
14 you made it seem like somebody else was proposing that. You  
15 were the financial advisor at the time, right? I mean, who  
16 else would have been proposing swaps?

17 MR. BARNES: Oh, anybody and everybody, you know,  
18 that read about this in the paper of what was going on, they  
19 would call up, they would bring a recommendation, they would  
20 send information in to the Authority or to the mayor, or to  
21 counsel, and say, look, I have this great idea, you should do  
22 this, or you should do that. Part of what I did is, you know,  
23 they sent it over to me and said, look at this. What do you  
24 think of this idea? There were a lot more of them that got  
25 gonged, for lack of a better term. And when you talk to these

1 people and you say to them, you know, we've considered it. We  
2 will take it into account. But most of them got killed. Most  
3 of them were deep-sixed.

4 CHAIRMAN EICHELBERGER: Senator Folmer has a  
5 follow-up here.

6 SENATOR FOLMER: I'm hearing this again, and  
7 please forgive me, Mr. Barnes, but we have all these people  
8 running around, you did the best that you could, everybody and  
9 anybody was suggesting to do these bonds. My question is, who  
10 was driving this train? Who's the final -- who was in charge?  
11 I mean, who was driving the train?

12 MR. BARNES: Well, ultimately, it's the Harrisburg  
13 Authority board, you know, who had responsibility. Again,  
14 it's a civic responsibility. I'm a member of a municipal  
15 authority where I live. It's a burden sometimes, and I'm not  
16 faulting them of where they decided.

17 One thing you have to remember is the incinerator,  
18 when they undertook the retrofit project, was \$100 million in  
19 debt. The alternative, and one of the alternatives that we  
20 did look at, despite what they said, well, they did mention in  
21 the audit that, you know, we did look at it, was the  
22 possibility of collapsing the debt that they have right now;  
23 not opening the plant. Mothballing it. Okay, not continuing.  
24 That hundred million dollars was a hard bite to take.

25 SENATOR FOLMER: I'm sorry, I didn't want to

1 interrupt you, but I'm just confused, and that's probably easy  
2 to do, but what were the consultants being paid for? I mean,  
3 why wasn't this trying to be stopped? I mean, again, the way  
4 it's sounding to me is that, well, we just -- how this  
5 happened, it was just one giant bad luck incident. You know,  
6 we did the best we could, and here we are with all the debt  
7 and such, but again, I see all these consulting fees, I see  
8 all these service fees. Why wasn't anybody trying to stop it?  
9 And if we know now -- now granted, I understand hindsight is  
10 always 20/20, but folks, here's the scenario: We have all  
11 this debt on the heads of the people of Harrisburg, the  
12 citizens of Harrisburg, the county residents of Dauphin  
13 County, and probably the rest of the State to boot, and I  
14 think they deserve better than just, gee, this just happened.

15           And again, I guess that was a statement. I'm  
16 sorry, but again, no one seemed to try to stop it. It just  
17 kept on going. And who, again, you said the Harrisburg  
18 Authority was driving the train, I guess. My point to you is  
19 that I think as a financial advisor in this, I think didn't  
20 you folks have some role in this?

21           MR. BARNES: Yes. Our primary function is to give  
22 financial advice on the project, how to finance the project in  
23 the most economical manner, and make sure that the execution  
24 of the project and financing for the project is completed.

25           SENATOR FOLMER: Okay. I mean, I don't want to

1 make statements.

2 Thank you very much.

3 SENATOR BLAKE: Just one last point, Mr. Barnes,  
4 and thank you again. I said this at the first hearing, and it  
5 probably deserves some consideration here. We're just trying  
6 to collect information that could possibly inform future  
7 legislative action. And there's already been dialogue,  
8 Senator Folmer mentioned this in a previous hearing about, and  
9 I understand the market for swaps is not what it was in 2003.  
10 But do you have any opinion about something that can inform us  
11 legislatively, maybe not an outright ban, but some other what  
12 you might perceive to be good checks and balances, or any  
13 other legislative advice?

14 MR. BARNES: Regarding swaps?

15 SENATOR BLAKE: Well, regarding municipal debt,  
16 regarding LGUDA, regarding swaps, maybe all of the above.

17 MR. BARNES: I think the Local Government Unit  
18 Debt Act is an excellent check on government, local government  
19 unit's borrowing. The problem here that came up with the  
20 self-liquidating debt report and the process of doing that, I  
21 don't see an economical way of trying to fix that, of taking  
22 something that was poorly done. And the self-liquidating debt  
23 certificate for the city was poorly done, and we can say that  
24 now in hindsight.

25 But one thing that the audit alleged was in most

1 times you have somebody independent doing this, and that's  
2 just not true. Most of the times it's whoever designed the  
3 project does the self-liquidating debt certificate, and  
4 normally it works. I am very familiar with it. I've done a  
5 lot of self-liquidating debt certificates. As a financial  
6 advisor, you know, we can look at them. The question is, how  
7 far does the State have to go with that? How far at DCED does  
8 the legal people need to take that? Should they have in-house  
9 engineers to look at, like the old FHA used to? Or pardon me,  
10 Farmers Home Administration? And it got to be very  
11 burdensome.

12 I think what you're looking at is something that  
13 is unusual, but there are others that come to mind with this  
14 as something as simple -- most of them are sewer projects, and  
15 the question is, is \$85 a reasonable amount for people to pay  
16 for a monthly sewer bill? PennVest says, yes, it is. Would  
17 DCED also look at that and have sort of a guideline of  
18 something like that? It's very complicated, and I admire you  
19 for trying to wade through it.

20 As far as swaps go, I don't think that most local  
21 government units in Pennsylvania have any knowledge or ability  
22 onboard to make that type of decision. And I don't think that  
23 most of them should be doing swaps or other derivatives. Some  
24 of them that are very simple, yes. But some of the  
25 complicated ones that I've seen them do, no.

1 SENATOR BLAKE: Thank you, Mr. Barnes.

2 CHAIRMAN EICHELBERGER: Mr. Barnes, the swaps that  
3 were done, they were your idea though, right? The ones that  
4 were done?

5 MR. BARNES: No.

6 CHAIRMAN EICHELBERGER: They weren't?

7 MR. BARNES: No. They were proposed by the  
8 structuring people at RBC. I can say that, to the best of my  
9 knowledge, I did not initiate any of the swaps that were done  
10 for the Harrisburg Authority.

11 CHAIRMAN EICHELBERGER: Okay. The overall  
12 background of where these folks were whenever they started  
13 this project, they didn't have a performance bond. Were you  
14 aware of that at the time?

15 MR. BARNES: No.

16 CHAIRMAN EICHELBERGER: Since a lot of people  
17 weren't aware of that, that's interesting.

18 MR. BARNES: Yes.

19 CHAIRMAN EICHELBERGER: And since the project  
20 couldn't cash flow, it was based on the guarantees of the city  
21 and the county, I assume, to be sold, is that accurate?

22 MR. BARNES: I think the bonds, and again, the  
23 underwriter would better discuss this, but in order to get  
24 municipal bond insurance, we needed additional guaranty, and  
25 that's why the county's guaranty was necessary to finance the

1 project. There was a, and still is, a desire by everybody to  
2 have a municipal guaranty because it has the full faith,  
3 credit, and taxing power of the municipality behind it. Even  
4 with some of the strongest revenue financings that I've done,  
5 we've done them with a municipal guaranty because they like to  
6 have the second shotgun. Is this -- is it necessary? In most  
7 cases, no, it's not. In this case, it was necessary to have  
8 the additional guaranty because there was the risk.

9 And everybody was aware of the risk that something  
10 would go wrong or could go wrong with this. And for people to  
11 sit here and say right now that they just gave the guaranty,  
12 and because it was necessary, but they didn't ever expect to  
13 pay on it, is naive. The county has been a hero here. The  
14 county has done what they're required to do under the  
15 circumstances, and they are entitled to reimbursement from the  
16 Harrisburg Authority and from the project when that is able to  
17 be done. But the guarantees were necessary, yes.

18 CHAIRMAN EICHELBERGER: Let me ask you, with your  
19 expertise -- well, let me just say, too, the foundation of  
20 this also encompasses, you know, I spoke about there's no bond  
21 in place, and a couple of other things here. One thing was  
22 that this construction schedule that was set up by Barlow was  
23 so tight that if there was a hiccup anywhere along the way,  
24 that the wheels came off the train, and that's what happened,  
25 although it was probably more than a hiccup. They got a

1 couple of years behind and didn't have the money, et cetera,  
2 et cetera, and that played into the problems with this  
3 alternative security package, and so on.

4 But can you explain to me -- two questions on  
5 this. The first one is how this -- how with investors,  
6 through issuing these bonds, when there was more borrowing  
7 done, that the first people paid were always the city and the  
8 county for what they had advanced, and that, of course, added  
9 to the new debt. I mean, the guaranty is always added to the  
10 debt, and then paying back the guarantees added to the next  
11 debt, and it just became a situation where the money was gone  
12 between fees, working capital, paying back debt, very little  
13 new money coming in to help with projects. Can you explain --  
14 I mean, I just don't understand how this works.

15 MR. BARNES: If I understand you correctly, you're  
16 saying why did these costs get paid as part of the financing  
17 for the projects?

18 CHAIRMAN EICHELBERGER: Yes.

19 MR. BARNES: Normally, the cost of a project  
20 includes the actual costs related to that project. In a lot  
21 of these circumstances, the city had advanced funds and wanted  
22 repaid those funds for costs related to the incinerator. You  
23 know, that's not unusual. You know, there are strict  
24 regulations and code requirements, Federal Code requirements  
25 that restrict exactly what you can borrow tax-exempt.

1           Some of these financings were done taxable and  
2 would not qualify as true project costs. Was it advisable to  
3 do that at the time? No, I don't think it was. Hindsight  
4 being 20/20, they couldn't afford it, and they kept on going  
5 deeper and deeper in debt.

6           I was, when I was finance director, and Mr.  
7 Kroboth spoke earlier about the incinerator has always been a  
8 problem. And 1980 it was a problem; 1983 it was a problem.  
9 They continued to finance out of it because where else is the  
10 city going to come up with the funds? And they did that to,  
11 you know, basically keep themselves, keep the incinerator from  
12 pulling the city down.

13           CHAIRMAN EICHELBERGER: I had received a note from  
14 somebody who I don't know that asked me, that explained  
15 something to me, and let me ask you about this. They claim  
16 that the later bond deals weren't structured the same as the  
17 previous bond deals. They were less restrictive. They took  
18 out more restrictive covenants in the bond indenture, such as  
19 minimum debt service coverage ratio, additional bonds test, a  
20 limit on subordinate debt, and that would have affected the  
21 market price of the bonds. Are you aware of any of that?

22           MR. BARNES: No, I don't think that's correct. I  
23 think they're -- whoever gave you that question is  
24 misinformed.

25           Okay. Senator Folmer.

1           SENATOR FOLMER: Thank you for your patience. I  
2 just want to see if I heard you correctly. You said that  
3 those who made the guarantees thinking that they would not  
4 have to pay back this debt were naive.

5           MR. BARNES: To think that they might not be  
6 called upon to make a debt service payment.

7           SENATOR FOLMER: Okay. If that's being the case  
8 then, how does this make the county a hero knowing that they  
9 were naive in doing the guaranty? Basically, it looks like  
10 they were doubling down and actually putting the county  
11 residents at risk then with this debt.

12           MR. BARNES: Apparently, Senator, the county was  
13 not naive. And I did say they were the hero. They stepped to  
14 the plate and did what they were supposed to do, and I don't  
15 think that the county has been negligent in any of their  
16 guaranty honors. Again, I have not been involved since--

17           SENATOR FOLMER: But the debt was not  
18 self-liquidating and they stepped to the plate -- I understand  
19 what you're trying to say, that they didn't want to see the  
20 city go down, and they were trying to, if I'm understanding  
21 this correctly, but my point is, I think, is that as we're  
22 moving forward here, here we have them basically like a  
23 gambler at the casino going, well, you know, this is my last  
24 shot here. We're going to double down and go forward, knowing  
25 that this was bad debt.

1 MR. BARNES: Which financing are you talking  
2 about? What financing are you talking about?

3 SENATOR FOLMER: 2007.

4 MR. BARNES: Okay, again--

5 SENATOR FOLMER: That, what was it, \$30 million  
6 bond issuances and such. That's what I'm referring to.

7 MR. BARNES: I was dismissed during the planning  
8 stage for the 2007 bonds.

9 SENATOR FOLMER: Okay. All right. Thank you.

10 CHAIRMAN EICHELBERGER: Okay, Mr. Barnes, thank  
11 you very much for your time. We appreciate it.

12 MR. BARNES: Thank you.

13 CHAIRMAN EICHELBERGER: And I understand Mr. Losty  
14 is here, if I'm told correctly. How about, we had scheduled  
15 for you at 1:00 o'clock. What if we come back at 12:45? Is  
16 that okay with everybody? Take a lunch break, we'll come back  
17 at 12:45. We'll get started on the afternoon a little early.

18 Thank you.

19 (Whereupon, the proceedings were recessed at 11:40  
20 a.m., and were reconvened at 12:40 p.m.)

21 CHAIRMAN EICHELBERGER: Okay, we'll begin. We'll  
22 start with James Losty, who is ready to go.

23 (Whereupon, JAMES LOSTY, was duly sworn.)

24 CHAIRMAN EICHELBERGER: If you would like to start  
25 with some remarks.

1 MR. LOSTY: Yes, thank you, Senator.

2 Good afternoon, Senators. My name is Jim Losty.  
3 I represent RBC Capital Markets. I will -- I've been in the  
4 municipal bond market 30 years in January. I have prepared  
5 some remarks to start off the hearing this afternoon. Bear  
6 with me, because they are somewhat lengthy, but I think they  
7 will maybe answer some of the questions you have but possibly  
8 serve as a source for other questions. So it will take a few  
9 minutes.

10 Mr. Chairman, Senator Blake, and Members of the  
11 committee, I want to thank you for the invitation to testify  
12 at today's hearing on behalf of RBC Capital Markets. We  
13 appreciate the opportunity to put into proper context the role  
14 that our firm played in connection with the Harrisburg  
15 Authority's financings of the retrofit project and to address  
16 some of the egregious errors in the forensic investigation  
17 report by Klehr Harrison.

18 Let me be clear at the outset that the Harrisburg  
19 Authority's problems with the retrofit are not related to the  
20 2003 financings. The financings that we were involved with  
21 all performed well, actually exceeding expectations projected  
22 at the time of the financing, and have saved the Harrisburg  
23 Authority money.

24 RBC Capital Markets' involvement in the financing  
25 of the retrofit of the Resource Recovery Facility began in

1 2003. We served as book running underwriter for two bond  
2 issues for the facility that occurred during 2003, the first  
3 in May, and the second in December.

4 The role of the underwriter in public finance  
5 transactions is to sell the issuer's bonds in the market and  
6 deliver bond proceeds at settlement. RBC Capital Markets did  
7 not serve the Harrisburg Authority, the City of Harrisburg, or  
8 Dauphin County as financial advisor for these financings. RBC  
9 Capital Markets' parent company, Royal Bank of Canada, also  
10 served as counterparty on interest rate swaps and a cap  
11 associated with one of the bond offerings, the Series D of  
12 2003. RBC Capital Markets' involvement was limited to the  
13 2003 financings, and we played no role in either the CIT  
14 financing or the 2007 financing.

15 As others have previously testified, the forensic  
16 audit report contains many inaccuracies. We note that RBC  
17 Capital Markets was never contacted during the preparation of  
18 this report, which easily could have remedied some of its more  
19 obvious errors. In February 2012, shortly after release of  
20 the report, RBC Capital Markets sent a lengthy letter to the  
21 Receiver and to the Harrisburg Authority members highlighting  
22 many of the report's inaccuracies and offering to meet to  
23 discuss the report. No response was ever received. This  
24 committee has received a copy of that letter.

25 RBC Capital Markets' involvement with the retrofit

1 project started in early 2003, long after the city and the  
2 Authority had already engaged Barlow Projects as project  
3 engineer in 1999. RBC Capital Markets had no role in the  
4 selection of Barlow, nor would any underwriter in a typical  
5 public financing be involved in the selection of engineers and  
6 contractors.

7           The team of finance professionals assembled to  
8 work on the retrofit financing was drawn from among the most  
9 seasoned, experienced, and highly regarded firms in the  
10 Commonwealth of Pennsylvania. The team included four major  
11 law firms - Rhoads & Sinon, Authority counsel; Obermayer  
12 Rebmann Maxwell & Hippel, bond counsel; Eckert Seamans Cherin  
13 & Mellott, underwriter's counsel; Mette Evans & Woodside,  
14 county counsel. Three financial and swap advisory firms -  
15 Milt Lopus Associates, representing the Authority and the  
16 city; Investment Management Advisory Group, representing the  
17 Authority, the city, and the county; Public Financial  
18 Management, representing the county; and seven other  
19 underwriting firms as co-managers for the bond sales.

20           Additionally, both city council and the County of  
21 Dauphin retained separate, independent, major engineering  
22 firms expressly for the purpose of reviewing every aspect of  
23 the retrofit plan put forth by Barlow and opining on its  
24 feasibility precisely because they knew other professionals  
25 were not in a position to offer that advice.

1           The conclusion drawn in the forensic audit that  
2 this team of many of Pennsylvania's finest bond professionals  
3 somehow misled or forced this financing upon an uninformed  
4 Authority, city, and county is absurd. In my 30 years in the  
5 public finance industry, I have never been involved in a  
6 project with more scrutiny from governing bodies.

7           Than the 2003 retrofit project received. And this  
8 wasn't cursory scrutiny, it was scrutiny that honed in on  
9 exactly the critical issues: To retrofit or not retrofit, and  
10 was Barlow capable or incapable of completing the project on  
11 time and on budget?

12           During the summer and fall of 2003, city council  
13 held numerous public meetings where literally hundreds of  
14 citizens appeared to hear presentations on the project from  
15 the working group. Leading off every meeting were  
16 representatives from Barlow who spent the first 30 to 60  
17 minutes reviewing the feasibility of the project, the Barlow  
18 technology, Barlow's past experience with other incinerators,  
19 and importantly, their projections of revenues and expenses of  
20 the retrofitted project.

21           Following Barlow, the other members of the finance  
22 team made shorter presentations on the actual financing  
23 itself, including legal requirements, the need for financial  
24 guarantees from the city and county, the use of bond  
25 insurance, and the actual structure of the debt. At the

1 conclusion of the presentations, the floor was opened to  
2 anyone in the audience with an interest in speaking about the  
3 project. These meetings were widely publicized in the press,  
4 and many were televised.

5 Right to the evening of the final city council  
6 vote in November, there was great uncertainty as to whether  
7 the project would be approved. On the night of the final  
8 vote, each of the council members made lengthy speeches prior  
9 to voting explaining the deliberative process they had  
10 followed in reaching a decision. It is impossible for any  
11 objective person to conclude, upon review of the meetings, the  
12 correspondence, and the bond documentation from that period  
13 that any decisionmaker in the approval process was not fully  
14 aware that the primary risk to the success of the retrofit  
15 project was the timely performance of Barlow.

16 This report makes the inaccurate accusation that  
17 the financing team was somehow derelict in not thoroughly  
18 reviewing and critiquing the Barlow technology, engineering  
19 plans, and revenue and expense projections. This criticism  
20 fundamentally miscomprehends each party's role in a public  
21 finance transaction. It is the role of the engineering firms  
22 to address project technology, project feasibility,  
23 projections of revenues and expenses. The financial  
24 professionals criticized in the report do not have that role.

25 Bond attorneys speak to the complexities of

1 Federal, State, and local laws and requirements for municipal  
2 bond offerings. Financial advisors and swap advisors speak to  
3 the structure of the financing and offer views and opinions on  
4 use of financial products and the fairness of pricing.  
5 Trustees safeguard bond proceeds, and finally, underwriters,  
6 like RBC Capital Markets, give market information and views on  
7 optimal bond structures, and then sell those bonds to  
8 investors.

9 Another fallacy of the report are the statements  
10 that the 2003 financing in some way has not performed well,  
11 was too complex, and has subjected the Authority and the city  
12 to undue risks and inflated costs. The truth is that the  
13 swaps utilized in the 2003 financing have performed even  
14 better than expected and were not excessive, overpriced, or  
15 speculative. Most importantly, the swaps with the Royal Bank  
16 of Canada have saved the Authority money.

17 With the benefit of nearly 10 years of history, it  
18 is now possible to review the performance of the 2003  
19 financings. As the audit correctly points out, the most  
20 traditional and conservative financing plan would have  
21 involved issuing 30-year fixed rate bonds. Given market  
22 conditions at the time in 2003, short-term rates were  
23 extremely low, and the yield curve was very steep, meaning  
24 that short-term rates were low, long-term rates were high. A  
25 steep curve, we call that.

1           The September 2003 change in the Pennsylvania  
2 Local Government Unit Debt Act that authorized the use of  
3 interest rate products by government entities, and the  
4 recognition by the financing team that the projections  
5 indicated operations at the retrofit facility would be tight,  
6 the decision was made to include a significant amount of  
7 variable rate debt in the 2003 financing, with the goal of  
8 lowering interest expense. The decision to include a swap was  
9 based simply on the expectation that it would be a better  
10 source of variable rate financing.

11           The report's 18-page discussion of the swap  
12 transactions is fundamentally wrong in many respects. The  
13 financing plan used an interest rate swap to exchange the  
14 Series D from a fixed rate of interest to a variable rate of  
15 interest for the reasons mentioned earlier, namely to access  
16 the low interest rates available in the short-term market in  
17 2003. Pennsylvania bond law requires that any variable rate  
18 debt have a maximum stated interest rate, and consequently,  
19 the fixed-to-floating rate swap had a maximum statutory rate  
20 of 12 percent embedded in the swap. This was not a separate  
21 swap, or two swaps, as the report talks about. It was just  
22 embedded in the swap under State law.

23           However, while the mayor of Harrisburg was willing  
24 to recommend taking variable interest rate risk on a  
25 significant portion of the debt, he directed that a more

1 realistic 6-percent cap be included in the plan of finance to  
2 protect the project from significant increase in short-term  
3 interest rates. Said another way, while the short-term rates  
4 were approximately 1 percent that prevailed in 2003 were  
5 clearly much more attractive than the alternative of 5-percent  
6 fixed rate bonds, the mayor felt that by allocating some of  
7 the benefit expected from the low short-term rates by  
8 purchasing a more protective 6-percent cap would be prudent.  
9 So what the report described as six different swaps in  
10 substance was one swap and one cap, pursuant to which the  
11 Authority received a fixed rate and paid a market base  
12 floating rate capped at 6 percent.

13 Now, there were two series of the Series D bonds,  
14 two subseries of the Series D bonds, and we split the swap  
15 into two pieces, but it was the same swap.

16 In full compliance with Pennsylvania Act 23, the  
17 Authority, the city, and the county were all advised by  
18 independent financial advisors with specific swap advisory  
19 expertise. A detailed interest rate management plan required  
20 under the act was adopted by all three entities. The purpose  
21 of the plan is to identify and list various risks associated  
22 with interest rate swaps, provide termination analysis,  
23 project debt service at maximum interest rates, and detail  
24 fees paid to professionals. Act 23 also requires that  
25 governmental entities receive updates on the plan at least on

1 an annual basis.

2 Royal Bank of Canada fully disclosed its  
3 compensation on the swap transactions to the independent  
4 advisors, and those advisors gave clients fairness opinions,  
5 as required under Act 23, at closing on the financing. The  
6 breakdown of the swaps spreads contained in the report is  
7 grossly overstated and inaccurate.

8 The use of interest rate swaps in the financing  
9 structure enabled the Authority to benefit from the  
10 extraordinary low short-term interest rates that prevailed in  
11 2004 and much of 2005, and provided lower debt service than  
12 projected at the time the financing closed in 2003. As the  
13 economy improved in 2004, and the Federal Reserve began a  
14 tightening program, short-term interest rates began to rise.  
15 Conversely, long-term interest rates dropped sharply, leading  
16 to what would eventually become an inverted yield curve, where  
17 short-term rates were actually higher than long-term rates.  
18 This environment proved to be an opportune time for the  
19 Authority, the city, and the county to consider reducing the  
20 risk to variable rate debt as short-term rates were rising.

21 In August 2005, a second interest rate swap was  
22 entered into that locked in a fixed rate beginning in June  
23 2006, which was the expected end of the construction period  
24 and extending through 2033, which was the remaining term of  
25 the financing. The fixed rate available in the swap market at

1 the time was 3.35 percent through 2033, which was a  
2 historically low rate and approximately equal to what the  
3 Authority hoped to pay over the life of the financing had they  
4 been in the variable rate market.

5 Stated differently, the Authority had benefitted  
6 from short-term rates since December 2003, could continue in  
7 the variable rate mode through the expected end of  
8 construction in June 2006, and could then convert to a fixed  
9 rate that approximated the assumed rate for the entire life of  
10 the financing. It represented prudent interest rate  
11 management planning, precisely as called for in Act 23.

12 By the spring of 2006, the interest rate cycle had  
13 changed again, and long-term interest rates had climbed,  
14 creating significant market value in favor of the Authority  
15 tied to the fixed rate swap they had just executed the  
16 previous August 2005. Additionally, the project by this time  
17 was delayed and struggling. The Authority chose to realize  
18 the gain available in its 2005 swap by terminating the swap  
19 for the years from 2011 to 2033. The termination resulted in  
20 a payment of over \$4 million from the Royal Bank of Canada to  
21 the Authority.

22 This enabled the Authority to retain a fixed rate  
23 during the ramp-up period from 2006 to 2011, when the  
24 Authority would be least able to weather swings in variable  
25 rates while at the same time obtaining the value created from

1 its actions in 2005. Not only was this a carefully considered  
2 and otherwise reasonable strategy in 2006, with the benefit of  
3 perfect hindsight, it has proven to be the right course of  
4 action. The Authority had an immediate gain of \$4 million,  
5 had fixed rate debt at 3.35 for the important early years of  
6 the project, and is now enjoying interest rates of  
7 approximately one-half of 1 percent, 50 basis points, on the  
8 remaining \$65 million Series D swap through December of 2013,  
9 when the swap will be gone.

10           Perhaps even more importantly than the interest  
11 rate performance of the financing plan, the use of an interest  
12 rate swap to create synthetic variable rate debt as opposed to  
13 utilizing traditional variable rate debt with bonds backed by  
14 letters of credit and municipal bond insurance allowed the  
15 Authority to steer clear of the upheaval that plagued much of  
16 the variable rate bond market when the credit crisis erupted  
17 in 2008. Had the Authority used traditional variable rate  
18 debt backed by FSA and a bank letter of credit -- and a bank  
19 providing a liquidity agreement, its variable rate debt would  
20 have spiked to rates of 10 percent or more, a situation many  
21 Pennsylvania issuers experienced in the 2008 and 2009 crisis.  
22 The Authority's decision to access the variable rate market  
23 through an interest rate swap rather than the traditional  
24 manner has worked to immunize it from all these fractures and  
25 has delivered low-cost financing.

1 RBC Capital Markets has completed a financial  
2 analysis that takes into account all cash flows in the Series  
3 D of 2003 bonds and the two associated swaps. The Authority's  
4 cost of funds to date is 3.35 percent. Going forward through  
5 the termination of the final interest rate swap in 2013, and  
6 using conservative projections through that time, the estimate  
7 is that the final cost of funds is likely to be 3.25 percent.  
8 Had the Authority chosen a traditional fixed rate structure,  
9 its cost of funds would have resulted in an interest rate of  
10 approximately 5.03 percent, based on the fixed rates available  
11 in December 2003 when the bonds were sold. Consequently, the  
12 structure that was utilized has saved the Authority over \$11  
13 million compared to a traditional fixed rate issue.

14 Even more significant, if a comparison is made of  
15 the actual debt service experienced on the Series D bonds to  
16 what was projected in the offering circular for the 2003  
17 bonds, which was a projection based on the long-term average  
18 of the variable rate index, a savings in excess of \$5.2  
19 million has been generated. Clearly, the original financing  
20 of the 2003 retrofit project was not a contributing factor to  
21 the problems that exist today.

22 By 2006, it became apparent that the retrofit  
23 project was struggling and completion would be delayed and  
24 over budget. Anticipating the difficulties that would  
25 accompany that scenario, RBC Capital Markets informed the

1 administration of the city of the privatization movement that  
2 was gaining traction in many public jurisdictions around the  
3 U.S. After several meetings, RBC Capital Markets was engaged  
4 by the City of Harrisburg and the Harrisburg Parking Authority  
5 to evaluate a long-term lease for the parking assets. RBC  
6 Capital Markets devoted over two years' work, including many  
7 hundreds of manhours and huge expense, and delivered at the  
8 end of the process a high bid of \$215 million from a fully  
9 qualified bidder. The mayor's plan was to close the lease  
10 transaction, pay off the parking debt, and use the net  
11 remaining proceeds of approximately \$100 million to pay down  
12 the excess Resource Recovery debt.

13           After many public meetings over four months, city  
14 council rejected the parking proposal in October 2008, a  
15 decision which has contributed to the current dire situation.  
16 Ironically, one of the key recommendations that came out of  
17 the Act 47 plan, and also the Receiver's plan, is just such a  
18 transaction. Unfortunately, the value of a parking  
19 transaction under current market conditions is less than the  
20 value rejected by city council in 2008, and of course, the  
21 delay in implementation has allowed the problem to grow far  
22 larger.

23           While we are extremely sympathetic with the  
24 situation that the Authority, the city, and county currently  
25 find themselves in, it is important that we address some of

1 the more egregious errors in the Klehr Harrison report with  
2 respect to RBC Capital Markets and Royal Bank of Canada. We  
3 stand by our work product and believe adamantly the current  
4 problems have nothing to do with the financing plan for the  
5 2003 bonds.

6 Sorry about the length.

7 CHAIRMAN EICHELBERGER: Well, thank you very much.

8 Senator Folmer, you have some questions?

9 SENATOR FOLMER: Yes, I do.

10 And thank you very much for your testimony, sir.

11 And just bear with me.

12 MR. LOSTY: Sure.

13 SENATOR FOLMER: My first question is, who did RBC  
14 represent on the incinerator financings?

15 MR. LOSTY: We represented the Authority.

16 SENATOR FOLMER: Okay. How was RBC selected?  
17 Would you know?

18 MR. LOSTY: RBC has a long history working with  
19 the Authority on various financings.

20 SENATOR FOLMER: Who did you report to? What was  
21 your role?

22 MR. LOSTY: Who did I report to?

23 SENATOR FOLMER: Yeah. Who did you answer to? I  
24 mean, the board?

25 MR. LOSTY: Oh, do you mean at the issuance?

1                   SENATOR FOLMER: Yeah.

2                   MR. LOSTY: The board of the Harrisburg Authority  
3 made the final decisions. We also had meetings for city  
4 council. City council had to approve things, and also the  
5 county had to approve.

6                   SENATOR FOLMER: Okay, thank you. Did RBC provide  
7 financial advice to the Authority on the incinerator  
8 financings?

9                   MR. LOSTY: We certainly gave our ideas with  
10 regard to how to structure the bonds the most advantageous  
11 way, given our expertise.

12                   SENATOR FOLMER: Did RBC provide financial advice  
13 to the city on the incinerator financings?

14                   MR. LOSTY: Certainly. We would offer the same  
15 kind of structuring advice with regard to how to best access  
16 the bond market.

17                   SENATOR FOLMER: Did you -- so you did with the  
18 city too, right? You just answered that, yes. So was that  
19 like a conflict of interest?

20                   MR. LOSTY: No. The city's guaranty was part of  
21 the financing, and as part of any financing plan, the  
22 Authority would take action, the city was a body that needed  
23 to take action, and the county in this particular case also  
24 needed to take action, so we also made presentations to the  
25 county.

1           SENATOR FOLMER: Okay. In 2003, Barlow did a  
2 series of four analyses on the incinerator - on March 24,  
3 2003; May 13, 2003; November 6, 2003; November 26, 2003. Now,  
4 these reports were key to determining if the debt would be  
5 self-liquidating, and each report contained debt service  
6 information provided by RBC Dain Rauscher, if I'm pronouncing  
7 his name correctly. Are these reports the ones that Mayor  
8 Reed relied upon to certify the incinerator debt was  
9 self-liquidating?

10           MR. LOSTY: I don't know what Mayor Reed relied  
11 upon. If you're asking did we as an underwriter provide debt  
12 service schedules to the engineer? Absolutely, yes.

13           SENATOR FOLMER: What was your role in generating  
14 these important informations?

15           MR. LOSTY: Oh, we have a whole team at RBC, so my  
16 role was the primary day-to-day fellow. We also would have  
17 analysts, of course, that would generate those numbers.

18           SENATOR FOLMER: Did you raise any red flags that  
19 the debt would not be self-liquidating?

20           MR. LOSTY: No.

21           SENATOR FOLMER: Okay. Now, on page 40 of the  
22 forensic audit talks about an e-mail you sent to an individual  
23 from TRowePrice stating, and I quote from the forensic report,  
24 and bear with me here, and I quote, "My only word of advice is  
25 if you are trying to evaluate this," i.e., the 2003 financing,

1 "on a revenue generating basis, you are the only one including  
2 the bond insurer. Bottom line is that there is an AA County  
3 with a full faith and credit general obligation pledge."

4 Now, are you saying in that quote, are you saying  
5 that the 2003 was primarily based upon the county's guaranty  
6 rather than the facility generating sufficient revenues? And  
7 if the incinerator was self-liquidating, why weren't the bonds  
8 also marketed based on the revenues of the facility.

9 MR. LOSTY: Let me elaborate on that, on your  
10 question. These bonds were among the most secure bonds in  
11 terms of structure of any bond issue that you can imagine in  
12 the State of Pennsylvania. First and foremost, they were  
13 backed by a rate covenant that said that the Authority would  
14 charge rates for tipping fees and things like that at the  
15 incinerator that would be sufficient to pay operating expenses  
16 and pay debt service.

17 First and foremost, that's an important thing for  
18 everyone to Royce. Every revenue bond issue done in the State  
19 of Pennsylvania will typically have a rate covenant. Actually  
20 making that rate covenant -- listing that rate covenant and  
21 implementing that rate covenant is key to revenue bonds. If  
22 you ignore the rate covenant, then of course revenues are not  
23 going to be sufficient. So first and foremost, there was a  
24 rate covenant. Secondly, there was a City of Harrisburg  
25 guaranty. Third, behind that was the County of Dauphin

1 guaranty. And then finally, there was municipal bond  
2 insurance that got the entire financing to a triple-A level.

3 So my e-mail to that gentleman was the real credit  
4 strength here is, it's our job, remember, as an underwriter to  
5 get the lowest possible interest rate we can get for our  
6 client. So I wanted that investor to focus on the strongest  
7 possible credit provider here, which was the County of  
8 Dauphin. And in fact, the OS that was used to market the  
9 bonds, if you gentlemen have looked at that, is replete with  
10 all kinds of disclosures that first and foremost look at this  
11 as the ultimate source of payment are the guarantors.

12 SENATOR FOLMER: Then that leads me to my  
13 question, did you believe the incinerator bonds to be  
14 self-liquidating?

15 MR. LOSTY: I didn't have a belief. I wasn't a --  
16 I'm not an engineer. Certainly, all the engineers' reports  
17 showed that they would be self-liquidating. And again,  
18 importantly, had the rate covenant been implemented and  
19 followed, it would be self-liquidating.

20 SENATOR FOLMER: Okay. Did you personally  
21 recommend to the Authority or to the county that they use RBC  
22 as a counterparty on the swaps?

23 MR. LOSTY: I recommended that RBC serve as  
24 counterparty, yes.

25 SENATOR FOLMER: Was there a conflict in RBC

1 serving as investment banker and as a swap counterparty?

2 MR. LOSTY: In my opinion, no. Across the  
3 country, it is more common than not that the senior managing  
4 underwriter is a swap provider, assuming they have a highly  
5 rated bank, as we did. We were a double-A rated bank.

6 SENATOR FOLMER: Okay, how much was RBC paid as a  
7 counterparty on the swaps? Just a ballpark figure.

8 MR. LOSTY: RBC, and this was all fully disclosed  
9 to the swap advisors at the time, RBC worked for approximately  
10 10 basis points on the swap transactions, not the 20 or 21  
11 that's reported in the -- or 18 to 21 that's reported in the  
12 report. Ten basis points.

13 SENATOR FOLMER: You noted -- earlier in your  
14 testimony you noted decisionmakers were fully informed of the  
15 financial risks in these financial transactions. If so, why  
16 do you believe they moved forward with these transactions?

17 MR. LOSTY: Oh, I think they moved forward because  
18 they had wholesale belief that the facility would be built out  
19 and would generate the type of revenue that was projected to  
20 do. And as others have testified, the plant is generating  
21 actually \$5 million more today than it was projected to  
22 generate. Of course, it wasn't done on the initial financing.  
23 It needed to be followed on financings to get it to that  
24 point. But solely, certainly as I said in my opening  
25 comments, in all these meetings, there was a very conscious

1 decision - retrofit or not retrofit, and the repercussions of  
2 that. So they did it because they felt that it was going to  
3 work, as we all did on the financing team.

4 SENATOR FOLMER: And then I'm going back to swaps,  
5 and I know you spoke to it at length in what you just read to  
6 us, and maybe I missed this and I'm going to ask this  
7 question: What are your thoughts on swaps in general?

8 MR. LOSTY: My thoughts on swaps in general, and  
9 just as background, Act 23 was passed by the State of  
10 Pennsylvania in September of 2003. To date, there have been  
11 over 700 swap transactions that have been carried out by local  
12 governments within Pennsylvania.

13 My own view is that when used prudently and with  
14 the right professionals that know what they're talking about  
15 and know the risks and know the profile of their clients, they  
16 have a very, very good role and a valuable role. And in fact,  
17 when the Pennsylvania Senate convened hearings after the  
18 Auditor General's report came out a couple of years ago about  
19 the Bethlehem Area School District's excessive use of swaps,  
20 the Pennsylvania Senate held hearings in one of the committees  
21 and they found that many, many issuers around the State of  
22 Pennsylvania, governmental issuers, came to that hearing,  
23 including the School Board Association and others, talking  
24 about how they did not want the swap law changed; that when  
25 used prudently, I think they are a very valuable tool.

1                   SENATOR FOLMER: Did you advise the city on any  
2 swap transactions? And how many, if yes.

3                   MR. LOSTY: I was never -- acted as a swap  
4 advisor, no.

5                   SENATOR FOLMER: Well, okay, then I'm done. Thank  
6 you, because you answered that last question.

7                   MR. LOSTY: Sure.

8                   CHAIRMAN EICHELBERGER: Chairman Blake.

9                   SENATOR BLAKE: Thank you, Mr. Chairman.

10                   Thank you, Mr. Losty. I guess Senator Folmer has  
11 addressed, again, some of the issues I was going to raise.  
12 You make a rather compelling contrast in argument. I guess my  
13 first comment is this: It seems to me that you have made an  
14 extraordinarily powerful argument that the interest rate risk  
15 that the facility would realize vis-à-vis these swap  
16 transactions was probably mastered properly to the market  
17 conditions within which it was done. What concerns me deeply  
18 is the sheer amount of debt that was incurred, and you've  
19 already answered this already, but I just wonder if you can  
20 extrapolate again. The representations made in selling the  
21 bonds included, for instance, your point about the covenant on  
22 rate, all these other factors that were related to the pro  
23 forma that the engineers had blessed as demonstrating for you  
24 as an underwriter the ability for the performance and the debt  
25 service obligations that were to be borne.

1 I'm just trying to get a sense of the dynamic in  
2 the selling of the bonds vis-à-vis the guarantees. Without  
3 the guarantees, they don't happen, right?

4 MR. LOSTY: Well, without the guarantees -- well,  
5 let's back up for a second. The municipal bond market is a  
6 market that is a broad market. But the vast majority of it,  
7 90 percent of the market, or something like that, is what we  
8 call the high grade municipal bond market, which basically is  
9 anything in the investment grade rating, something in the  
10 triple-B all the way to up to triple-A rating. And the reason  
11 for that is municipal bond investors receive a very low  
12 interest rate on those bonds. In today's market, it's the  
13 lowest in history, it's 2 percent. In 2003, it was 5 percent.  
14 Investors getting 2 percent today or 5 percent in 2003 are not  
15 interested in taking undue risk. They're looking -- they look  
16 at municipal bonds as an extremely safe investment, and  
17 because of that, they're willing to take a very, very low  
18 interest rate, and these are for 20- and 30-year bonds. So to  
19 get 2 percent today or 5 percent in 2003 is a very low rate.

20 So the market itself, 90 percent of the market is  
21 that very high grade, investment grade market. There is a  
22 small percentage, 10 percent or so which we would call the  
23 nonrated market or the speculative market, tends to be used  
24 for nursing homes and retirement communities and things that  
25 can't qualify for a strong rating on their own. Those bonds

1 carry a much higher interest rate than the investment grade  
2 market. And in the case of Harrisburg, because there was  
3 significant debt on Harrisburg, I was very frank with the  
4 mayor in the summer of 2003 in saying we can't go any further.  
5 The earlier deal that we did that restructured the debt was  
6 it. The market was saturated with just Harrisburg debt alone  
7 in terms of the city guaranty. The only possibility was if  
8 Dauphin County, in spirit of cooperation, would agree to step  
9 in and back the bonds, that there would be a viable financing  
10 alternative. Other than that, the bonds were not salable.

11 SENATOR BLAKE: Understood. The other thing, I  
12 guess, you've already made an argument that the swap decisions  
13 that were made were the proper ones. Variable rate debt for  
14 the next 30 years and those costs, you made a compelling  
15 argument in your opening testimony that in fact the decisions  
16 that were made about these transactions have made the  
17 circumstance for the incinerator financing less difficult than  
18 it otherwise could have been. Is that your--

19 MR. LOSTY: That's correct. It's that the 2003  
20 financing has achieved a rate of 3.25 percent by the end of  
21 2013. And actually, given what it appears that the Authority  
22 will be selling the incinerator at some point here, it  
23 actually coincides perfectly because the debt will all come up  
24 for the most part to be able to be retired at the end of 2013.  
25 And if it's not retired, if for some reason the city and

1 county and Authority decide to stay in this debt, the market  
2 has completely bailed them out, to some extent. We're at  
3 all-time low interest rates. We could turn around and  
4 refinance these bonds for the next 20 years at 2.5 percent  
5 today.

6 SENATOR BLAKE: Understood.

7 MR. LOSTY: So the market -- and again, it wasn't  
8 that we had a crystal ball, but it turns out that the '03  
9 financing has worked better than ever expected.

10 SENATOR BLAKE: Understood. Your only fiduciary  
11 responsibility is as the underwriter, RBC. According to your  
12 responses to Senator Folmer, you didn't advise particularly  
13 the mayor or the Authority, you just simply did the  
14 underwriting from RBC's perspective?

15 MR. LOSTY: We did the underwriting, but to be  
16 clear, no, we did not serve as financial advisor, but the role  
17 of an underwriter is to present ideas and give thoughts. And  
18 so by no means do I want to leave the impression that I didn't  
19 offer advice at times in terms of what I thought were good  
20 financing decisions, but the Authority engaged an entire team  
21 of financial advisors who ultimately would make the final  
22 advice. But certainly, I'm not someone who is shy from giving  
23 my opinions, so I would give my opinions.

24 SENATOR BLAKE: Understood. The only other point  
25 I have here right now, Mr. Losty, and I appreciate it, is just

1 really a technical clarification I'm looking for. There was a  
2 Barlow pro forma included in the closing for the 2003 D, E, F  
3 bonds. Page 7 of the data on that, it's an exhibit that  
4 lists, I guess, all of the sources and uses, and conspicuously  
5 omitted in the sources and uses is the city guaranty fee. And  
6 if you can't answer that for me now, it would be something I'd  
7 like clarification on after this hearing, if possible. It has  
8 to do with the issue in 2003, it would be the \$125 million.  
9 It lists total issue sources and uses and does not indicate  
10 the \$4.2 million guaranty fee to the city, and that's just  
11 something--

12 MR. LOSTY: Okay, I would have to get back to you  
13 on that, because I know many of the numbers do show the \$4.2  
14 million. You're correct, I don't see it on here, but I don't  
15 know the answer for that, offhand.

16 CHAIRMAN EICHELBERGER: Thank you for your  
17 testimony.

18 MR. LOSTY: Thank you.

19 CHAIRMAN EICHELBERGER: So, Mr. Losty, the swaps  
20 were your proposals?

21 MR. LOSTY: The swaps were our proposal. Yes,  
22 sir.

23 CHAIRMAN EICHELBERGER: That answers the question  
24 we asked Mr. Barnes a little while ago. Now, you consider  
25 yourself to be part of the finance team that was put together

1 here?

2 MR. LOSTY: Yes, sir.

3 CHAIRMAN EICHELBERGER: But your client was the  
4 Authority?

5 MR. LOSTY: The bonds were issued by the  
6 Authority, so ultimately that was, but the signatory on the  
7 bond purchase agreement was the city, county, and Authority.  
8 So all three were involved, obviously.

9 CHAIRMAN EICHELBERGER: Okay, now this was where  
10 this kind of blurs for me, if you can explain this a little  
11 bit better. With your involvement over that period of time,  
12 the development of the self-liquidation statement, you didn't  
13 have any role in that then?

14 MR. LOSTY: No. As I think I mentioned earlier,  
15 our role in the self-liquidating debt report was to provide  
16 the debt service projections. What did the \$125 million in  
17 bonds, what kind of debt service was going to result from that  
18 \$125 million? We provided that to the engineer to include in  
19 his report. And that was basically a market based thing.  
20 What could we sell the bonds for?

21 CHAIRMAN EICHELBERGER: So you understood the cash  
22 flow difficulties of the project?

23 MR. LOSTY: Oh, as I said in my opening  
24 statements, everyone involved in the project knew that the  
25 cash flows, once it was built out, would be tight.

1                   CHAIRMAN EICHELBERGER: Yeah. Well, you know, I  
2 had mentioned a little while ago about some of these  
3 foundational issues about how tight that was. I mean, it was  
4 unrealistically tight, as far as the Barlow report went, for  
5 the construction schedule.

6                   MR. LOSTY: I would disagree. That the revenues  
7 that the facility is generating today exceed what was  
8 projected in the Barlow report, so in 2003 the debt that we  
9 were involved with, the debt service that resulted from that  
10 bond issue compared to the revenues that exist today, the  
11 plant would be fine, had it not been for the fact that that  
12 was not enough debt, as we know, and the CIT and the 2007  
13 financings then were necessary to complete the project. But  
14 in '03, the debt and the revenues matched.

15                   CHAIRMAN EICHELBERGER: Well, as I recall, that  
16 revenue projection, that didn't have anything to do with what  
17 they're getting today. The numbers they're getting today, the  
18 places they're getting the refuse from is entirely different  
19 than what was projected.

20                   MR. LOSTY: I'm not sure I follow -- understand  
21 your point.

22                   CHAIRMAN EICHELBERGER: The fees are much higher  
23 today than the projections were then.

24                   MR. LOSTY: Tipping fees are higher than they are  
25 today, yes.

1                   CHAIRMAN EICHELBERGER:  Much higher.

2                   MR. LOSTY:  And again, I go back to the rate  
3 covenant.  The Authority had a rate covenant, and if the  
4 tipping fees were even higher today, there wouldn't be a  
5 problem.  The facility would be generating even more revenue  
6 and carrying all its debt.

7                   CHAIRMAN EICHELBERGER:  But we can't, in fairness,  
8 compare what the projections were to reality today because  
9 they're two different financial situations.  I mean, we could  
10 charge fees today for anything, you know, you name a number  
11 and put that in as a fee schedule and that would change what  
12 they're getting.

13                  MR. LOSTY:  Royce that's what a rate covenant is.  
14 It specifically says year by year set rates to generate  
15 revenues sufficient to pay your operating expenses and pay  
16 your debt service.  That's why -- and this isn't new finance.  
17 And throughout Pennsylvania, for 100 years water projects,  
18 sewer projects, parking projects, convention centers have  
19 utilized this form of financing with rate covenants.

20                  CHAIRMAN EICHELBERGER:  But it didn't unfold that  
21 way.

22                  MR. LOSTY:  Again, the problem, if you go back and  
23 look at what happened today is that the project could not be  
24 completed for the 2003 financing.  It required follow-on  
25 financings, which increased the debt load, with higher debt

1 service, and that caused the whole equation to get out of  
2 balance.

3 CHAIRMAN EICHELBERGER: When did you -- I assume  
4 you were aware at some point that the project didn't have and  
5 the contractor didn't have a performance bond.

6 MR. LOSTY: No, when the financing closed in 2003,  
7 as I think others have testified, and you may hear from others  
8 today, the actual construction contracts were not complete.  
9 They weren't completed until May of 2004. This was what we  
10 call an advance funding, a funding in advance of all the final  
11 contracts being let. And additionally, as part of the bonding  
12 documents and our bond purchase agreement, there was a  
13 certification by the city, Authority, and county, or by the  
14 Authority anyway, I don't have it in front of me, that said  
15 that -- certifying to RBC that all necessary performance bonds  
16 to qualify under State law would be included by the time the  
17 contracts were let. But we sold the bonds in December, and  
18 this whole issue of the finalization of those -- of that  
19 performance package was not until four or five months later.

20 CHAIRMAN EICHELBERGER: Okay, so who certified  
21 that then?

22 MR. LOSTY: And I don't have the BPA in front of  
23 me, but we can check that. I think it's the Authority.

24 CHAIRMAN EICHELBERGER: You don't know who  
25 specifically was involved in that? What professional? You

1 know, was it one person, was it a group of people?

2 MR. LOSTY: I don't, but the lawyers coming on  
3 after me could better address that than I could.

4 CHAIRMAN EICHELBERGER: That's fair enough.

5 I had asked a question earlier about bond  
6 indentures being changed over a period of time so they're less  
7 restrictive. Do you know anything about that?

8 MR. LOSTY: I heard your question earlier, and I  
9 don't have recollection on that. Again, I think the bond  
10 attorneys coming on could talk because they tend to draft the  
11 bond documents, the actual indentures themselves.

12 CHAIRMAN EICHELBERGER: With your payment  
13 agreement, would you have been paid if these bonds did not go  
14 through?

15 MR. LOSTY: No. Typically, that's how  
16 underwriting works. If there's a bond issue, there's a  
17 payment. If there isn't, there is no payment.

18 CHAIRMAN EICHELBERGER: In 2006, as I understand  
19 it, there was a swap that was terminated, I think that's what  
20 you had mentioned earlier in your prepared remarks. Was that  
21 the one where it was \$4 million generated?

22 MR. LOSTY: Yes. Just to reiterate, in 2005, when  
23 interest rates were starting to change because the economy was  
24 heating up and the Federal Reserve started to raise short-term  
25 interest rates, instead of that steep yield curve that I

1 talked about that existed in 2003, we were getting to a  
2 flatter curve, where short-term rates were going up, long-term  
3 rates were coming down. At that point, we could lock in a  
4 swap rate for the remaining 27 years of the financing at that  
5 point at 3.35 percent, and it was my thought is going back to  
6 the projections we made in 2003, we hoped by staying in  
7 variable rate bonds for the whole life of the issue to achieve  
8 approximately 3.25 percent.

9 So if we could lock in at 3.35 percent and take  
10 all the risk off the table in 2005, that was a prudent thing  
11 to do. And so we entered into the swap in 2005, and then what  
12 you're referring to in 2006, as the project was struggling and  
13 rates had shot back up, long-term rates had gone up, the  
14 Authority suddenly had the opportunity to realize a \$4 million  
15 gain from basically terminating the back end of their swap,  
16 still keeping the 3.35 in place through 2011, but taking off  
17 the swap from 2011 to 2033.

18 CHAIRMAN EICHELBERGER: I couldn't find anywhere  
19 where the city or the county authorized that change. Do you  
20 recall how that was done? How you were authorized to do it?

21 MR. LOSTY: There's all kinds of documentation on  
22 it, and always official action was taken, so official action  
23 would have been taken, but you can maybe ask some of the  
24 attorneys who are coming later. But we can't enter into swaps  
25 or terminate swaps without official action being taken.

1                   CHAIRMAN EICHELBERGER: Okay. The one thing that  
2 was curious to me, and I think it was part of the 2003  
3 agreement that you had spoken about, you were protecting  
4 against a 12-percent interest rate. Was that a prudent move  
5 at the time? I mean, 12 percent to me seemed like it was a  
6 very high interest rate to protect against.

7                   MR. LOSTY: Royce what I said. Under State law,  
8 for every insurer in Pennsylvania, if you issue variable rate  
9 bonds, you have to have, under State law, a statutory  
10 mandatory interest rate, and the statutory mandatory rate that  
11 was built into this document was 12 percent. That was not a  
12 separate swap. That was not anything that cost the Authority  
13 money. That was just embedded in the swap at 12 percent. It  
14 was what we would call a cost-free cap, and that's to qualify  
15 for State law purposes.

16                   And then to finish, as I mentioned, the mayor felt  
17 that 12 percent was too high a rate. Not that anyone thought  
18 that rates were going to go to 12 percent, but that he wanted  
19 a more realistic cap, so that's when the decision was made to  
20 drop the cap to 6 percent.

21                   CHAIRMAN EICHELBERGER: Getting back, one last one  
22 for me, I don't know if anybody else has anything or not.  
23 Yeah, I think we'll have a couple of follow-ups. But on this  
24 performance bond situation, so once that happened, and that  
25 was after the fact, did that affect anything that you were

1 doing? Was there an obligation of some kind to inform  
2 investors? Or how did that work?

3 MR. LOSTY: No, the bonds had been sold on a fixed  
4 rate basis. Certifications were made. Others have -- Dan  
5 Lispi, I know, at the last hearing talked about that he  
6 thought that the performance package did comply with State  
7 law. Others today can talk about it, so it did not result in  
8 any upheaval in the market for the Authority's bonds, if  
9 that's the question.

10 CHAIRMAN EICHELBERGER: And you're convinced that  
11 investors were fully informed about the financial strength of  
12 the project itself and relying more on the guarantees of the  
13 city and the county?

14 MR. LOSTY: I don't understand your question, that  
15 they were fully informed on the financial strength, or what do  
16 you mean?

17 CHAIRMAN EICHELBERGER: Of the project, that the  
18 project couldn't pay for itself.

19 MR. LOSTY: Oh, I think if you look at the OS,  
20 there's no discussion in there about evaluate this on the  
21 projections of revenues and expenses. It's replete: The  
22 strength here are the guarantors. We expect the revenues will  
23 be there and the rate covenant will be followed, but the  
24 strength is the guarantors.

25 CHAIRMAN EICHELBERGER: What shape was the city in

1 at that point, though?

2 MR. LOSTY: Well, as I mentioned earlier, had the  
3 county not gotten involved, the city could not have borrowed  
4 an additional \$125 million on their own credit strength.

5 CHAIRMAN EICHELBERGER: But the investors, do you  
6 think that there was enough disclosure that the investors knew  
7 that the city also probably couldn't pay these bills?

8 MR. LOSTY: Absolutely. Again, that OS is like a  
9 New York phone book.

10 CHAIRMAN EICHELBERGER: I'll confess, I did not  
11 read that entirely, but I read a good part of it though.

12 MR. LOSTY: All you have to do is read the first  
13 few pages where all that is disclosed upfront.

14 CHAIRMAN EICHELBERGER: Chairman Blake.

15 SENATOR BLAKE: Thank you, Mr. Chairman.

16 Mr. Losty, thank you. I just have one more point  
17 of clarity I want to get, because you've described this, and  
18 I'm just trying to -- a lot of what I've done in the second  
19 hearing here is try to understand what we might have to do  
20 legislatively, if anything, to deal with this circumstance and  
21 whether or not there's any statutory or regulatory flaws or  
22 weaknesses in the process of municipal finance, and Authority  
23 financing.

24 You mentioned that there's a representation made  
25 to the investors with respect to the project satisfying all

1 statutory requirements for performance bonding, so that's the  
2 first representation that's made. And then you have this  
3 being funded prior to the conclusion of construction documents  
4 and the execution of the project vis-à-vis those construction  
5 documents. That's right, right?

6 MR. LOSTY: That's correct. Yes, sir.

7 SENATOR BLAKE: By the way, is that a frequent--

8 MR. LOSTY: Very frequent. School districts, for  
9 instance, around the Commonwealth commonly, when interest  
10 rates look good and they have a project down the road, they do  
11 what's known as an advance funding and borrow money today and  
12 put it aside for 6 months or a year and wait for the project to  
13 be crystalized.

14 SENATOR BLAKE: Understood. So then there was a  
15 later judgment being made by those that had the Authority to  
16 make the judgment that a performance bond that would otherwise  
17 be statutorily required could not be obtained, but they made  
18 representation of an alternative security, and there is some  
19 legal opinion somewhere that says to the Authority or to the  
20 city or both that what has been suggested as an alternative  
21 satisfies State law with respect to that security. Is that  
22 your--

23 MR. LOSTY: That's my understanding. Yes, sir.

24 SENATOR BLAKE: That's your understanding. So in  
25 that interpretation then there's nothing that need be restated

1 to the investors? There's a sense of a similar security being  
2 given, is that correct?

3 MR. LOSTY: Correct. Yes, sir.

4 SENATOR BLAKE: Okay. Thank you.

5 CHAIRMAN EICHELBERGER: Senator Folmer.

6 SENATOR FOLMER: Earlier today, and actually, it  
7 was right before lunch or the lunch break, Mr. Bruce Barnes  
8 noted that six swaps in two years is highly unusual, he said.  
9 How do you respond to that?

10 MR. LOSTY: Well, I think Mr. Barnes was in error,  
11 that there were not six swaps, as I went through in this long  
12 diatribe I started off with. There was one swap done at the  
13 time of the 2003 financing. It was divided into two pieces  
14 because the '03 bonds had a 5-year and a 10-year maturity. So  
15 it was documented as two swaps, but it was one swap, and then  
16 there was one cap associated with that. So I don't have any  
17 further comment on what Mr. Barnes said.

18 SENATOR FOLMER: Then if there was any only one,  
19 then how many times was RBC paid?

20 MR. LOSTY: RBC was paid at the time we executed  
21 the 2003 swap and cap. There was a, sometime in the summer of  
22 2004, the cap was changed from a SIFMA cap to a LIBOR cap, and  
23 we made a fee at that time. And then when rates turned down,  
24 and in 2005 when we entered into the second swap, there was a  
25 fee at that time, sir.

1           SENATOR FOLMER: So basically, you applied three  
2 times for one swap then?

3           MR. LOSTY: No, not one swap. Totally different  
4 swaps. One time for one swap.

5           SENATOR FOLMER: Well, you just said there was  
6 only one swap.

7           MR. LOSTY: There was one swap in '03. There was  
8 a second swap in '05.

9           SENATOR FOLMER: Okay, of all the swaps you have  
10 been involved in, how complex or unique would you rate the  
11 Harrisburg swaps?

12           MR. LOSTY: Not complex or unique at all. They  
13 were, at this time, and remember, in September of 2003, the  
14 State of Pennsylvania had passed the changes to allow swaps to  
15 go forth, and there were many insurers around the State of  
16 Pennsylvania, and around the country, quite honestly, that  
17 were utilizing interest rate swaps to create, in this  
18 particular case, variable rate financing, but also, as Mr.  
19 Barnes talked about, create fixed rate financing. So these  
20 were very plain vanilla swaps.

21           SENATOR FOLMER: Several testifiers have talked  
22 about the role of engineers. Who were the engineers, and what  
23 did they do?

24           MR. LOSTY: Well, I think the engineers were  
25 certainly there on the record. It was Barlow was an

1 engineering firm, and then the county and the city council  
2 each hired their own engineering firms, Buchart Horn, and HRG  
3 I think was the other firm. And their role specifically,  
4 because everyone knew the primary risk here was, was Barlow  
5 capable? Could Barlow deliver? Would the technology work?  
6 There was great doubt on the part of city council, and even  
7 the county wanted it validated, so their role was to come in,  
8 evaluate the technology, evaluate the capability of the firms,  
9 and also look at the projections of revenues and expenses and  
10 see whether they were--

11 SENATOR FOLMER: If that's the case, then why  
12 weren't there any red flags being thrown up, if they were that  
13 concerned?

14 MR. LOSTY: Again, I think you have not had  
15 engineers come in and talk to you, but that would be a  
16 question for them and not for me.

17 SENATOR FOLMER: And then finally, I just have  
18 this question, because you're a financial advisor with RBC and  
19 such: Why do financial advisors place so much reliance on the  
20 financial advice of engineers? Why wouldn't the financial  
21 experts generate their own financial projections?

22 MR. LOSTY: Well, again, to clarify, I'm a  
23 municipal bond underwriter, not a financial advisor.

24 SENATOR FOLMER: I'm sorry. I'm sorry.

25 MR. LOSTY: So the underwriting firm, it's never

1 our role. As I put in my opening statements, every party, the  
2 reliance of everybody involved in the financing team is that  
3 each individual party is competent, experienced, and capable  
4 of performing their job and their role. For us to try to  
5 suggest that the engineering design was faulty or that their  
6 revenues were -- this was a complicated project. It's a  
7 cogeneration plant. For an underwriting firm or a bond lawyer  
8 or a trustee or an FA to walk across the line, that's where  
9 you get into trouble, when you start going beyond your areas  
10 of expertise.

11 SENATOR FOLMER: Then -- okay, then what you just  
12 said then brings one final question from me, is that is  
13 whether RBC or whoever the financial advisors were and so  
14 forth going forward, how could you give the best fiduciary  
15 advice when you weren't sure that the engineering or the  
16 project was actually going to work?

17 MR. LOSTY: Because we relied -- in fact, if it  
18 were only Barlow, that would even be a more apt question. But  
19 the fact that you had Buchart and HRG that came in and said  
20 that this looks reasonable, it looks viable. I mean why -- if  
21 somebody had three engineering reports that said it would  
22 work.

23 SENATOR FOLMER: Okay. Thank you, sir.

24 MR. LOSTY: Sure.

25 CHAIRMAN EICHELBERGER: Okay, thank you, Mr.

1 Losty. We appreciate your time today.

2 MR. LOSTY: Thank you. Thank you.

3 CHAIRMAN EICHELBERGER: Oh, could we have a copy  
4 of that testimony that you had?

5 MR. LOSTY: Sure.

6 CHAIRMAN EICHELBERGER: Great. Thank you.

7 Next is Mr. Andrew Giorgione. And you're an  
8 active member and current member of the Bar Association, so we  
9 won't swear you in today. Is that correct?

10 MR. GIORGIONE: That's correct. I am, and I  
11 prepared sworn testimony, so.

12 CHAIRMAN EICHELBERGER: Would you like to go ahead  
13 and proceed with some remarks?

14 MR. GIORGIONE: That would be great.

15 Good afternoon, Mr. Chairman and Members of the  
16 committee. My name is Andrew Giorgione. I'm an attorney at  
17 Buchanan Ingersoll Rooney. I'm appearing today at your  
18 request, and sitting with me is John Leathers, who is General  
19 Counsel to the firm.

20 Based on your letter, it's my understanding that  
21 the purpose of today's hearing is to discuss the Local  
22 Government Unit Debt Act and how it was applied to various  
23 borrowings of the Harrisburg Authority for the Resource  
24 Recovery Facility from 2003 to 2007. The purpose of my sworn  
25 testimony, which will be brief, is to provide some background

1 on our work for the Authority.

2 I've been a resident of the City of Harrisburg  
3 since 1990. When I graduated law school, I worked in the City  
4 Solicitor's Office for the City of Harrisburg. I left the  
5 city and joined Obermayer Rebmann Maxwell & Hippel in January  
6 1996. Obermayer represented the Authority many years prior to  
7 my employment, and I began doing work for the Authority when I  
8 joined Obermayer. Obermayer served as special counsel to the  
9 Authority in various matters - litigation, environmental, and  
10 public finance. During my time at Obermayer, I, along with  
11 other members of that firm, worked on the 2003 financings  
12 identified in the forensic audit.

13 In July 2005, I joined Klett Lieber Rooney &  
14 Schorling. At that time, most of the matters for the  
15 Authority were transferred with me to Klett. Klett, as you  
16 know, merged with Buchanan in 2006.

17 In 2007, city council enacted legislation to  
18 assume control of the appointments to the Authority, and in  
19 July 2007 appointed new members, and Buchanan no longer  
20 represented the Authority. To be clear, neither I nor  
21 Buchanan have represented the Authority in any matters since  
22 July 2007 and did not participate in the 2007 financing, which  
23 closed later in the year.

24 At the time our representation of the Authority  
25 ended, we turned over a list of outstanding matters to the

1 Authority to its new solicitor, which was the firm of Goldberg  
2 Katzman & Shipman, along with all related files and records.  
3 We also met with representatives of that firm on at least  
4 three occasions, and later in 2008 the Authority initiated  
5 litigation against CIT Capital USA, and we provided documents  
6 and testimony in subsequent years on that matter.

7 Our only other substantive contact with the  
8 Authority came in 2011 when Glenn Weiner, Esquire, requested  
9 documents relative to our representation of the Authority.  
10 Attached is our reply to that request, I attached it to my  
11 testimony, in which we directed Mr. Weiner to request copies  
12 of our records from the Goldberg firm, to which we had  
13 transferred the records as the Authority's successor counsel.  
14 Thus, in reply, we identify the location of our former  
15 records. We also offered to provide any further documents  
16 upon directive of the Authority. Mr. Weiner did not reply.

17 As you know, on page 14 of the report, Buchanan is  
18 identified as a party that did not provide the information  
19 requested. In light of the firm's attached reply, I think  
20 that's not accurate.

21 And that's the scope of my testimony.

22 CHAIRMAN EICHELBERGER: Okay, thank you.

23 Senator Folmer.

24 SENATOR FOLMER: Thank you very much, Mr.

25 Giorgione.

1                   Would you explain the CIT deal? Specifically,  
2 whose idea was it? How was it done? Who was involved?

3                   MR. GIORGIONE: Sure. So I believe it was about  
4 mid-2005 and Barlow was in trouble again as it related to the  
5 project. Earlier in the year they had come to us having cash  
6 flow problems related to the project and expressed to us that  
7 they had problems with the company delivering the boilers for  
8 the project, the company that was their subcontractor to  
9 design, engineer, and build the boilers, and that there were  
10 cost overruns related to that contract, and they asked for  
11 relief under the contract of \$2 million. And the Authority  
12 agreed to do that.

13                   This was not much later, probably three or four  
14 months they came to us again and they felt they were in  
15 trouble again financially in the project, and that they needed  
16 to raised additional funds. At that time, we had relatively  
17 brief conversations with the county that was not interested in  
18 issuing any further debt for the project. We talked to the  
19 underwriters, who said, quite frankly, with the project not  
20 being complete, I don't think there's any ability to go into  
21 the financial markets and issue any debt by the Authority  
22 guaranteed by even the city or the county. And certainly, at  
23 this time, publicly it was known that the project was in  
24 trouble and there are indications from city council they had  
25 no desire to issue any additional debt.

1           So our response back to Barlow was, you're going  
2 to have to raise the money. I mean, there's now way we can  
3 help you. We don't have the cash, and we're not going to  
4 provide it. Barlow then talked to several different financing  
5 entities to look at what's referred to as mezzanine financing  
6 to try to finish the project. And they brought to us CIT as a  
7 potential entity. And so the structure that was discussed,  
8 and this is late November, early December, was a structure  
9 whereby CIT would loan the money directly to Barlow, and  
10 Barlow would finish the plant. And CIT would be repaid  
11 through revenues generated from the facility, but in a  
12 waterfall fashion, that it was in a bucket below operating  
13 expenses and all existing debt service obligations. And  
14 that's the way we presented it, that we would think that the  
15 Authority and the city would find it acceptable, and the  
16 county would find it acceptable, and CIT agreed to that  
17 structure. And documents were being generated along those  
18 lines.

19           I don't remember the exact date, but it was  
20 literally 9 or 10 days before closing, and we trying to close  
21 early January. I trust you Royce at this time there was no  
22 activity going on at the site. The project needed to be  
23 delivered by the middle of 2006 because debt service payments  
24 were going to start, because we were on interest only and  
25 using interest only reserves to make those payments.

1           And so we were on a tight time schedule to try to  
2 get the remaining money raised so that Barlow could finish the  
3 plant, and documents were being generated. But literally 9 or  
4 10 days before closing I had a conference call with CIT and  
5 Barlow, and at that time they changed the entire structure, 10  
6 days before closing, and they basically said we're not going  
7 to do the structure we've been discussing for the last couple  
8 of months, and documents we've been giving to you. They  
9 changed it to a technology sale agreement. It was a direct  
10 obligation to the Authority. This is the only way we would do  
11 the deal. This is the only way we're going to do it.

12           And they actually at that time had lawyers from  
13 North Carolina that were papering this deal for them. And I  
14 asked them repeatedly to get, there's plenty of qualified law  
15 firms in Pennsylvania, because of concerns I had with the  
16 structure.

17           But to make a very long story short, I don't think  
18 the city or the Authority and the county really had any  
19 choice. And so we went down the path of closing this  
20 transaction. And we did it with concerns, and listen, I've  
21 testified two days in Federal court on this issue. The judge  
22 upheld the structure as being legal. But that doesn't, you  
23 know, take away from the fact that it was an extremely  
24 difficult financing and not one that anybody was happy with.  
25 I mean, Tom Mealy, who is probably one of the best public

1 employees I've been around, you know, quit over it; I mean, he  
2 was so distraught. And that was shared by many people,  
3 including the members of the Authority and the mayor and the  
4 county.

5 SENATOR FOLMER: Thank you.

6 You seem to have played multiple roles during  
7 these incinerator transactions. Would you tell us who you  
8 were working for? Who did you represent? Who did you report  
9 to? Who did you take direction from?

10 MR. GIORGIONE: Well, we represented, as special  
11 counsel, the Harrisburg Authority. Because of the guarantees  
12 being provided by the city, we certainly met with the mayor,  
13 we certainly met with city council. I mean, there were dozens  
14 of public hearings, obviously, and so we represented all of  
15 them. We did not represent the county.

16 That having been said, at the time, I also did  
17 legal work for the county on various different matters. But  
18 we did not represent them in this regard. And in fact, the  
19 county hired -- they had their own solicitor, but they also  
20 hired special counsel and engineers and financial advisors  
21 that advised them in the transaction.

22 SENATOR FOLMER: Thank you. Would you talk about  
23 your August 1, 2003, letter to Mayor Reed which provided  
24 background on your and Jim Losty's July 28, 2003, meeting with  
25 County Solicitor William Tully and Chuck Zwally and Tom Smida

1 of Mette Evans to discuss the county's secondary guaranty of  
2 the bonds?

3 MR. GIORGIONE: I mean, that's nine years ago. Do  
4 you have a copy of the letter? I'd be happy to look at it and  
5 try to refresh my memory, but I don't know what you're  
6 referring to.

7 SENATOR FOLMER: We don't have that copy with us.  
8 I apologize.

9 MR. GIORGIONE: I'm sorry, Senator. It was a long  
10 time ago. I trust you understand.

11 SENATOR FOLMER: I understand. No, I totally  
12 understand that. We're just trying to get to the bottom of  
13 some of this stuff.

14 You subsequently met with Commissioner Haste and  
15 reported to the mayor that, and I quote from that, "We  
16 cautioned Chairman Haste that the Resolution would cause a  
17 stir. His response was simply, any of those who would object  
18 to this transaction are not supporters of the County or City  
19 and would not support either administration. In sum, he  
20 expressed little concern and confirmed the County's support of  
21 this financing as being in the best interests of the County  
22 and City."

23 Were you surprised by Commissioner Haste's  
24 reaction, and did you find him to be more or less supportive  
25 as efforts moved along to complete the 2003 transaction?

1 MR. GIORGIONE: The county was very supportive.  
2 But Senator, there's a long history related to the county and  
3 city's relationship and this incinerator. You know, when Act  
4 101 was passed in the late '80s, counties had the ability to  
5 direct where the waste would go in your county, and the County  
6 of Dauphin directed their waste away from the city  
7 incinerator, as did the County of Cumberland. And so there  
8 was some very difficult times between the county and the city.  
9 And litigation ensued. It was multi-years of litigation, and  
10 eventually it was resolved. And I think the county ultimately  
11 recognized that, you know, it's got to be a good partner to  
12 the city, it can't let it fail.

13 And I know for a fact, going through the county's  
14 mind, is they had a large issue back then with a big landfill  
15 in the upper part of the county that was not supported by the  
16 residents. And I think they made the public policy decision  
17 that if waste were taken to the Authority and burned at the  
18 incinerator, one, it was going to generate energy; two, there  
19 wouldn't be a need to permit and expand the landfill in upper  
20 Dauphin County, and again, it would be helpful to the city.  
21 So those were the policy decisions as I understood them at the  
22 time.

23 SENATOR FOLMER: Would you share with us the due  
24 diligence measures you undertook to insure Barlow's  
25 projections were realistic and/or accurate?

1 MR. GIORGIONE: Well, if you're referring to the  
2 self-liquidating debt report, I mean, that's not our job. We  
3 were bond counsel. I mean, that having been said, I saw the  
4 self-liquidating debt reports, I saw when they were generated.  
5 And again, you know, pro forma risk was something that we  
6 discussed at almost every public meeting that we had on this  
7 project. And I will tell you that we had dozens. We had them  
8 at the county, we had them at the Authority, we had them  
9 before city council, we had them with DEP. And all these  
10 meetings we talked about environmental risk, technology risk,  
11 construction risk, you know, Barlow's availability to deliver  
12 this project, pro forma risk. We talked about all of it.

13 I mean, I can distinctly remember one issue that I  
14 saw in the pro forma that I raised to the mayor and others was  
15 there was a big number in there for disposal of specialty  
16 waste, and that's sort of high-end expensive waste, and the  
17 Authority didn't historically take that. It was 25,000 tons a  
18 year, and at \$100 a ton, that's \$2 1/2 million revenue. That  
19 seemed a concern to me. But Barlow was convinced that with  
20 this new facility, that they would be able to attract that  
21 type of waste. And if you looked at other waste incinerators  
22 in the State, they were doing those kind of numbers, and  
23 better. And so it was reasonable to understand it.

24 But besides that, I mean, we didn't have a  
25 responsibility to draft that. I mean, I did review, I did

1 look at them, but I didn't have a particular expertise except  
2 that one issue that I just recall in my mind at the time.

3 SENATOR FOLMER: On page 65 of the forensic audit  
4 it talks about your role and the work to provide Barlow with a  
5 security package rather than a performance bond. Why did you  
6 move forward without a performance bond, and what was your  
7 justification for taking the approach that you did? Did you  
8 feel you were stuck between a rock and a hard place and this  
9 just was the best of the bad ideas, of all the bad ideas?

10 MR. GIORGIONE: No. And, you know, I mean, I know  
11 it's somewhat hyperbole, I just don't think there were a lot  
12 of bad ideas in 2003. I mean, again, if the city did nothing,  
13 there was a lot of discussion over many years that it was  
14 going to have to somehow deal with the stranded debt that  
15 would be left, and so the decision was made to go forward.  
16 And I sit here today, I think it was the right decision that  
17 was made by the Authority, by the mayor, by city council, by  
18 the county. And again, if Jim Barlow delivered the project on  
19 time and on budget, we wouldn't even be here. We wouldn't be  
20 here.

21 So going back to your question, it's complicated  
22 because Barlow -- you know, Barlow -- first, it's wrong to say  
23 that there wasn't a performance bond. In fact, there was.  
24 The main entity, the main contractor that was in charge of  
25 fabricating the plant, Cianbro, provided a performance bond.

1 I mean, that in fact occurred. So it's wrong to say that  
2 there wasn't a performance bond.

3 SENATOR FOLMER: Well, then, could you walk us  
4 through the rationale as to why a performance -- now, wait a  
5 minute. So you're saying that there was a performance bond?

6 MR. GIORGIONE: Yeah. Cianbro provided a  
7 performance bond for the fabrication of the plant, yes. It  
8 was \$19 million, \$20 million, whatever the size of their  
9 contract was.

10 SENATOR FOLMER: That's a good question. How did  
11 that meet the legal requirements?

12 MR. GIORGIONE: Well, Cianbro was a contractor  
13 performing services, construction services, and had to provide  
14 a bond to bond their work.

15 SENATOR FOLMER: But were they not a  
16 subcontractor?

17 MR. GIORGIONE: They were, to Barlow. Barlow  
18 was--

19 SENATOR FOLMER: Well, then why wasn't there one  
20 for the contractor then?

21 MR. GIORGIONE: Well, they were the contractor.  
22 Barlow was the construction manager.

23 SENATOR FOLMER: No, you said they were the  
24 subcontractor.

25 MR. GIORGIONE: Barlow was the construction

1 manager. Essentially, Cianbro was the contractor underneath  
2 that was doing the fabrication of the plant. So Barlow would  
3 design, engineer, build the component parts, have them  
4 delivered to the site, and then would oversee Cianbro.

5 SENATOR FOLMER: So Cianbro had the performance  
6 bond?

7 MR. GIORGIONE: They did have a performance bond,  
8 yes.

9 SENATOR FOLMER: But did Barlow?

10 MR. GIORGIONE: Barlow did not. Barlow did not.

11 SENATOR FOLMER: Then why did they move forward?

12 MR. GIORGIONE: Well, I think the decision was  
13 made to go forward because there was sufficient forms of  
14 security in the contract separate and apart from the  
15 performance bond provided by Cianbro. I mean, number one, you  
16 have to understand, a large portion of Barlow's contract, as  
17 my recollection is \$35 million, \$40 million, was the  
18 fabrication and delivery of equipment for the site - boilers,  
19 handlers, the grate system, and all that other stuff. Barlow  
20 was not paid upfront for that material. The way it was  
21 structured in the contract, it had to be designed, built,  
22 engineered, fabricated, and delivered to the site before they  
23 would get paid. So that was a form of security to make sure  
24 that that was done.

25 Another big form of security in the contract,

1 besides the performance bond by Cianbro, who was going to take  
2 those parts and put them together, was there was an enormous  
3 retainage. It was around 20 percent. Normally in  
4 construction contracts, the retainage is 5 to 10 percent.

5 SENATOR FOLMER: Okay.

6 MR. GIORGIONE: And so I think there was a level  
7 of comfort by the county, the Authority, and the city that  
8 there was sufficient security under the May 2004 contract for  
9 the delivery of the project.

10 SENATOR FOLMER: Okay. Then Thomas Mealy earlier  
11 told us that you and Dan Lispi brought Barlow to the  
12 Authority. Would you walk us through the process to select  
13 Barlow?

14 MR. GIORGIONE: Yeah, I mean, I didn't have  
15 anything to do with selecting Barlow. Obviously, lawyers  
16 don't select them.

17 SENATOR FOLMER: Okay.

18 MR. GIORGIONE: Dan, for quite some time, as an  
19 employee of the city, was looking for technologies to deploy  
20 to retrofit the plant. And he probably looked at half a dozen  
21 different technologies. I mean, plasma, and, I mean, I can't  
22 even remember all the stuff he looked at. At the same time,  
23 he was doing an analysis of if we don't do a retrofit, what  
24 the city is going to look like and what's going to happen to  
25 the tax base if you have to cover this stranded debt.

1           Dan had read about Barlow and its technologies, I  
2     don't know when that was, and started a dialogue with them,  
3     and then had an opportunity to visit work that they were doing  
4     at that time in, I believe, Minneapolis and talk to them about  
5     looking at this project and seeing if it was a project that  
6     they could do. I actually accompanied him on one trip to  
7     Minneapolis because Barlow brought their lawyers in  
8     Minneapolis who had structured the financing for that deal,  
9     and they walked through with me how they put that deal  
10    together. What contracts they used, how it was financed, how  
11    it was structured. And so I think Dan became very comfortable  
12    with Barlow and their technology.

13           One of the big issues with the plant historically  
14    was the grating system. The grates were moving parts, and  
15    they used to break down all the time, because as the grates  
16    shifted, trash would move in through the system. Barlow's  
17    technology was using an air technology, no moving parts, that  
18    would push air through the trash and tumble it into the  
19    system. And he thought that was a dramatic improvement  
20    because when the grates break down, you got to shut the plant  
21    down. Using this air technology, he felt the reliability  
22    would be much better and not what they had experienced  
23    historically. So it was his recommendation that the city and  
24    the Authority go down the path with Barlow.

25           SENATOR FOLMER: Thank you. Who did you advise

1 and what did you tell them about certifying the incinerator  
2 bonds as being self-liquidating?

3 MR. GIORGIONE: I didn't tell anyone. We had no  
4 responsibility for it. We were bond counsel.

5 SENATOR FOLMER: Okay.

6 MR. GIORGIONE: We had no responsibility for the  
7 self-liquidating report.

8 SENATOR FOLMER: Were you around to be able to  
9 answer this: Who asked the most questions or were otherwise  
10 uncomfortable with moving forward with self-liquidation  
11 certificates? Would you know anything about that?

12 MR. GIORGIONE: I mean, I don't. I mean, there  
13 were a lot of people involved. They were independently  
14 reviewed, as you heard, on many occasion by two separate  
15 engineering firms. I really don't know what else to tell you.

16 SENATOR FOLMER: Numerous press reports have been  
17 written about the Harrisburg incinerator, as you know. What's  
18 your opinion about these reports? What, if anything, would  
19 you say has been reported wrong?

20 MR. GIORGIONE: We don't have enough time today.

21 SENATOR FOLMER: Okay.

22 MR. GIORGIONE: And I don't mean to be glib when I  
23 say that, but I think there's been, you know, and in all  
24 fairness, this is not easy stuff. But I think that if you go  
25 back to 2003 and read the reporting that was done then, and if

1 you look at the transcripts of all the hearings, you could see  
2 how much due diligence and discussion and meetings and  
3 different professionals were brought into this deal, very good  
4 professionals, very good engineering firms, very good law  
5 firms, including many of my counterparts, very good financial  
6 advisers and underwriters and bankers. And all of that  
7 structure, everything that was done had nothing to do with the  
8 failure of this plant. Nothing. They had nothing to do with  
9 it.

10 SENATOR FOLMER: What can you tell us about the  
11 2003, quote, City Council Fund that's found on page 48?

12 MR. GIORGIONE: Well, I do recall that it was a --  
13 the issue was first raised with me by the president of the  
14 council. He asked me to talk to the mayor about it, and I  
15 raised the issue with him, and I told the mayor, you just need  
16 to talk to the president of city council directly.

17 SENATOR FOLMER: So who established it? Do you  
18 know?

19 MR. GIORGIONE: I believe it was the mayor's idea.

20 SENATOR FOLMER: Okay. And who made the decisions  
21 on how it was spent, the mayor? And how much was spent, and  
22 how was it spent?

23 MR. GIORGIONE: And I don't know. So the fund was  
24 set up, and I believe it was administered by the city, but I  
25 don't know anything about it. I mean, I don't know who

1 requested money from it or what amounts were spent, and I  
2 wouldn't know.

3 SENATOR FOLMER: Now, your statement of financial  
4 interest for 2005 lists two direct and indirect sources of  
5 income. One you mentioned earlier was Klett Lieber Rooney &  
6 Schorling, and the other one was JEM Group. What's the JEM  
7 Group, and what's the significance of its inclusion on your  
8 statement of financial interests?

9 MR. GIORGIONE: I might have done business  
10 development work for them. They're a contractor. I believe  
11 that was related to the construction of an office tower in the  
12 City of Harrisburg where I was paid a fee for helping them  
13 generate business.

14 SENATOR FOLMER: Okay.

15 MR. GIORGIONE: The owner of the company is  
16 Jessica Myers. She's a friend of mine.

17 SENATOR FOLMER: Okay.

18 Okay, thank you. I'm through, Senator.

19 Thank you, Mr. Giorgione.

20 CHAIRMAN EICHELBERGER: Senator Blake.

21 SENATOR BLAKE: Thank you, Mr. Chairman.

22 Thank you, Attorney Giorgione, for your presence  
23 and your testimony here today. I'm grateful. I don't really  
24 have much to cover. I think you've already answered a lot of  
25 questions here.

1 I think you may have had a chance to listen to the  
2 previous testimony from Mr. Losty with respect to the funding  
3 early, right, getting into the construction, and then the  
4 issue of the performance bond. And I'm just trying to get  
5 clarity on the performance bond issue, and I'm realizing, on  
6 the basis of all the testimony we had in the previous hearing,  
7 and all the one that we had at this hearing, it's almost like  
8 you were in so deep and, you know, the commitments had already  
9 been made and it was all teed up and it was almost like there  
10 was no turning back. But I still think this bears some  
11 consideration for me as a legislator in terms of going forward  
12 and whether or not there's some legislative consideration this  
13 issue should be given.

14 The Pennsylvania Public Works Contractors' Bond  
15 requires financial security for contracts above a certain  
16 dollar amount entered into by contracting bodies, which would  
17 include the Authority. The statute does not require a  
18 performance bond, but the prime contractor must provide the  
19 contracting body security of 100 percent of the contract  
20 amount. In the case of Barlow, they are not only construction  
21 manager but they are, I think, prime contractor. Am I correct  
22 on this?

23 MR. GIORGIONE: My recollection is no, Cianbro is  
24 the prime contractor because they were the ones fabricating  
25 what Barlow was designing, engineering, and delivering to the

1 site for fabrication.

2 SENATOR FOLMER: Okay, my mistake. Again, my  
3 feeling about it was I thought Cianbro was sub to Barlow, and  
4 that in the case of the performance bond that Cianbro  
5 provided, it was really a performance bond given to Barlow.  
6 Barlow would still have been, in my estimation, and I could be  
7 wrong, again, Attorney Giorgione, I don't know if I'm in the  
8 weeds far enough to know these relationships, but we'll find  
9 out. The thing for me is did there have to -- I'm trying to  
10 figure out whether there had to be a representation or whether  
11 the alternative security still passed muster, and apparently  
12 it did, from several legal perspectives, that it passed muster  
13 with respect to compliance with that law. Meaning there was a  
14 sense that there was still 100-percent security for the amount  
15 of the contract. Is that your interpretation?

16 MR. GIORGIONE: Yeah, my recollection was there  
17 was much discussion around this. Barlow's lawyers at LeBoeuf  
18 Lamb had provided their legal analysis of what was required in  
19 terms of security because of the roles being played by Barlow,  
20 and I know the solicitor for the Authority and my firm looked  
21 at it. I think we were comfortable, very much comfortable  
22 with the security packages being in compliance with  
23 Pennsylvania law when the contracts were signed in May 2004.

24 SENATOR BLAKE: Understood. Thank you.

25 Thank you, Mr. Chairman.

1                   CHAIRMAN EICHELBERGER: I can't understand how  
2 anybody could think that that would be sufficient under the  
3 law, but. I have sold bonds for 30 years and I've never seen  
4 a situation where anybody has gotten anything other than a  
5 performance and payment bond on a job, and for 100 percent.  
6 I'll go back and review the role of these subs. I mean, you  
7 just told Senator Folmer that that was a subcontractor.  
8 That's my understanding, that there was a series of subs that  
9 provided bonds to Barlow, which didn't do anything to protect  
10 the Authority, and then the retainage, which is never  
11 considered security, was up, but--

12                   MR. GIORGIONE: Well, retainage, you're actually  
13 holding the cash. That's actually the best form of security  
14 you can have.

15                   CHAIRMAN EICHELBERGER: Not under the law that  
16 pertains to performance bonds, it's not recognized there.  
17 It's not recognized by insurance companies. I don't know who  
18 recognizes it. Sure, practically speaking, it's a nice thing  
19 to have retainage, but I don't think it complies with the law.

20                   MR. GIORGIONE: And my recollection is also that  
21 Cianbro, the bond that was provided by Cianbro, the  
22 beneficiaries of that bond were not just Barlow but the  
23 Harrisburg Authority.

24                   CHAIRMAN EICHELBERGER: Well, we'll have to check  
25 into that a little further.

1 MR. GIORGIONE: Because I remember, when Cianbro  
2 was terminated, that bond had to be released by the Authority.

3 CHAIRMAN EICHELBERGER: Well, the concoction that  
4 was cobbled together obviously didn't work. I mean, the proof  
5 is in the pudding, I guess, at this point.

6 MR. GIORGIONE: I can't disagree with you. That  
7 having been said, Barlow didn't just miscalculate by a little  
8 bit. I mean, let's be clear here. I mean, they miscalculated  
9 by a lot, and I don't know how that happened, and I don't  
10 think anybody on our side knows how that happened. And  
11 there's never been an investigation into where all the money  
12 went for this project that they had. So, you know, that's  
13 distressing to me. But it's an honest answer, and I think  
14 anybody on this side of the table would tell you the same  
15 thing. We don't know where all the money went, how they  
16 miscalculated so badly.

17 I mean, if you think about it, if you add the \$25  
18 million from CIT, which did have some working capital and the  
19 additional, I mean, they missed by \$30 million, \$40 million,  
20 \$50 million. I mean, a big number. I don't know how that  
21 happened. I just don't. But certainly, to me, that's cause  
22 for investigation.

23 CHAIRMAN EICHELBERGER: To follow up on Senator  
24 Folmer's point about that JEM Group, you didn't disclose  
25 anything since you were working for both them and the

1 Authority, and they did some work, I guess, for Reynolds  
2 Company.

3 MR. GIORGIONE: Yeah, they were an off-shoot of  
4 Reynolds. I didn't have any relationship with Reynolds, and I  
5 didn't help JEM on anything related to the city Authority or  
6 the city. This was an office tower in downtown. Jessica came  
7 to me, she wanted a piece of the business, asked me if I'd  
8 talk to the owner and help her out, and I did.

9 CHAIRMAN EICHELBERGER: Okay. Do you know if the  
10 bond, getting back to this performance bond, and not to argue  
11 that point over again, but after that decision was made and  
12 the alternative security package was put together, how was  
13 that information communicated to the bond people? Did the  
14 investors know about that? Because we just heard from Mr.  
15 Losty that that was after the fact that things were sold.

16 MR. GIORGIONE: I don't recall. I don't recall  
17 that I communicated anything to the bondholders.

18 CHAIRMAN EICHELBERGER: And you wouldn't know if  
19 that had any impact on whether they would think that that  
20 would jeopardize the security of their investment in any way?

21 MR. GIORGIONE: I don't.

22 CHAIRMAN EICHELBERGER: I also question, as I  
23 recall, the bond indenture specifically stated that there  
24 would be a performance bond in place. How did you justify  
25 getting around that? Other than the law, the statute, then it

1 was also addressed in the bond indenture.

2 MR. GIORGIONE: Yeah, I think we had a performance  
3 bond. I think I indicated that.

4 CHAIRMAN EICHELBERGER: Okay.

5 MR. GIORGIONE: Sir, let me raise another point on  
6 this performance bond issue. And I'm going to be honest with  
7 you, I think this is somewhat of a red herring too. If you  
8 think about what that performance bond was supposed to do, it  
9 was supposed to address the fabrication and building of this  
10 plant; not the design, not the engineering. And so if there  
11 were portions of this plant that were designed and engineered  
12 improperly, which we know there were, because the bond that  
13 secured that, the surety company paid in full on that, it's my  
14 understanding, to the Authority. Then why would the surety  
15 company on the fabrication also pay? Their simple argument is  
16 they misdesigned it. We built what they told us to build, and  
17 it didn't work. It's not our fault.

18 So I don't -- if there's a conception out there  
19 that these guys were just going to stroke a check, I don't  
20 think that's remotely realistic on what would have happened.

21 CHAIRMAN EICHELBERGER: Well, often in bonds too  
22 there are timeline penalties.

23 MR. GIORGIONE: There are.

24 CHAIRMAN EICHELBERGER: And there were, I think,  
25 in the alternative security package as well, right?

1 MR. GIORGIONE: Yes.

2 CHAIRMAN EICHELBERGER: But there was nobody to  
3 fall back on because there wasn't a bond carrier.

4 MR. GIORGIONE: There was not. That's correct.

5 CHAIRMAN EICHELBERGER: That would have been one  
6 benefit.

7 Ms. Barratini, who had testified at the last  
8 hearing, raised some issues regarding the 8110(b)  
9 certifications. Do you recall who was put together to address  
10 those concerns and how they were -- who answered her during  
11 that time?

12 MR. GIORGIONE: I don't.

13 CHAIRMAN EICHELBERGER: You don't recall what the  
14 issues were?

15 MR. GIORGIONE: I don't, I'm sorry.

16 CHAIRMAN EICHELBERGER: Another comment here that  
17 was made, that there was an e-mail detailing how, that I think  
18 I quote this, Freddie is getting \$1 million, and council wants  
19 money too. Do you know what that was referring to?

20 MR. GIORGIONE: Yeah, I saw that in the audit  
21 report. I mean, it was a phone call I received from the  
22 president of city council's counsel, and he said that the  
23 president was upset, he felt there was unfairness related to  
24 the transaction. I said I'll relay it to the mayor and ask  
25 him to speak to him.

1                   CHAIRMAN EICHELBERGER:  Senator Folmer.

2                   SENATOR FOLMER:  Sir, thank you for your time  
3 here.

4                   What advice did you give Mayor Reed regarding all  
5 these transactions?  Did you give him any signs of warnings?  
6 Sound off any alarms?  Raise any red flags?

7                   MR. GIORGIONE:  How many years?  I mean, it's  
8 pretty tough.  What transactions, I mean?

9                   SENATOR FOLMER:  Any of them.  Any that would come  
10 to mind.

11                  MR. GIORGIONE:  Well, let's talk about 2003.  I  
12 mean, certainly, we discussed with the mayor and publicly with  
13 the Authority and the city council all the risks of the  
14 project.  We talked about them in every meeting.  And I went  
15 through the litany of them before - the environmental risk,  
16 the pro forma risk, the technology risk, the construction  
17 risk.  And that's what I think caused even city council to  
18 hire their own engineer, to wrap their own heads around this  
19 issue independently from the Authority and the mayor.

20                  I mean, I don't know how really to answer your  
21 question.  I think the mayor obviously knew the risks of the  
22 project.

23                  SENATOR FOLMER:  Does anything stick out in those  
24 conversations?

25                  MR. GIORGIONE:  Not that I can recall.  I mean,

1 and it's a long time ago. There was a lot of conversations.  
2 So, I mean, this project, we worked on this project for, you  
3 know, over a decade. You know.

4 SENATOR FOLMER: Okay. I'm good. Thank you.

5 CHAIRMAN EICHELBERGER: You know, again, I had  
6 mentioned this earlier, I just can't -- what strikes me is  
7 that everybody is so compartmentalized in what they do, and  
8 it's interesting that an attorney-at-law that would be  
9 involved, and deeply involved in the middle of this, with all  
10 the history and background and all the connections that you  
11 had in all these borrowings, when things don't look right,  
12 just you stick to what you're looking at and you don't offer  
13 advice on anything else. I mean, if the deal is falling  
14 apart, it would be like me going to a physician and having a  
15 problem with my arm, and, you know, my back, the skin is torn  
16 off my back, I think the physician would say, let's look at  
17 your arm, but we're also going to look at your back.

18 I don't see where the financial analysts, the bond  
19 counsel, just everybody involved with this didn't raise flags  
20 and ask additional questions about what was collapsing around  
21 them as these deals when went on and on and on.

22 MR. GIORGIONE: You know, if I could take you back  
23 to 2001, 2002, and 2003 to try to understand how we got to  
24 where we were, you know, a lot of times money was being issued  
25 and debt layered on this facility because DEP or EPA or

1 somebody was requiring new environmental measures or things to  
2 be done to the facility. And when that was done, there was  
3 money owed from the Authority to the city that was borrowed  
4 and paid over to the city. That was the decision that the  
5 mayor made and the Authority made to structure it that way.  
6 There was nothing illegal about it. But it did put a lot of  
7 debt on that facility. There's no doubt about it.

8 CHAIRMAN EICHELBERGER: Right.

9 MR. GIORGIONE: And it was a concern. Obviously,  
10 we talked about that. The reality of it is, by 2003, it was a  
11 time where the city had to make a decision whether they were  
12 going to eat that \$94 million and figure out how to address  
13 that structural, or go forward with the project. And I can  
14 tell you that I was comfortable, as were many, many other  
15 professionals, that Barlow had a reasonable chance of  
16 delivering this project on time or on budget. The reality of  
17 it is, even if they missed by a little bit, you're still going  
18 to be in a better position than owing \$94 million. I know we  
19 talked about that. I mean, let's say their projections are 20  
20 percent off. So now the city's guaranty is going to kick in,  
21 a million or two a year. That's better than somewhere in the  
22 neighborhood of \$6 million, \$7 million, \$8 million a year.

23 So we talked about all these things. I mean, if  
24 you were back in time and sitting in on all these meetings, I  
25 don't know you would have reached a different conclusion not

1 to go forward with this project. It's easy to Monday-morning  
2 quarterback here a little bit, but I think there was a lot of  
3 people. And DEP gave all the permits to build the plant, you  
4 know, the different layers of guarantees, the bondholders  
5 buying the bonds. I mean, you know, Barlow having built two  
6 of these plants and doing well. I don't know. It seemed  
7 reasonable at the time. That's all I can tell you.

8 CHAIRMAN EICHELBERGER: Senator Folmer, one  
9 follow-up.

10 SENATOR FOLMER: And this is a tough question for  
11 you to answer, I understand, but because I'm just trying to  
12 get a total feel for all of this, and I appreciate all that  
13 you said here today. In retrospect, knowing what you now  
14 know, are there any regrets?

15 MR. GIORGIONE: Oh, definitely. Doing the CIT  
16 transaction.

17 SENATOR FOLMER: Okay.

18 MR. GIORGIONE: There's no doubt. And I have said  
19 that publicly at city council meetings, but again, that was  
20 after the fact.

21 SENATOR FOLMER: Right.

22 MR. GIORGIONE: There was, again, an engineering  
23 report delivered at the time of that financing that this  
24 amount of money was going to finish that plant. And I'll tell  
25 you, one of the thinkings -- one of the things that ran

1 through our mind is, if the plant gets done and is operating  
2 and generating revenue, then you can refi that debt and take  
3 it out so you don't have to worry about it. But now you can  
4 do it traditionally, because now the marketplace knows the  
5 plant's done. But one of the biggest engineering companies in  
6 the country delivered a report that this money will be  
7 sufficient enough to finish the plant.

8 SENATOR FOLMER: Okay.

9 MR. GIORGIONE: And it didn't happen. So, yeah, I  
10 really regret doing that transaction. But again, at that  
11 time, one of the other things we did is we started to look for  
12 other contractors, Dan Lispi searched for other contractors to  
13 step in and finish the plant at that point, and he couldn't  
14 find one interested.

15 SENATOR FOLMER: Right.

16 MR. GIORGIONE: It was just too far out. There  
17 was too many concerns about engineering and design and things  
18 of that nature.

19 SENATOR FOLMER: Thank you.

20 MR. GIORGIONE: Thank you.

21 CHAIRMAN EICHELBERGER: Okay, thank you. Thank  
22 you, Mr. Giorgione. Thank you for your time today.

23 MR. GIORGIONE: You're welcome.

24 CHAIRMAN EICHELBERGER: The next witness is Carol  
25 Cocheres. And you are a member of the Bar?

1 MS. COCHERES: Yes.

2 CHAIRMAN EICHELBERGER: So we'll waive the  
3 swearing in here. We welcome you today, and whenever you're  
4 ready. If you have any prepared remarks or anything you'd  
5 like to offer before we ask questions, that would be fine.

6 MS. COCHERES: Just a short background statement.

7 Mr. Chairman and committee Members, good  
8 afternoon. My name is Carol Purell Cocheres, and for the past  
9 37 years, I've been a Pennsylvania lawyer, having graduated  
10 from Duquesne University and its law school in 1975. After my  
11 law school graduation, I came to Harrisburg and then served  
12 for eight years as an assistant counsel with the Pennsylvania  
13 Department of Community Affairs, commonly called DCA, under  
14 the administrations of both Governors Shapp and Thornburgh. I  
15 mention DCA in part because DCA is one of the predecessor  
16 agencies to the Department of Community and Economic  
17 Development.

18 From DCA, I entered into private practice in 1984.  
19 And then in 1986, I joined Eckert Seamans' public finance  
20 group. And for over 25 years, I was a partner in the  
21 Harrisburg office of Eckert Seamans. In 2010, after a major  
22 reconstruction of my back at Johns Hopkins, I retired from  
23 Eckert Seamans on medical disability and currently am of  
24 counsel to the firm. As a result of my back problems, if this  
25 goes on for a long time, I may need to ask for a break to get

1 up at some point. But anyway, I beg your indulgence if that  
2 happens.

3           Eckert Seamans is a highly respected Pennsylvania-  
4 based law firm headquartered in Pittsburgh. Eckert maintains  
5 offices throughout the Commonwealth, including Harrisburg, and  
6 throughout the eastern United States. Eckert employs more  
7 than 340 attorneys, and represents clients in virtually every  
8 area of the law, and prides itself on its professional  
9 integrity.

10           During my tenure at Eckert Seamans, we represented  
11 the Harrisburg Authority as bond counsel in connection with  
12 the 2007 retrofit completion financing, as well as we served  
13 as underwriter's counsel for the 2003 retrofit financing. In  
14 connection with the 2007 retrofit completion financing, our  
15 responsibility as bond counsel was to work with the Authority,  
16 the city, the financial advisors, and the underwriters so that  
17 the proposed completion financing was in compliance with State  
18 law. In particular, the Pennsylvania Municipality Authorities  
19 Act, and the Local Government Unit Debt Act, and as  
20 applicable, Federal law. We also rendered opinions on the  
21 legality of the notes and of the city guaranty.

22           We fulfilled our responsibilities under the 2007  
23 retrofit completion financing professionally and competently.  
24 We did not make any public policy decisions regarding the  
25 issues, including the decisions to issue any bonds or to make

1 any guarantees. Rather, we assisted in the execution of  
2 policy decisions made by the elected and appointed public  
3 officials.

4 In 2010 and 2011, as you know, there was a review  
5 of these financings and other matters was conducted by Klehr  
6 Harrison Harvey Branzburg LLP, and ParenteBeard LLC, at the  
7 request of the Harrisburg Authority. During the course of  
8 that review, Eckert Seamans, along with other law firms,  
9 financial advisors, and other entities, was requested to  
10 produce work papers and other documents, as well as to have  
11 professionals in the firm interviewed by the attorneys  
12 representing the Authority.

13 Eckert Seamans produced thousands, and I mean  
14 thousands, of pages of documents requested by the Authority's  
15 representatives regarding the 2007 financing. I also  
16 voluntarily agreed to be personally interviewed by the  
17 Authority's attorneys, and was interviewed for several hours.  
18 Although other firms may have refused to produce documents or  
19 appear for interviews, Eckert fully cooperated with the review  
20 to the extent allowed by attorney/client privilege to other  
21 clients.

22 As a result of our cooperation, the Authority's  
23 attorneys had full access to all the documents they requested  
24 of Eckert Seamans, as well as to my personal recollections.  
25 However, the report omits mention of many facts that I related

1 to them, as well as documents that were produced by the firm  
2 and given to them.

3 Finally, as of October 17, 2012, the Harrisburg  
4 Authority has waived its attorney/client privilege with us for  
5 me to be able to appear at this meeting. I am prepared to  
6 answer any questions that you may have, Senator, and of your  
7 committee, and I thank you for the opportunity to appear here  
8 today.

9 CHAIRMAN EICHELBERGER: Thank you very much.

10 Senator Folmer, do you have some questions?

11 SENATOR FOLMER: Yes, thank you.

12 Ms. Cocheres, thank you. Who prepared the bond  
13 documents for the incinerator financings? Did the bond  
14 documents contain standard provisions for a revenue financing?  
15 And if not, how were they different from the standard  
16 provisions?

17 MS. COCHERES: Okay, let me make a distinction  
18 here between -- we were underwriter's counsel for the 2003  
19 transaction.

20 SENATOR FOLMER: Okay.

21 MS. COCHERES: And prepared the official statement  
22 for the Authority and the city and the county. That's really  
23 their documents, but we prepared and organized the document.  
24 For the 2007 financing, we were bond counsel.

25 Now, for the 2003 deal, the bond counsel for that

1 transaction, which was Obermayer, prepared the relevant bond  
2 documents; whereas in the 2007 transaction, where Eckert was  
3 asked to serve as bond counsel, we prepared the documents  
4 relating to that transaction, the note documents, the  
5 indenture, the guarantees, and so forth.

6 SENATOR FOLMER: Well then, with the 2003 in mind  
7 then, did you believe the 2003 debt to be self-liquidating?

8 MS. COCHERES: Okay, I hate to sound like a broken  
9 record with other people that have said this earlier today,  
10 but there is sort of a compartmentalized view of this. In  
11 2003, our firm did not prepare the self-liquidating debt  
12 report. As attorneys, we're not qualified like engineers to  
13 put together the numbers and the estimates that are required  
14 for a self-liquidating debt report.

15 SENATOR FOLMER: Then what about 2007?

16 MS. COCHERES: Okay 2007, the 2007 debt was not  
17 qualified as self-liquidating. There were no exclusionary  
18 proceedings submitted to the Department of Community and  
19 Economic Development for the 2007 debt.

20 SENATOR FOLMER: Could you explain that?

21 MS. COCHERES: Okay. Maybe I should give you a  
22 little bit of background on what self-liquidating debt is.  
23 That might help with the situation here. As one of my  
24 partners frequently states, self-liquidating debt has like  
25 four premises. One, you need to have a facility constructed.

1 Two, that facility has to be operating. Three, the facility  
2 has to be generating revenues through charges, fees, and other  
3 assessments. And four, there has to be a rate covenant where  
4 the Authority or issuer has the obligation to raise rates in  
5 order to produce revenues sufficient to pay operating expenses  
6 and debt service.

7 I think what you're leading up to is -- you  
8 haven't said it, but I'll take a guess, and this will be a  
9 long answer, is you're looking at the Section 8110(b)  
10 certification.

11 SENATOR FOLMER: Correct.

12 MS. COCHERES: Okay. That particular issue,  
13 there's a long story, but I'll go through it. Okay, in May of  
14 2007, our firm was asked to become bond counsel on the  
15 retrofit completion transaction. As with any other  
16 transaction, the first thing we investigated and reviewed was  
17 whether the transaction would meet State and local law. And  
18 as I mentioned earlier, the Municipality Authorities Act, as  
19 well as the Local Government Unit Debt Act. I know that, just  
20 as an aside, the report does not really get into the  
21 Municipality Authorities Act and its application here. But we  
22 did that, and one of the very first issues that came up, and  
23 it was also recognized by the other members of the financing  
24 team, was what to do, how to address the 8110(b)  
25 certification.

1           So in our review and our analysis, we checked the  
2 legislative history, of which I have significant amount  
3 personally, since I was at the department back when the '72  
4 act was amended in '78-'79; the case law; the decisions that  
5 are issued by the department whenever a challenge or a  
6 complaint is submitted to the department, and of course a  
7 review of the statute.

8           There was a dearth of guidance. There just really  
9 wasn't anything there to deal with what we had in front of us  
10 in 2007, which was a partially completed project that the  
11 public officials at that time wanted to have it completed. So  
12 by the first week of June, I contacted Bernadette Barratini at  
13 DCED. I explained to her the situation, the status of the  
14 project, that there were issues on cash flows in the past, but  
15 we were looking also into the future, and this new financing  
16 for the completion of the facility was supposed to provide the  
17 sufficient funds to complete the project, as well as to  
18 eventually self-liquidate the project.

19           There was so much fluidity at that time, and I'm  
20 talking at this point, still like in June, July of 2007.  
21 There was so much fluidity, which I explained to her that  
22 there were discussions of selling the facility, there were  
23 discussions on raising rates for both the city residents and  
24 the county residents. And so when we laid this all out, and I  
25 told her that I thought that the new debt that we were talking

1 about, both the -- the new debt looked like it was going to  
2 have two components - the working capital component and the  
3 construction component - that both of those components, the  
4 debt that would be incurred would not be qualified as  
5 self-liquidating, and that the remaining debt, in my  
6 discussions with her, it seemed as though it was going to be  
7 acceptable to DCED that since this was a noncompleted project,  
8 that the outstanding 8110(b) certification could remain in  
9 place until such time as the project was completed, and if at  
10 that point it appeared that some of the debt would not be  
11 self-liquidating, which most people thought that there would  
12 at least be a portion of the outstanding debt at that time,  
13 would probably not be self-liquidating at the end, that that  
14 could be taken -- adjustment could be made to the debt  
15 statements and to the city's debt capacity at that time. So  
16 we proceeded on that reliance then through the rest of the  
17 summer and into the fall of 2007.

18 Now, in the fall of 2007, there was a new board at  
19 the Harrisburg Authority. We were again reappointed or asked  
20 to stay on by the chairman of the Authority, as he said to me  
21 that he knows -- he knew I was a straight shooter and he asked  
22 me to continue with the project. And we moved on, and at that  
23 time, in the fall of 2007, PFM, Public Financial Management,  
24 was engaged, as well as the engineering firm of HDR. And  
25 those two parties were to review and to, I would say, analyze

1 the reasonableness of completion of the project, look into  
2 what the revenues -- what revenues might be generated, and so  
3 forth.

4 And by the fall of 2007, PFM had put together  
5 different options that would show how the outstanding debt  
6 would be paid, how the new debt might be paid, there was going  
7 to be a reserve for like the CIT financing, and so forth. And  
8 PFM did in fact give us, and the public officials were given  
9 copies of these various options, options that included showing  
10 that the debt could be self-liquidating. That there were  
11 estimates and projections to that effect.

12 And I think one thing that's been missing in this  
13 hearing, missing in the audit report, is this concept of when  
14 you're talking about self-liquidating debt, you're still  
15 always talking about estimates. There aren't guarantees when  
16 you deal with self-liquidating debt. It's a look into the  
17 future of the project, and it's not a look back historical  
18 evaluation.

19 And so in the fall we did have numbers. I did  
20 mention this to the auditors, and that was one of the  
21 omissions that the auditors made is that they said in the  
22 audit report that projections that we -- they had found in our  
23 -- they did not find any projections in our documents that  
24 showed that the debt was self-liquidating. Well, I have for  
25 the committee a copy of an e-mail that was in fact sent by our

1 firm counsel, and I'll give you a copy of this, to Doug  
2 Schleicher, pointing out to them that we gave them one  
3 particular Public Financial Management presentation on the  
4 working capital loan that was dated November 13, 2007. We  
5 referred to -- I'll give this to you -- all the documents were  
6 numbered under a documentation system. So referred to that  
7 particular item, which I gave you copy of, plus we gave them a  
8 copy of the May 8, 2008, financial update, again being put  
9 together by Public Financial Management.

10 And this particular report I'm bringing up to you,  
11 and it was sent to Mr. Schleicher, to show that the Authority  
12 had the intention of in fact making the debt self-liquidating,  
13 and they were planning to -- this was the direction from the  
14 chairman, James Ellison, that the debt service through 2008  
15 was all covered for all the outstanding debt. The debt  
16 service starting in 2009 was not covered. And James Ellison  
17 and the other Authority board members had said that they  
18 wanted to have the rates pay for the debt service in 2009.  
19 And so PFM, Covanta, HDR all worked on numbers in 2008 to have  
20 the debt be self-liquidating on the basis of the rates, fees,  
21 and charges being charged to the customers of the facility.  
22 And I wanted to bring this to your attention, the fact that  
23 there was an attempt by the Authority to have the debt be  
24 self-liquidating, that was an omission in the report.

25 Now, the problem that occurred was that the

1 Authority raised the rates, which resulted in the city raising  
2 its rates per ton. However, when the Authority attempted to  
3 raise the rates of the county customers, the county challenged  
4 that rate increase under the solid waste disposal agreement  
5 that ran between the Authority and the county. And for the  
6 Authority, unfortunately for the Authority, the Authority lost  
7 the arbitration. And so that was what's caused some of the  
8 issues here, because of the big differential in rates between  
9 what the city residents are charged and what the county  
10 residents are charged.

11 I hope that gives you a little bit better picture  
12 of how of this -- what the approach was and what was done in  
13 2007 as to the Section 8110(b). If you have further  
14 questions.

15 SENATOR FOLMER: I have just one more question for  
16 you. Who advised Mayor Reed and Commissioner Haste to sign  
17 the 8110(b) certifications that the existing incinerator debt  
18 was self-liquidating?

19 MS. COCHERES: Well, I think by the time -- we  
20 were in the fall, November of 2007. And by the way, the  
21 officials had been made aware of the issue of self-liquidating  
22 debt like throughout the process here. By the time we hit the  
23 fall, there were options that PFM and HDR and so forth had put  
24 together that showed that the outstanding debt could be  
25 self-liquidating in the future. And as I mentioned to you

1 earlier, self-liquidating debt is not just an historical  
2 examination. It's also a prospective examination.

3           So we -- by the way, in the fall also I had a  
4 second conversation with DCED to confirm again that the  
5 approach that was being taken was in fact acceptable to DCED,  
6 because the last thing we wanted was to send proceedings up to  
7 the Department of Community and Economic Development and have  
8 them rejected because there was something wrong with the  
9 certificate or they didn't agree with the fact that even  
10 though there were financial difficulties with the incinerator,  
11 that the 10(b) certificates could still be executed by the  
12 respective -- well, I worked with city. I can't tell you, and  
13 we sent the certificate over to Mayor Reed, which he executed.

14           I do also want to point out to you that the  
15 ordinance, guaranty ordinance, was very explicit, and I don't  
16 know if you have seen the actual ordinance. It appeared as  
17 though from the last hearing that you hadn't seen how explicit  
18 and detailed the guaranty ordinance actually was. And in the  
19 guaranty ordinance, there's very specific language on all the  
20 difficulties that the incinerator was having, losing money.  
21 There's a five-page single-spaced recitals of the project  
22 going back to 1993 and bringing up about the termination of  
23 Barlow, the failure to complete the retrofit bonds project,  
24 resulting in delays and losing -- not being able to operate  
25 efficiently, not being able to generate anticipated revenues,

1 and so forth. A big description of the project, the two  
2 components of the financing, which I mentioned earlier. Also,  
3 there's mention in here that it's anticipated that the  
4 Authority wasn't going to be able to fund certain debt service  
5 payments. That's all mentioned in the five-page preamble  
6 alone.

7           And then every single penny of the \$30 million  
8 working capital loan is set forth in Exhibit D to the  
9 facility. Everything that was to be spent, all the  
10 reimbursements to the city, the county, payments for operating  
11 expenses to Covanta, payments of moneys that the Authority  
12 owed on water and sewer with respect to the incinerator, the  
13 cost of issuance. So this was an extremely complete set of  
14 proceedings that was sent up to DCED. If DCED had problems  
15 with the 8110(b) certification, I don't know how they could  
16 have -- I mean, they could have missed how complete this  
17 particular ordinance was.

18           And I think it's important to point out also that  
19 there were no challenges or complaints submitted to the  
20 department with respect to either the working capital  
21 component or the construction component. And I think that's  
22 telling, because there have been other challenges to city  
23 projects by city residents if they were concerned with the  
24 project. There had actually been one back at the beginning of  
25 the incinerator acquisition back in like '93, and then there

1 were a couple objections to parking bonds in connection with  
2 the South Street garage around 2000, 2002. So it wasn't  
3 unheard of for citizens to take a challenge, and here no  
4 challenges were made.

5 And then under the debt act there's also the  
6 ability for an individual or resident or party to challenge  
7 DCED's approval of the project up to the Commonwealth Court,  
8 and no challenges or appeals were made to the Commonwealth  
9 Court.

10 And I guess I have one more omission I thought  
11 that the report -- and it's related to self-liquidated debt  
12 also and this whole risk issue, is that back in 2007, there  
13 were a tremendous number of meetings, both public meetings and  
14 working session meetings, of all the public and appointed  
15 officials. There were numerous city council committee  
16 meetings, there were regular city council meetings, the  
17 Dauphin County Commissioners had meetings, there were working  
18 session meetings. All the public officials knew what the  
19 situation was.

20 And this report also fails to mention that of the  
21 public officials and appointed officials, you had the mayor  
22 approving it, six of the seven city council members approved  
23 the financing. All three of the county commissioners approved  
24 the financing, and two out of the three voting members of the  
25 Harrisburg Authority approved the transaction. However, the

1 report doesn't mention all these comments I made about all of  
2 the publicity, public input, and so forth, that occurred at  
3 that time in 2007.

4 So I might have given you a long answer to your  
5 questions, but I'm trying to also bring out some of the things  
6 that were omissions in the report.

7 SENATOR FOLMER: And I appreciate that and such,  
8 but I asked this earlier before the lunch break, and I forget  
9 who it was, but with all this happening and all these experts  
10 and full disclosure and everything else going on, who was  
11 actually driving the train?

12 MS. COCHERES: Well, in 2007, the public officials  
13 and appointed officials were driving the train. They made the  
14 decisions to complete the facility.

15 SENATOR FOLMER: Would you know who in particular?

16 MS. COCHERES: Yes. The mayor, the members of --  
17 the two Authority board members, and the county commissioners  
18 all made the decision that it was better to complete the  
19 Resource Recovery Facility project than to have \$225 million  
20 of stranded debt.

21 SENATOR FOLMER: Okay.

22 MS. COCHERES: And the report, by the way, also  
23 doesn't say if the -- what would the situation be now if the  
24 facility had not been completed?

25 SENATOR FOLMER: Okay. Thank you.

1                   CHAIRMAN EICHELBERGER:   Senator Blake.

2                   SENATOR BLAKE:   Thank you, Mr. Chairman.  Thank  
3 you, Attorney Cocheres, for your thorough testimony and for  
4 your professional account of these proceedings, and I hope  
5 your back is feeling better.

6                   MS. COCHERES:   Thank you.

7                   SENATOR BLAKE:   I only have one question, really,  
8 and I think -- I agree with you, and I've already said it on  
9 the record in these hearings that I think the forensic audit,  
10 while an extraordinarily valuable piece of information, is not  
11 full information, and there are certainly other things to  
12 inform our thinking here in this testimony.  But they do raise  
13 one concern in the audit I wonder if you would address  
14 directly, and it really has to do with what you just described  
15 as a very thorough project description, and they questioned  
16 the ability to borrow for interest payments on '98, 2002, 2003  
17 debt as a cost of the 2007 project because you grasp it as a  
18 whole, even though they're individual transactions along the  
19 way.

20                   I guess what I'm trying to get to on this,  
21 Attorney Cocheres, is what I heard at the previous hearing  
22 about the unique nature of this project.  Even talking to  
23 others who had done bond counsel across the State, there was a  
24 distinction here that differentiates it from your standard  
25 sanitary waste Authority project and others because of the

1 dynamics and the complexities associated with its operations,  
2 the relationship between the city and the county, et cetera.  
3 And I'll give you a chance to response. But even DCED, I  
4 think, and I used to work at DCED, and by the way, I worked at  
5 DCA as well. But the thing is, I think even they were making  
6 an interpretation about this as something distinctive. I  
7 asked Attorney Barratini, had you seen something like this?  
8 And her response was, no, this was kind of unique. Is that  
9 your assessment as well?

10 MS. COCHERES: I wouldn't say it was totally  
11 unique.

12 SENATOR BLAKE: Okay.

13 MS. COCHERES: It was different than -- the  
14 incinerator project is different than a water and sewer  
15 project, to a certain extent, but at the same time too the  
16 incinerator project is still subject to the same rate  
17 covenants that are in effect for water and sewer projects.

18 SENATOR BLAKE: Um-hum.

19 MS. COCHERES: And one thing on the debt service  
20 and the working capital, that payments that were included in  
21 the 2007 transaction, going back to covering the 1998 and the  
22 2002s, and the 2003 A, B, Cs, and Ds, Es, and Fs, that was, as  
23 project cost under the Municipality Authorities Act as well as  
24 the Debt Act, they fell within the parameters.

25 SENATOR BLAKE: Okay.

1 MS. COCHERES: And in fact, there's no mention in  
2 the audit report of the Municipality Authorities Act right at  
3 the beginning of the purposes section of the Municipality  
4 Authorities Act. The very first item listed that authorities  
5 can borrow for is working capital in that list. And then they  
6 have a list of particular type projects that can be undertaken  
7 by municipal authorities, and there's specifically listed  
8 incinerators.

9 SENATOR BLAKE: Okay.

10 MS. COCHERES: But anyway, the working capital  
11 components, which were for operating expenses and capitalized  
12 interests, we believe was -- all fell within the definitions  
13 under the Municipality Authorities Act as well as the Debt  
14 Act. And like I said, the ordinance was very clear about what  
15 the proceeds of the working capital loan were to be used for.

16 SENATOR BLAKE: Understood. Thank you. The only  
17 other -- and by the way, your testimony is completely  
18 consistent with DCED with respect to the certification, and I  
19 think your testimony also affirms some other testimony we've  
20 gotten in both of these hearings regarding the nature of the  
21 reliance on projections in order to fall within the purview of  
22 self-liquidating, the definition, the attributes that you  
23 point out. So I guess my question is this: Again, from a  
24 forward-looking perspective, are there any ways for us to  
25 mitigate the risk of the kinds of failure in projections that

1 we witnessed here?

2 MS. COCHERES: No, I don't think so.

3 SENATOR BLAKE: No?

4 MS. COCHERES: Because what happened here, and  
5 this is also what I heard some of the other people testify to,  
6 what happened here was the implementation of the financings,  
7 not the financings themselves. The implementation of the  
8 project by Barlow and the project people is what caused the  
9 problem here, not the finances.

10 SENATOR BLAKE: Understood. Thank you very much.

11 Mr. Chairman.

12 CHAIRMAN EICHELBERGER: In the 8110(b)  
13 certifications for 2007, so did you prepare those?

14 MS. COCHERES: Our firm prepared the one-page  
15 sheet 8110(b) certification, yes.

16 CHAIRMAN EICHELBERGER: Now, I'm confused here.  
17 You talk about looking forward when you do an 8110(b).

18 MS. COCHERES: It's also looking forward because  
19 the -- to a certain extent, yes, if there are economic  
20 problems, economic deficiencies occurring that look like they  
21 are going to be continuing, then there has to be a  
22 determination of if whether all of a particular outstanding  
23 bond issue is now no longer self-liquidating, or a portion of  
24 that bond issue is no longer self-liquidating, and then  
25 appropriate changes have to be made on a debt statement when

1 the debt statement is submitted to the Department of Community  
2 and Economic Development.

3           However, when there's here in 2007, it was  
4 understood that there was going to be a fix here, I mean, the  
5 project was going to be completed, and that going forward,  
6 that most, if not all, of the outstanding debt would  
7 eventually, if not -- and I say eventually because in 2008,  
8 there were moneys being borrowed to pay the 2008 debt service,  
9 which was permitted under the Debt Act. And under -- well,  
10 okay, just permitted under the act. But in the future, it was  
11 expected that there would be sufficient revenues to be  
12 self-liquidating. And there was still the option that if the  
13 project still didn't work out, even after the completion  
14 financing, the city and the county could make adjustments to  
15 their debt statements presented to the department.

16           If this project was totally -- the big difference  
17 here, it was the fact that the project wasn't completed, and  
18 there was an expectation that the funds being borrowed would  
19 result in the project being operational and paying. That's  
20 how -- that's the view that was taken in 2007.

21           CHAIRMAN EICHELBERGER: Okay, if I can put these  
22 pieces together--

23           MS. COCHERES: Okay.

24           CHAIRMAN EICHELBERGER: --the way I understand  
25 this is, at that point in 2007, the project was way behind

1 schedule, and the schedule that was initially drawn up by  
2 Barlow and accepted by everybody was blown, and the  
3 certifications that were made at that point, as I read them,  
4 actually look back, not forward, they certify that the debt of  
5 the city or the county, previously excluded as  
6 self-liquidating, credited or as subsidized, no decrease in  
7 the amount to be excluded is required by any change in  
8 circumstances other than decreases resulting from the payment  
9 of bonds or notes. So except for the money that they paid  
10 off, nothing else has changed, but in fact it did change.

11 MS. COCHERES: But because the project was not  
12 completed--

13 CHAIRMAN EICHELBERGER: Because your conversation  
14 with Ms. Barratini said that it was one continuous project.

15 MS. COCHERES: Well, we presented it to DCED that  
16 there's been one continuous project really going back to 1993,  
17 because when the Harrisburg Authority acquired the facility  
18 from the City of Harrisburg in '93, at that point there was in  
19 the resolution and in the documents the intent to retrofit the  
20 facility. And I think back in '93 there was money for  
21 engineering purposes to start this project, this retrofit. As  
22 Mr. Giorgione stated, it was a 10-year process to get to 2003  
23 with getting the retrofit in place.

24 CHAIRMAN EICHELBERGER: That might refresh his  
25 memory. I had asked him a question about the questions raised

1 by Ms. Barratini, and that was, I think, that was what I was  
2 referring to, and I found the series of e-mails that  
3 ultimately were answered by you that -- or no, they were  
4 answered by him, by Andrew Giorgione, "This issue is resolved.  
5 Carol and I spoke with Bernadette and she has all the info.  
6 she needs in the existing SLDR." What's SLDR?  
7 Self-liquidating debt?

8 MS. COCHERES: Yeah, debt report.

9 CHAIRMAN EICHELBERGER: And those were the  
10 conversations that went back and forth about she was  
11 questioning the time where there were cash flow issues.

12 MS. COCHERES: If I remember correctly on that,  
13 and I'm not quite sure, I'm a little fuzzy, but I thought that  
14 there was a 5 -- the projections originally set up were 5  
15 years instead of for the 20- or 30-year term of the bond  
16 issue. And one of the reasons why I know Mr. Giorgione asked  
17 me to be on the phone and to contact Bernadette is because of  
18 my past position up at DCED, and that I knew Bernadette and  
19 actually introduced Bernadette to him in the phone  
20 conversation. So what was essentially done is that the full  
21 projections were presented to the department.

22 CHAIRMAN EICHELBERGER: Well, as lawmakers, we're  
23 trying to figure out what we can do to make things better. So  
24 you're explaining to us that really all the problems that  
25 we've seen over that long period were acceptable under the law

1 because the project was considered, since it was started when  
2 the city took over the incinerator, it really was one very,  
3 very long project, and even though it had all these various  
4 smaller projects as part of it, it was considered one large  
5 project under LGUDA?

6 MS. COCHERES: That is the way it was formulated  
7 from really day one and through each of the individual  
8 financings. And if you go back and you look at the 2003  
9 guaranty ordinance, it was viewed as one long project, as well  
10 as in our 2007 ordinances we referred back to 1993 and the  
11 retrofit, and the fact that there was a failure of the  
12 retrofit, with the 2003 bond proceeds there was a failure  
13 there of that particular project.

14 CHAIRMAN EICHELBERGER: Well, it's discomfoting  
15 to me to see how when projections aren't met and we see the  
16 cash flow issues over that entire time and that we allow that  
17 to continue to happen really unchecked, I mean, it just  
18 continues to be recertified that everything is continuing and  
19 we're still working on it, so give us more money and allow us  
20 to incur more debt for our taxpayers in the city and in the  
21 county and we'll eventually work our way out of it. I mean,  
22 that's not very comfoting.

23 MS. COCHERES: But those were decisions made,  
24 policy decisions made by the county and city officials.

25 CHAIRMAN EICHELBERGER: I understand you weren't

1 signing your name to that, but, I mean, it involved everybody  
2 that was involved in the project. But I'm saying under the  
3 law, we allowed -- apparently, under the law, we allowed that  
4 to happen. I mean, whatever we're doing, as long as it was  
5 one continuing problem, apparently we're still allowed to go  
6 ahead and borrow more and more money and try to work our way  
7 out of that. I mean, most banks wouldn't allow a private  
8 business to do that. They would say, well, that's enough.  
9 You're shut off.

10 MS. COCHERES: Well, even under the Municipality  
11 Authorities Act, the definition of working capital would be  
12 broader than what's under the Local Government Unit Debt Act.  
13 So even if you wanted to say that each of these financings was  
14 a separate project under the Municipality Authorities Act,  
15 moneys for working capital and debt service could still be  
16 borrowed under the Municipality Authorities Act.

17 CHAIRMAN EICHELBERGER: I think that's problematic  
18 as well. I mean, the definition appears to include all the  
19 guaranty reimbursements, debt service, any special projects  
20 that money was pulled out of that for Special Project Funds.  
21 I mean, those things--

22 MS. COCHERES: There were no Special Project Funds  
23 in the 2007 transaction.

24 CHAIRMAN EICHELBERGER: You don't know about  
25 before that though.

1 MS. COCHERES: I don't know what happened about --  
2 I don't know about the Special Project Fund in 2003.

3 CHAIRMAN EICHELBERGER: Would your firm be paid if  
4 that deal didn't go through in either '03 or '07, both cases?

5 MS. COCHERES: No, which is typical in public  
6 financing.

7 CHAIRMAN EICHELBERGER: Can you explain to me too,  
8 I had asked this of somebody earlier, the waterfall of  
9 payments that are made so that -- what I'm trying to  
10 understand is how the city and county continued to get their  
11 money back after they made payments, and then when refinancing  
12 was done, they were paid first.

13 MS. COCHERES: Okay, I think the biggest  
14 distinction that's not really clearly mentioned in the report  
15 is that the 2007 working capital financing was not secured by  
16 any revenues from the Resource Recovery Facility. That \$30  
17 million transaction was secured solely by the guarantees of  
18 the city and the county. And under the reimbursement  
19 agreement that had been mentioned earlier, the prohibition  
20 against reimbursing the city and the county for guaranty  
21 payments were from moneys, from the -- the actual revenues  
22 being generated from the facilities. And bond proceeds,  
23 whether -- just aren't -- bond proceeds themselves aren't  
24 revenues, receipts and revenues, under the indentures.

25 CHAIRMAN EICHELBERGER: That's the 2007.

1 MS. COCHERES: Right. Definitely the 2007, right.

2 CHAIRMAN EICHELBERGER: Okay. I appreciate that.  
3 I didn't understand that.

4 Do you have another one, Mike?

5 SENATOR FOLMER: I just have a couple of  
6 follow-ups. You just said that -- you say that these policy  
7 decisions by elected officials were made by the elected  
8 officials, but yet the elected officials tell us that they  
9 relied upon the professionals to ensure that there were sound  
10 policy discussions. How do we rectify these two positions  
11 with one another?

12 MS. COCHERES: I don't know.

13 SENATOR FOLMER: Because as an elected official,  
14 we're going to be going to various experts and hopefully,  
15 we're given sound advice, but yet, I guess -- well, I don't  
16 get it.

17 MS. COCHERES: The problem with the Harrisburg  
18 Resource Recovery Facility, as I mentioned to you earlier,  
19 occurred through the implementation of the construction  
20 project and the failure of Barlow to complete that project.  
21 That's what caused this whole problem to blow up.

22 SENATOR FOLMER: Okay, well, then I'm going to ask  
23 you this question: Bruce Barnes earlier testified and said  
24 that the city's self-liquidating debt certificate was poorly  
25 done. As your firm drafted the certificate, how do you

1 respond to that?

2 MS. COCHERES: Okay, we did not draft -- okay, I  
3 don't know which self-liquidating debt certificate he's  
4 talking about, but the 2003 self-liquidating debt certificate  
5 was drafted by Barlow. The attorneys didn't draft that  
6 certificate. Any comments that attorneys made on a cover  
7 letter to that certificate were made to just reference back  
8 specifically to the Debt Act language under Section 8026. And  
9 even the report speaks to the attorneys only made minor  
10 comments to the self-liquidating debt report, and it was just  
11 on that first page of the certificate. The rest of the -- the  
12 report itself, there's like a page-and-a-half certificate that  
13 matches and corresponds to the language in Section 8027 of the  
14 Debt Act. And then attached to that certificate is the  
15 engineer's report, which was prepared by the engineers. And  
16 in the 2003 situation bond issue, that was prepared by Barlow.  
17 That was not prepared by any of the attorneys.

18 CHAIRMAN EICHELBERGER: Okay. Earlier I asked you  
19 the question, who was driving the train, and you said -- of  
20 course you said the mayor and then the Authority, because you  
21 said two of the three Authority members voted on this, and of  
22 course the county commissioners. I know who the mayor is and  
23 was, and I know who the county commissioners were, but could  
24 you tell me who the two Authority members were?

25 MS. COCHERES: James Ellison and Erica Bryce.

1           SENATOR FOLMER: Okay. And one last question, and  
2 thank you for that. Eckert Seamans charged a fee of \$300,000  
3 plus costs as bond counsel for the 2007 C and D notes. Is  
4 \$300,000 a normal fee for the \$30 million bond issue? And  
5 what was the basis for charging the \$300,000?

6           MS. COCHERES: The basis for the charging of the  
7 \$300,000 was the tremendous number of hours that we put into  
8 the project. The 2007 financing was not a typical \$30 million  
9 project. We spent hours and hours on the project, going to  
10 meetings with all the different officials, both appointed and  
11 elected, the other financing team members. We actually,  
12 someone told me that our hourly rate, by the time we finished  
13 it, probably only came down to about \$235 an hour for that  
14 particular financing.

15           SENATOR FOLMER: Was it just Eckert Seamans?  
16 Because the other professionals can't seem to remember what  
17 they charged. Am I right? Because no one has been able to  
18 give us any background on any of this. You have, so was it  
19 just Eckert Seamans?

20           MS. COCHERES: Well, because I prepared for  
21 today's meeting and checked out what we charged in 2007.  
22 There's also a mistake in the audit report about how much  
23 money the firm made in the years 2003 to 2010. It speaks to  
24 as though we made \$3 million over those years, and that's  
25 incorrect.

1           One thing we'd like to point out is that our firm  
2 ended up -- I guess I should take this back, maybe explain a  
3 little bit better here. The law firm of Wolf Block was  
4 handling the Harrisburg Authority's lawsuit against Barlow's  
5 insurance company. It was a contingency fee matter, and  
6 Barlow -- there was a settlement. The Authority received  
7 several million dollars, and then the Wolf Block team would  
8 have gotten the contingency fee payment.

9           Wolf Block was dissolving, and the attorneys from  
10 Wolf Block that worked on that project, at least one of the  
11 attorneys that worked on that litigation, came to Eckert  
12 Seamans. So when the payment came on the contingency fee, it  
13 came to Eckert Seamans, but the Authority knew that only  
14 one-third of that payment of \$1.8 million was going to Eckert  
15 Seamans, and the rest had to go to whatever remained of Wolf  
16 Block, and then there was another law firm that a Wolf Block  
17 attorney went to.

18           So the amount of fees we earned from 2003 to 2010  
19 was not \$3 million, but it was \$1.8 million over that time  
20 period.

21           SENATOR FOLMER: Okay.

22           MS. COCHERES: Is there anything else?

23           CHAIRMAN EICHELBERGER: How about one final one  
24 from me.

25           I asked this of a couple other people, so let me

1 ask you. I'm just trying to get my hands around the ethical  
2 obligation of an attorney-at-law in that situation, and I'll  
3 use a little bit more dramatic example. If I'm laying on a  
4 gurney after a bad car accident and I tell a doctor that my  
5 wrist really hurts and he sees that one of my legs was torn  
6 off in this accident, he's not going to just treat my wrist  
7 and say, well, all he asked about was my wrist, so that's all  
8 I looked at. I can't understand with all these problems why  
9 somebody in the system didn't come forward and say, there's  
10 some foundational concerns about how tight this schedule is,  
11 this is untested engineering here, there's no performance bond  
12 in place, the city's financial position isn't good, they're a  
13 guarantor, all those issues. It seems like everybody did  
14 their specific job and nothing else.

15 Do you think that is in compliance with the  
16 ethical implications of the professionals involved, whether  
17 they're attorneys or bond counsel or the financial analysts  
18 that were here? And just everybody.

19 MS. COCHERES: Well, that's a very broad question  
20 to address. You'd almost have to take each professional and  
21 what their role was and examine it with respect to each of the  
22 financings.

23 CHAIRMAN EICHELBERGER: Were any red flags raised  
24 by you during your time on the case?

25 MS. COCHERES: Oh, yes. Yes. We put together the

1 official statement for the 2003 transaction and we put  
2 numerous warnings in that official statement. There is no way  
3 someone could buy that paper without seeing the potential  
4 pitfalls, the fact that there was -- many of the points that  
5 you just made were all mentioned in the official statement in  
6 connection with the 2003 transaction. And in 2007, as bond  
7 counsel, you know, we do have the reputation of being upfront  
8 and letting our clients know what the problems are.

9 CHAIRMAN EICHELBERGER: Okay.

10 MS. COCHERES: The 2007 deal was supposed to solve  
11 this problem.

12 CHAIRMAN EICHELBERGER: Right. Right.

13 MS. COCHERES: So.

14 CHAIRMAN EICHELBERGER: Well, thank you very, very  
15 much for your time today. We appreciate it.

16 MS. COCHERES: You're welcome.

17 CHAIRMAN EICHELBERGER: Wish you well with your  
18 back.

19 MS. COCHERES: Thank you.

20 Here's a copy of the ordinance.

21 CHAIRMAN EICHELBERGER: Oh, thank you.

22 (Document handed to committee.)

23 CHAIRMAN EICHELBERGER: Our next witness is Mr.  
24 James Ellison.

25 We understand Mr. Ellison is not here yet, but he

1 will be here shortly, so we'll take about a 15-minute break  
2 because we're ahead of schedule. Thank you.

3 (Whereupon, the proceedings were recessed at 3:11  
4 p.m., and were reconvened at 3:26 p.m.)

5 CHAIRMAN EICHELBERGER: I call the hearing back to  
6 order. We have Mr. James Ellison. He's in place, ready to  
7 go. And you're a current member of the Bar Association, so we  
8 won't give you the oath today.

9 And do you have any opening comments for us?

10 MR. ELLISON: As a matter of fact, I do not have  
11 any opening comments, sir. I was asked to appear before the  
12 committee to answer questions, and that's what I'm here to do.

13 CHAIRMAN EICHELBERGER: Okay, we appreciate you  
14 being here today.

15 Senator Folmer, do you want to start?

16 SENATOR FOLMER: Thank you, Mr. Ellison, for being  
17 here.

18 Would you give us a timeline of your history with  
19 the Harrisburg Authority? You appear to have gone from  
20 solicitor to board member to chair, so could you give a  
21 brief--

22 MR. ELLISON: Sure. I joined my firm in 1997, I  
23 believe. Shortly after I became a member of the firm, the  
24 firm was appointed solicitor to the Harrisburg Authority, and  
25 I served as assistant solicitor to Mr. Nate Waters and also to

1 Mr. Bruce Walter. My involvement at that time was just simply  
2 to attend meetings that either Mr. Waters or Mr. Walter could  
3 not attend. I really didn't have very much involvement in  
4 terms of the day-to-day operations of the Authority, at least  
5 not until 2007, and it was at that point that I was asked to  
6 consider becoming a member of the Harrisburg Authority board  
7 to help get the Resource Recovery Facility's retrofit project  
8 completed. That was in, I want to say January or February of  
9 2007, and I was seated as a board member in August of 2007.

10 SENATOR FOLMER: When you arrived at the Authority  
11 in 2007, what did you find?

12 MR. ELLISON: When I first arrived in August of  
13 2007, my earliest recollection was I read an article in the  
14 newspaper within a day or so after I was finally seated that  
15 the Harrisburg Authority was considering a \$50 million plan to  
16 completely retrofit the Resource Recovery Facility. After  
17 finding out about that, I contacted the Harrisburg Authority  
18 staff to find out exactly what that plan involved and to make  
19 it clear that I could not, as a new board member, sign off on  
20 any plan without becoming familiar with the details and also  
21 meeting with all the stakeholders.

22 Essentially, what I found was an operation that  
23 was in disarray financially, it had no ability to sustain debt  
24 service. The Resource Recovery Facility itself was only  
25 operating on one burner. The other two burners were not

1 operational because of the problems with the construction and  
2 retrofit process, and that was the main revenue generator for  
3 the actual Resource Recovery side of the Harrisburg  
4 Authority's operations.

5           So the first task that I set myself to, as well as  
6 the other board members, was finding a way to identify what  
7 the issues were with the Resource Recovery Facility and see  
8 how those issues matched with the \$50 million plan that was on  
9 the table at the time, and then to also sit down with the city  
10 and the county to find out if there was movement to be had on  
11 that plan, either upwards or downwards, so that we can move  
12 forward with getting that facility completed.

13           SENATOR FOLMER: Okay. Who did you rely upon for  
14 advice and counsel? Did anyone share with you concerns in  
15 2007 about existing incinerator debt not being  
16 self-liquidating?

17           MR. ELLISON: I don't recall specific  
18 conversations about whether or not the debt was  
19 self-liquidating. What I do recall is that the first step, or  
20 the first thing that I wanted to look at was how do we get the  
21 retrofit completed in a timely fashion for the least cost?  
22 And secondly, assuming that we came up with that plan, how do  
23 we go about paying for it?

24           I do recall that there were discussions--and  
25 you'll have to bear with me, because this was about five years

1 ago--I do recall that there were discussions with the city,  
2 with the county, and with our own professionals, including  
3 bond counsel, the Authority solicitor, special counsel that  
4 was retained by the Authority, that there were various options  
5 for us to look at, and the option that made the most sense was  
6 rate increases. And we had spoken with representatives of the  
7 city and the county about that idea as we were going through  
8 that process back in 2007.

9           The working capital portion of the plan that was  
10 negotiated was intended to cover debt service for, I believe,  
11 the 2008 calendar year, I believe. So looking into 2009, we  
12 knew that we were going to have to increase rates for both  
13 city customers and for county customers. And I believe that  
14 we did have some financial projections that were completed  
15 that showed that if we actually achieve the rate increases  
16 that were targeted, that we would have been able to address  
17 all of the outstanding debt issues.

18           SENATOR FOLMER: Now, Carol Cocheres just told us  
19 that the 2007 bond was driven by Mayor Reed, the county  
20 commissioners, and two Harrisburg Authority members - you and  
21 another member. Why did you push this bond so hard?

22           MR. ELLISON: Well, I wouldn't say that I pushed  
23 anything hard. Keep in mind, as I said, when I first arrived  
24 at the Harrisburg Authority, there was a \$50 million deal  
25 already on the table for this project, and our options were

1 essentially only two options: To do absolutely nothing, in  
2 which case approximately \$225 million worth of stranded debt  
3 would have been left for the city and the county to handle, or  
4 we could go ahead and move forward with the financing for the  
5 completion of the facility, and that would have given us the  
6 opportunity to, number one, have a facility that was fully  
7 operational, and that based upon revenue projections could be  
8 profitable. And number two, that would have given us the  
9 opportunity to look at rate increases as a way of covering all  
10 outstanding debt. And that seemed to make the most sense at  
11 the time, as opposed to sticking the city and the county with  
12 \$225 million of stranded debt.

13 SENATOR FOLMER: Did you have any concerns with  
14 moving forward with the 2007 C and D notes?

15 MR. ELLISON: I'm sorry?

16 SENATOR FOLMER: Did you have any concerns with  
17 moving forward with the 2007 C and D notes?

18 MR. ELLISON: Well, after consulting with the  
19 various professionals that we had in mind, and also keep in  
20 mind that the only professional I believe that we retained  
21 from the Authority's original team was Carol Cocheres. We had  
22 brought in Public Financial Management as the new financial  
23 advisor, that is a nationally known company with a national  
24 reputation. We had also brought in special counsel from  
25 Goldberg, Katzman & Shipman, and we were also consulting with

1 the Harrisburg Authority solicitor.

2 After speaking with all of the professionals, the  
3 Harrisburg Authority board, at that time comprised of myself,  
4 Mr. Papenfuse, and Miss Erica Bryce, we relied upon the advice  
5 that was given to us at the time. And we were, at that time,  
6 presented with two options. Option number one was do nothing  
7 and the entire house falls apart, or we could move forward  
8 with completion of the retrofit process and look at rate  
9 increases as a very viable option to solving the debt issue.

10 SENATOR FOLMER: Okay. Your firm, Rhoads & Sinon,  
11 prepared and presented a June 26, 2003, opinion on conflicts  
12 of interest for members of the Harrisburg Authority. What did  
13 you do to insure members of the board did not have any  
14 conflicts? And just to amplify that, why didn't this guidance  
15 apply to you as a board member as you were serving as chair  
16 while Rhoads & Sinon was doing the work for the Authority?

17 MR. ELLISON: Well, two things. Number one, I was  
18 not involved in the 2003 transaction in any way, shape, or  
19 form.

20 SENATOR FOLMER: Okay.

21 MR. ELLISON: The memo that you speak of I've  
22 never seen because I was not involved in that project. So  
23 that's first.

24 Second, when I was originally asked to serve as a  
25 member of the Harrisburg Authority by Harrisburg City Council,

1 there was a public hearing process during which I was  
2 interviewed, and it was specifically raised by the then  
3 president, now current Mayor of the City of Harrisburg, Linda  
4 Thompson, that it was known to the entire council that Rhoads  
5 & Sinon had historically performed legal services for the  
6 Harrisburg Authority and continued to do so up through the  
7 date of my hearing before council. And the only question that  
8 was asked was if there was a conflict between Rhoads & Sinon's  
9 ongoing representation of the Harrisburg Authority and my  
10 duties as chair, how would I resolve the conflict? And I  
11 advised, and this was videotaped publicly, or video recorded  
12 publicly, I advised that I would speak with the Authority  
13 solicitor at every step of the way to make sure that there  
14 were no conflict of interest issues, and to the extent that  
15 there were, I would side with the Harrisburg Authority. And I  
16 made that very plain upfront.

17 SENATOR FOLMER: Okay, thank you. What role did  
18 you play in the 2007 C and D notes, and who were you advising?

19 MR. ELLISON: Well, I wasn't advising anyone. As  
20 the chairman, I was the one soliciting advice.

21 SENATOR FOLMER: Okay.

22 MR. ELLISON: And as I said, the professionals  
23 that I relied upon at the time were my bond counsel, my  
24 special counsel, my solicitor, and my financial advisor. And  
25 also keep in mind that we also met with representatives of the

1 county, and the county had its own legal team and its own  
2 financial team, and we also met with representatives of the  
3 city as well. So there were no decisions that were made in a  
4 vacuum by any party independently. This was very much a  
5 cooperative process from the outset, because that's what I  
6 insisted upon.

7 SENATOR FOLMER: Bear with me with this next  
8 question. Now, in the last hearing that we had, former Mayor  
9 Reed told us the Special Projects Fund was under the control  
10 and discretion of the Authority. Is that true or false?

11 MR. ELLISON: Let me answer the question this way:  
12 When I became chair of the Harrisburg Authority, in  
13 conjunction with the other new Authority board members, the  
14 first thing that we did was shut down that Special Projects  
15 Fund. Okay? I have seen nothing in my review of the  
16 Harrisburg Authority documents that existed at the time that  
17 led me to conclude that that Special Projects Fund was  
18 controlled by anyone other than Mayor Reed.

19 Now, with that being said, the Harrisburg  
20 Authority, on paper, operates as an independent entity. So of  
21 course, no disbursements could be made without action by the  
22 board. But based upon documents that I've seen,  
23 correspondence between the mayor's office and the Harrisburg  
24 Authority, anytime the mayor designated that a disbursement be  
25 made from that fund, the disbursement was made. And there

1 were occasions where those disbursements were made without a  
2 vote of the Harrisburg Authority, so I would have to disagree.

3 SENATOR FOLMER: Okay, so just to amplify that, so  
4 I can get better understand it, sir, and I thank you for that  
5 answer, what can you tell us about the Special Projects Fund?  
6 I mean, did Mayor Reed direct or attempt to direct you or the  
7 Authority on how to apply the moneys in the Special Projects  
8 Fund?

9 MR. ELLISON: Well, to the best of my  
10 recollection, and again, keep in mind, this was five years  
11 ago.

12 SENATOR FOLMER: I understand.

13 MR. ELLISON: To the best of my recollection, by  
14 the time the new Authority board members took their seat, the  
15 Special Projects Fund was either empty or had very little in  
16 it. There was no communication between Mayor Reed's office  
17 and the new Authority board as it pertained to the day-to-day  
18 activities of the board. I made it very clear from the  
19 outset, once I became Chair, that the Harrisburg Authority was  
20 operating as an independent entity that had its own board and  
21 would govern itself. So there was no reason for Mayor Reed to  
22 contact us to provide us with any directives or a wish list of  
23 any sort, and he never did.

24 I believe the only -- I think I had only two  
25 meetings with Mayor Reed during the time that I was chair of

1 the Harrisburg Authority. The first meeting was sometime in  
2 November dealing with the working capital and construction  
3 plan that we were negotiating with the city and the county,  
4 and the second meeting I believe was a meeting with Mayor  
5 Reed, Commissioner Haste, and Council President Thompson. And  
6 again, that was about solving the debt issue. But there was  
7 never a time where Mayor Reed even attempted to issue any type  
8 of directives to the Harrisburg Authority regarding the  
9 Special Projects Fund, which was by that time closed, or any  
10 other funds.

11 SENATOR FOLMER: Okay. And my last question is  
12 this, and I thank you: Why didn't you cooperate with the  
13 forensic audit team in sharing information? It says that  
14 Rhoads & Sinon cooperated by sharing information, but Mr.  
15 Ellison as an individual did not.

16 MR. ELLISON: Actually, two answers to that  
17 question. Number one, I wasn't contacted until very late in  
18 the process by counsel for the Harrisburg Authority who was  
19 allegedly heading up that process, first. And second, the  
20 only documents that I had were copies of old agendas or board  
21 meeting minutes, which were well within the control of the  
22 Harrisburg Authority. There were no other documents that I  
23 had outside of that grouping or that classification.

24 SENATOR FOLMER: Okay. Thank you.

25 CHAIRMAN EICHELBERGER: Thank you, Senator Folmer.

1 Chairman Blake.

2 SENATOR BLAKE: Thank you, Attorney Ellison. I  
3 appreciate you being here and your time. Again, Senator  
4 Folmer covered a lot of ground I would have otherwise touched  
5 on with you, but I guess when you arrived in '07, you had a  
6 lot of catch-up. How mature was the deal by the time you got  
7 there? How much time did you have between your arrival as  
8 chair and the actual vote to go forward with the '07  
9 financing?

10 MR. ELLISON: Well, there was, I would say, there  
11 was an artificial stimulus, so to speak, that forced the  
12 parties to reach some type of deal quickly. It's a matter of  
13 record that the Harrisburg Authority had missed several debt  
14 payments that year, and I believe the City of Harrisburg had  
15 covered some of those debt payments. The city was essentially  
16 out of money, and any future debt service payments that the  
17 Harrisburg Authority missed which the city couldn't cover on  
18 its guaranty fell to Dauphin County to make.

19 To the best of my recollection, I became chair in  
20 September. The next debt service payment was upcoming in  
21 either November or December. And the Harrisburg Authority had  
22 no way to make that payment. So it became incumbent upon us  
23 to work out a deal on the working capital and construction  
24 loan, which would include moneys to cover debt service. So I  
25 would say I had about six to seven weeks to get myself

1 familiar with the issues, assemble a team that would be able  
2 to competently help us navigate those waters and finalize a  
3 deal.

4           And that deal had to be negotiated with the county  
5 and the city, and that final deal was a result of numerous  
6 meetings, including public meetings before Harrisburg City  
7 Council, public meetings with the Harrisburg Authority, and  
8 several working meetings with representatives of the  
9 Harrisburg Authority, Harrisburg City Council, the Dauphin  
10 County Commissioners, and Covanta. So it was a very  
11 work-intensive process, a very fact-intensive process. There  
12 were some bumps along the way, and at the end of the day, we  
13 negotiated a deal which is the personification of political  
14 compromise, because no one was really happy with what we came  
15 up with at the end. Everybody had to give something for us to  
16 get that deal across the finish line. But eventually, I  
17 believe we got it completed around Thanksgiving.

18           SENATOR BLAKE: Understood. Thank you.

19           A lot of the testimony we got up to now, Attorney  
20 Ellison, kind of mirrors some of your own testimony, meaning  
21 that we arrived in 2003 and the decision had to be made to  
22 whether we close the house down or whether we take another  
23 shot at finishing an unfinished project. And then in '03, it  
24 was do we close the house down, or do we take a shot at  
25 completing an unfinished project, and the same thing occurred

1 I think upon your arrival in '07. I think your own statement  
2 was, what was the option?

3 MR. ELLISON: That's true. That's true.

4 SENATOR BLAKE: So I guess what I'm asking you is,  
5 you know, in retrospect, as you look at this, how do you feel  
6 about the risk that was taken by the taxpayers? And in  
7 particular, as it relates to the decisions that were made  
8 under your own watch? You did have a dissenting board member  
9 who testified in our previous hearing here. Did some of those  
10 dissenting comments, do you recall how that affected your  
11 final decisionmaking process?

12 MR. ELLISON: I'm not sure which board member  
13 previously testified, and I'm not sure of the substance of  
14 their testimony. What I will say is that between myself and  
15 Mrs. Bryce, I do know that Mr. Papenfuse at the end of the  
16 process decided that he was not in favor of us going forward  
17 with the plan. So I'm assuming that's the board member that  
18 you're talking about.

19 But myself and Mrs. Bryce, after meeting with the  
20 professional team that we put together to advise us, as well  
21 as meeting with the city and the county, felt that that was  
22 the best option on the table for us. It was either do nothing  
23 and literally let the entire house fall in on itself, or find  
24 a way to get the project completed so that we could get  
25 revenues coming in, and then look to rate increases to close

1 the gap. Because at the end of the day, the Harrisburg  
2 Authority, as far as I'm concerned, is like any other  
3 business. If you have a problem meeting your debt service or  
4 meeting other expenses, then you have to look at increasing  
5 the cost of the product in order to cover that gap, and also  
6 cutting expenses where you can. And that's exactly what we  
7 tried to do.

8 With respect to the city, we went to the city,  
9 went to Harrisburg City Council, advised that we needed a rate  
10 increase, gave them the number, the dollar value of that rate  
11 increase, and the city, knowing exactly what it was that we  
12 were up against, gave us that rate increase.

13 When we went to the county for the same reason, we  
14 found ourselves embroiled in litigation for about a year. And  
15 ultimately, we were not able to get that rate increase, and as  
16 a result, the debt service picture of the Harrisburg Authority  
17 became much fuzzier and much cloudier than it should have  
18 been.

19 SENATOR BLAKE: Understood. And that is  
20 consistent with prior testimony of Attorney Cocheres, the  
21 issue of the covenant that ran with the bonds expecting a  
22 certain amount of rates to be paid to the Authority, and then  
23 losing in court; henceforth, not realizing the benefit of  
24 those increased rates later on.

25 I guess I don't have any more questions, and maybe

1 just ask you if you have any recommendations from your  
2 experience with the Authority to this commission, to this  
3 board -- I'm sorry, to this committee. There's a history here  
4 of individual professionals being very capable and  
5 professional within their own scope, their own purview. There  
6 was an interface with DCED on behalf of the Authority that,  
7 you know, some might say that DCED stretched their  
8 interpretation of this as one continuing project going all the  
9 way back to 1998, and even before that. We're trying to  
10 understand whether or not there is legislative or regulatory  
11 controls that we can consider that would mitigate the kind of  
12 risk on the taxpayers that this set of financing deals  
13 imposed, both at the county and at the city level. I wonder  
14 if you have any comment on what we might want to consider.

15 MR. ELLISON: Senator, I'm really not sure that I  
16 can answer this question for this reason: When I came on  
17 board in 2007, I really didn't study the prior transaction and  
18 what went wrong or what worked with that transaction. I  
19 really only focused on the problem that was at hand, which was  
20 how do we get this ball across the goal line? How do we get  
21 this project finished? So I didn't have a lot of history  
22 about who the various actors were up until that point, and  
23 what their activities were in connection with the project. I  
24 can just tell you that I thought that my team did everything  
25 that it could, that we could, to get the project completed and

1 to solve the debt service issue. And I don't think that my  
2 team really could have done a better job than what they did,  
3 given the mess that they inherited. I don't think that anyone  
4 would dispute that it was an absolute mess, at least when I  
5 walked in in August 2007.

6 SENATOR BLAKE: Understood. Thank you, Attorney  
7 Ellison.

8 Thank you, Mr. Chairman.

9 CHAIRMAN EICHELBERGER: Mr. Ellison, getting back  
10 to the Rhoads & Sinon legal opinion on the voting matter.

11 MR. ELLISON: Uh-huh.

12 CHAIRMAN EICHELBERGER: Did you have any knowledge  
13 of that? I know you were a practicing attorney in that firm.

14 MR. ELLISON: I never saw that opinion. As I  
15 indicated, when the Harrisburg Authority -- or when Rhoads &  
16 Sinon became solicitor to the Harrisburg Authority, I was the  
17 assistant solicitor, but honestly, I only attended meetings  
18 that Mr. Walter or Mr. Waters did not attend. I did not draft  
19 opinions, I did not review opinions. The opinion of which you  
20 speak to this day I have not seen, so I couldn't offer any  
21 specific testimony to it.

22 CHAIRMAN EICHELBERGER: Okay, that's  
23 disappointing. I was anxious to hear what you had to say  
24 about that. So when you arrived in '07, if you see our chart  
25 over here, it shows how the cash flow would have been over the

1 years. It's kind of surprising to me that, and I'm not saying  
2 it's illegal, but it appears it's something that needs  
3 addressed, that we can continue to say this project is  
4 self-liquidating, knowing the history of it never cash-flowing  
5 and moving ahead, spending more money, borrowing more money.

6 When you were making decisions at that point, that  
7 2007 bond, most of the money wasn't being used for the project  
8 itself. It was paying off other fees, working capital, that  
9 kind of thing.

10 CHAIRMAN EICHELBERGER: That's true. I believe  
11 \$30 million of that money went to working capital, which  
12 included repayment of disbursements that were made by the city  
13 and the county. Those were negotiated as a part of that deal,  
14 and I can state for the record that the Harrisburg Authority  
15 tried very hard to negotiate those items out, because the city  
16 and the county, as guarantors of the project, agreed to incur  
17 certain risks, and those risks did not break in their favor.  
18 And so it was not my opinion at the time that the Harrisburg  
19 Authority should be borrowing money to reimburse those  
20 entities for their losses. But that was the only way for to  
21 us get a deal done.

22 As I said, at the end of the day, no one was happy  
23 with the deal that was done because everyone had to give up  
24 something. And in some cases, I think that the Harrisburg  
25 Authority probably gave up a little more than what it wanted

1 to. It is a matter of record, that during the time that we  
2 were negotiating this deal, the Harrisburg Authority actually  
3 went into a technical default, I believe it was sometime in  
4 November 2007, because that deal had not been finalized  
5 because we were not happy with the terms and conditions that  
6 were being insisted upon by the county. And so we pushed back  
7 very hard and basically announced to the county that we would  
8 go into a technical default if necessary to avoid additional  
9 financial burdens being placed upon us. And it was after that  
10 process that we finally got to a deal that all the parties  
11 could actually live with.

12 CHAIRMAN EICHELBERGER: Were you primarily relying  
13 on the guaranty of the city at that point, or of the county?

14 MR. ELLISON: The county. The city's guaranty at  
15 that particular point in time was very weak, and all parties  
16 knew that. The city pretty much told us that they didn't have  
17 the money to make the next debt service payment, so that meant  
18 it was the county's guaranty that was really going to keep  
19 that ship afloat, and that gave the county tremendous  
20 bargaining power.

21 CHAIRMAN EICHELBERGER: How much did you rely on  
22 all the professionals, your team, as you put it, to make your  
23 decisions? How much did the Authority in general rely on the  
24 professionals?

25 MR. ELLISON: I relied very heavily on my team.

1 Ms. Cocheres, for instance, has a longstanding reputation as  
2 an attorney dealing in municipal financial matters, and I've  
3 known of her professional reputation my entire career, so I  
4 relied upon her. I also relied upon PFM. As I said, at the  
5 time when I came in, the Authority's current financial advisor  
6 I believe was Mr. Bruce Barnes, and he was operating just as a  
7 solo professional on his own. But I felt that we needed to  
8 bring in a much bigger company with more resources, and so I  
9 brought in PFM, relied very heavily upon them.

10 Our special counsel, Goldberg Katzman & Shipman,  
11 specifically Royce Morris, he was very instrumental in helping  
12 us negotiate most of the major points of the deal, and I  
13 relied very heavily upon him. So I would say that I did as a  
14 responsible board member was supposed to do, and that was put  
15 people in place that you think are good people who can do the  
16 job, listen to the advice that they give you, and execute.  
17 And that's what we did.

18 CHAIRMAN EICHELBERGER: So they were driving the  
19 train more than the Authority's own thought process? I mean,  
20 it was--

21 MR. ELLISON: Oh, no. I would say this: As I  
22 testified earlier, there were four parties to this process.  
23 There was the Harrisburg Authority, the county, the city, and  
24 even Covanta had a say in this. All of those parties made the  
25 joint decision to proceed in the direction that they did. So

1 no, I wouldn't put it on the professionals of any one entity.  
2 All the parties, all the stakeholders made a common decision  
3 to go in one direction, and that's what we did.

4 CHAIRMAN EICHELBERGER: Okay, how about one more  
5 question on the Special Projects Fund.

6 MR. ELLISON: Sure.

7 CHAIRMAN EICHELBERGER: With either hat, either  
8 your chairman's hat or your attorney-at-law hat.

9 MR. ELLISON: Sure.

10 CHAIRMAN EICHELBERGER: Do you know of any  
11 statutory Authority to establish that fund in the first place?

12 MR. ELLISON: Let me answer the question this way:  
13 I don't know of any, and when I first took my seat with the  
14 Harrisburg Authority board, there were a lot of questions  
15 about the legality of that fund and the history of the  
16 disbursements from that fund. In looking into it and looking  
17 at some of the documents pertaining to some of those  
18 transactions, a lot of those transactions, it was my opinion  
19 that there was some type of fraud at play there. And we did  
20 contact law enforcement and we actually got an investigation  
21 started with the FBI. We referred the matter to the Justice  
22 Department, as well as to the Attorney General's Office. The  
23 Attorney General's Office was not interested, but we did meet  
24 with representatives of the FBI, because I thought that from  
25 what I found, there was definitely some activity at play that

1 I didn't think passed the smell test, either legally or  
2 professionally. So for my part, that was a decision that was  
3 made, and that was done fairly quickly.

4 CHAIRMAN EICHELBERGER: Senator Folmer.

5 SENATOR FOLMER: Yeah, I just have one follow-up  
6 question. A previous testifier said the county was the hero  
7 in all this. Would you agree?

8 MR. ELLISON: A process like this only works if  
9 all the parties are working and cooperating in good faith.  
10 And there were times during the process that it was  
11 questionable as to whether all parties were operating in good  
12 faith or just simply operating from their own interests to  
13 protect. And certainly the county felt that it had to make  
14 sure that it protected the interests of its residents. City  
15 council felt that it needed to protect the interest of city  
16 residents. And frankly, all of those folks were customers of  
17 the Harrisburg Authority. So we felt that we had the same  
18 interest.

19 I'm not sure that anyone, looking back on this  
20 process, can claim to have worn the white hat or to be a hero,  
21 so I'm not going to sit here today and tell you that I agree  
22 with the proposition that the county was the hero in this  
23 process.

24 SENATOR FOLMER: Okay, thank you for that answer,  
25 sir.

1                   CHAIRMAN EICHELBERGER: Thinking about one more  
2 question, and it pertains to the self-liquidating debt. It  
3 was your understanding, I guess at the time, that the debt --  
4 that the new borrowing was self-liquidating, and you were  
5 comfortable with that?

6                   MR. ELLISON: I don't recall if my understanding  
7 was the debt was self-liquidating per se or if we had made a  
8 determination that we were going to deal with the debt by  
9 raising rates to cover the debt. That's really the best way  
10 that I can answer that question.

11                   Okay. I don't have anything else. We really  
12 appreciate your time today. Thank you for making the trip in.

13                   MR. ELLISON: Thank you.

14                   CHAIRMAN EICHELBERGER: And our last witness is  
15 David Unkovic, who is an attorney and former Receiver for the  
16 Commonwealth for the City of Harrisburg.

17                   MR. UNKOVIC: Good afternoon, sir.

18                   CHAIRMAN EICHELBERGER: Good afternoon.

19                   You gave us a prepared statement. Did you want to  
20 offer any remarks or go over any of that with us?

21                   MR. UNKOVIC: Yes. If you would, Mr. Chairman, I  
22 did prepare any eight-page statement. There are copies of it  
23 over there. Do any of you need copies, at this point?

24                   And you had asked me to take a look at what  
25 legislative actions you might take as a result of the

1 situation with Harrisburg's incinerator debt, which is what  
2 this statement is addressed to. So it goes through a lot of  
3 detail, but I propose that I would just give in summary  
4 fashion the five proposals that are in here and then answer  
5 your questions, if that's okay. Okay? Thank you.

6 I'm making these recommendations based on my  
7 experience as Receiver for the city and also for being a bond  
8 lawyer for over 30 years in Pennsylvania and working on  
9 financings for all sizes of local governments in Pennsylvania.  
10 So I really have five proposals for your consideration, for  
11 the General Assembly's consideration.

12 The first is to amend the Local Government Unit  
13 Debt Act to improve the Debt Act process, including the review  
14 of proposed self-liquidating debt. When debt is entered into  
15 in Pennsylvania, it is a two-step process that's a lot like  
16 buying a house. You first have the bond sale, which is like  
17 the agreement of sale when you agree to buy a house from  
18 somebody, and then you don't close it for about 30 days later.  
19 So when you're buying a house, you have to get the house  
20 insurance and things like that, as you know, and on a bond  
21 issue, there are certain things that happen between the bonds  
22 being sold, marketed to the public and sold, and the time you  
23 close.

24 The way the Debt Act works is DCED doesn't even  
25 know that the local government is considering a bond issue or

1 a guaranty until, in most cases, until the bond sale's already  
2 occurred. So in this case the city enacts an ordinance for a  
3 guaranty, and then subsequently that guaranty and the debt  
4 statement and other things are filed with DCED. And that's  
5 different from other States. In North Carolina and New  
6 Jersey, for example, they know when a local government is  
7 interested in going into the market, and they ask them some  
8 hard questions before they do.

9 So what I'm proposing as the first proposal is to  
10 have a two-step process under the Debt Act, to have another  
11 process before the local government goes into the market. And  
12 this wouldn't be on the normal deal where you're just building  
13 something that's within your debt limit, and so forth. But  
14 there are six items that I would suggest that DCED be informed  
15 of by the local government before debt's issued.

16 One is the local government certifying that its  
17 audited financial statements are up to date. I think in a lot  
18 of the problems you see around Pennsylvania with local  
19 governments, their audits are long overdue, which is partly  
20 the case in Harrisburg. But that's a sign that there are real  
21 problems, and I think if a local government doesn't have  
22 up-to-date audited financial statements, that DCED should be  
23 empowered under the Debt Act to tell them they can't go  
24 forward till they get their books done.

25 The second recommendation is similar to that.

1 There are requirements on publicly offered bonds, under rules  
2 of the Securities and Exchange Commission, that the local  
3 government, for bond issues that are already outstanding,  
4 provide information to the market, annual financial  
5 information and also notices of extraordinary events, like  
6 payment defaults on bonds and so forth. And I'd also  
7 recommend that the local government have to prove to DCED that  
8 they're up to date on their secondary market disclosures under  
9 the Federal regulations before they can issue debt again. And  
10 that's another sort of sounding bell that something could be  
11 wrong. If a government is behind in those disclosures to the  
12 secondary market, it usually means that there's some problems  
13 or that they're extremely sloppy.

14           The other four items that could be run by DCED  
15 first, before the bond sale, would include two related to  
16 self-liquidating debt. So if you want to do self-liquidating  
17 debt, I think the time for the analysis is before the bonds go  
18 into the market. And once, as I said before, once the bonds  
19 are sold on the market and before you get to closing, there's  
20 a great amount of pressure on DCED to approve a debt filing,  
21 because they know if they don't approve it, and then the  
22 underwriter has to go back to the people who wanted to buy the  
23 bonds and tell them, forget it, we don't have the bonds, that  
24 negatively affects the local government the next time they  
25 want to go into the market, either for that same project or

1 for another project. It's just a very bad thing. So it puts  
2 a lot of pressure on the lawyer at DCED who's reviewing these  
3 things to come up with a "yes" answer.

4 And so I think in the case of self-liquidating  
5 debt, if a local government wants to have self-liquidating  
6 debt, that DCED should -- that they should file with DCED  
7 whatever reports and so forth that show that it's  
8 self-liquidating before the bonds go into the market.

9 Also, if a local government has self-liquidating  
10 debt outstanding, and this is sort of the lookback 8110(b)  
11 test, and they want to do a new bond issue, that they have to  
12 show DCED that in fact their existing self-liquidating debt  
13 continues to be self-liquidating. And if DCED is not  
14 satisfied, they can prevent the local government from going  
15 forward.

16 Two other items I'd suggest. One is if a local  
17 government is doing a refunding that does not have present  
18 value savings, they're doing a refunding for some other  
19 reason, such as those scoop-and-toss refundings that Steve  
20 Goldfield testified to you about on the first day, where  
21 you're just trying to push debt out into the future, that any  
22 sort of refunding like that should have to go to DCED first,  
23 and there should be an explanation to DCED about why that sort  
24 of noneconomic refunding is in the best financial interest of  
25 the local government, in the long-term best financial

1 interest. So you may have DCED react and say, fine, you can  
2 do this once and then get your house in order in two years,  
3 but this repeated series of scoop-and-toss refundings which  
4 you saw in Harrisburg, I think DCED would say no at some point  
5 to that, those types of financings.

6 The last recommendation is that if there's a  
7 financing that involves over 10 percent of the proceeds going  
8 for working capital as opposed to bricks and mortar on the  
9 project, that the local government have to show DCED that it's  
10 in the long-term best financial interest of the local  
11 government to have that much working capital in a bond issue.

12 So what I'd suggest is a preliminary process where  
13 those items, if they exist in that bond issue, proposed bond  
14 issue, would have to be run by DCED first, and then DCED could  
15 say fine, or not fine, or whatever. And then if they say  
16 fine, the local government can go ahead and do the process  
17 that they do now under the Debt Act and issue the debt, price  
18 the bonds, file with DCED, and get the debt approved.

19 I'd also recommend, in that regard, that local  
20 governments be prohibited under the Debt Act from collecting  
21 guaranty fees. I think there's been too much games playing  
22 with that and moving money around. If a local government  
23 wants to guaranty the Authority -- I'm sorry, the debt of its  
24 Authority, it should do so so that the Authority can have  
25 lower interest costs on the debt, so that the bonds will bear

1 interest at a lower rate because of the guaranty. It  
2 shouldn't be done to be transferring money from the bond  
3 issuer or from the Authority over to the local government.

4 So that's my first recommendation is those  
5 amendments to the Debt Act. The second recommendation is to  
6 amend the Debt Act in the Municipality Authorities Act to  
7 prohibit local governments and authorities from entering into  
8 any new interest rate swap agreements. You know, there have  
9 been a number of reports regarding swaps in Pennsylvania, one  
10 is the forensic report for Harrisburg, but also Auditor  
11 General Jack Wagner issued a report in 2009 which talked about  
12 the Bethlehem Area School District and other situations around  
13 the State, and the Auditor General recommended prohibiting  
14 swaps going forward.

15 There was also a study by the Pennsylvania Budget  
16 and Policy Center, which is nonprofit, in January of this year  
17 that analyzed the swaps entered into by the City of  
18 Philadelphia and the Philadelphia School District, and that  
19 study estimated that the combined losses of the city and the  
20 school district through last year on their swap transactions  
21 was \$331 million, and they still have exposure for losses of  
22 up to \$240 million. Philadelphia City Council held a hearing  
23 on October 23 of this year, just a few weeks ago, to look into  
24 what happened with these swaps in the City of Philadelphia,  
25 and they took testimony from a lot of the professionals and

1 also from the Auditor General.

2 But I think when you look at these studies, in my  
3 conclusion, and from having done interest rate swaps and been  
4 involved with them, is that Act 23 of 2003, which amended the  
5 Debt Act to allow swaps, should be reversed. I think it's  
6 been a failed experiment. It's not that there haven't been  
7 good swaps, and maybe even most swaps are good. First of all,  
8 the repercussions when a swap goes bad are multi-million-  
9 dollar problems. And when you think about it, what else would  
10 you authorize local governments to do where there might be a 1  
11 in 10 chance, or even a 1 in 100 chance, that they're going to  
12 have a multi-million-dollar problem as a result of what  
13 they're entering into?

14 The other thing I'd say about swaps in local  
15 governments is they're incompatible with the way public  
16 officials and elected officials operate. You know, it's very  
17 difficult if you have to terminate a swap. And when the Great  
18 Recession hit, a lot of local governments had entered into  
19 what are called "swaptions," which is a specific type of swap.  
20 But there's one county, which is a fairly strong county in the  
21 State, that had a swaption, and they had like a five-year  
22 window to decide whether to get out of the swap. And when you  
23 get out of a swap early, you have to pay a termination fee,  
24 and it's based on lots of calculations of present value of  
25 flows of money.

1           But that county in particular, five years ago they  
2 could have gotten out of the swaption for \$4 million, and they  
3 had the money. It's a fairly wealthy county. But they  
4 politically simply couldn't, the county council, get  
5 themselves to vote to send \$4 million off to some bank in New  
6 York to get out of a swap that they probably shouldn't have  
7 gotten into in the first place.

8           So they didn't do anything. They sort of waited  
9 to see if rates would go up instead of down. And then you're  
10 into gambling, which isn't good. But rates kept going down,  
11 which was against their financial interests. And so finally  
12 they had to terminate the swap because they got at the end of  
13 this window, this year, and they ended up paying a \$24 million  
14 termination payment.

15           And I'm not saying that to criticize these  
16 officials, but just to say, it's not compatible with how you  
17 all as elected officials have to operate in the public bubble  
18 you operate in to make decisions like that. You know, the  
19 treasurer of a corporation, a private corporation, they can  
20 say, okay, we have to bite the bullet and take the loss, and  
21 we did something we shouldn't have done, but it's very hard  
22 for public officials, and you just get into worse and worse  
23 situations if the market continues to go against you.

24           So I think these instruments are not necessary.  
25 You know, public finance was around a long time before 2003

1 and local governments got to do their financings, and they  
2 should not be given this power anymore. It's pretty much like  
3 a game of Russian roulette, where every once in a while the  
4 bullet's going to go off and there's a bad situation. So  
5 that's my second recommendation.

6           The third one is to amend the Debt Act to include  
7 criminal penalties for knowingly participating in ultra vires  
8 act, an act that's beyond the power of the local government,  
9 or for filing a materially false certification with DCED, or  
10 for aiding and abetting any such act or filing. You know, the  
11 securities laws operate under the assumption that people  
12 involved in these transactions are going to act fairly and in  
13 the best interests of both the issuer and the purchasers of  
14 the debt. And I think the Debt Act, in large part, is  
15 operating that way too. It puts a lot of trust in the  
16 professionals in terms of what they're doing. And I think,  
17 you know, when I look at transactions that have happened  
18 around the State for school districts and local governments,  
19 that there needs to be some fear of the law put into this  
20 statute to prevent people from going up to the line or over  
21 the line on some of these transactions.

22           So even though there is another existing statute  
23 that could be utilized in the Harrisburg situation, where  
24 making a false statement under oath or filing a false  
25 certification intending to mislead a public servant in

1 performing his official function is a crime, I think having a  
2 specific criminal provision in the Debt Act itself would  
3 prevent a lot of these problems, or at least make people think  
4 a couple of times about it.

5           The fourth recommendation is that the General  
6 Assembly should pass no further extensions of the bankruptcy  
7 prohibition. As you know, in June of 2011, the General  
8 Assembly prohibited third-class cities from filing for  
9 bankruptcy for a one-year period, which ran through June 30 of  
10 this year. And then in June of this year, the General  
11 Assembly extended that prohibition through the end of  
12 November, this month.

13           For municipalities that are in distress, as the  
14 Distressed Municipalities Act has been amended, it requires  
15 the approval of the Secretary of DCED before they can file for  
16 Chapter 9 bankruptcy. And in particular with respect to  
17 Harrisburg, which is under Chapter 7 of the Distressed  
18 Municipalities Act, Act 47, they can't file without the  
19 Receiver taking them into bankruptcy. So with respect to  
20 Harrisburg in particular, I don't think that the General  
21 Assembly needs to be concerned about there being any frivolous  
22 bankruptcy filing for Harrisburg because it will require both  
23 the Receiver and the Secretary of DCED to approve it. And so  
24 I think that these bankruptcy prohibitions only help the  
25 creditors that the Receiver is trying to deal with.

1           I think General Lynch is doing a very good job as  
2 Receiver. I think he's got difficult negotiations he has to  
3 do, and he did ask the General Assembly in June not to extend  
4 this thing. It was extended, but it shouldn't be extended  
5 again. And I know that that won't happen this month, but when  
6 you come back in Session next year, it should not be  
7 resurrected. I think that should just be put aside and let  
8 things play out as they will, because the threat of  
9 bankruptcy, although you want to avoid bankruptcy, the threat  
10 of bankruptcy is crucial to the negotiations that have to  
11 happen to resolve the debt problem.

12           The last recommendation is that the General  
13 Assembly should ask the State Attorney General and the United  
14 States Attorney to conduct a criminal investigation of the  
15 Harrisburg incinerator financings, or the General Assembly  
16 should pass an act for the creation of a special prosecutor to  
17 conduct such an investigation. I think that -- well, when I  
18 was Receiver, it struck home to me, because I talked to lots  
19 of people in the city and dealt with the city administration  
20 and all of their challenges and stuff. The effect of this  
21 debt that was put in place in Harrisburg for the incinerator,  
22 it's not just a story about an incinerator that was a bad  
23 investment. It's had an effect on everything that happens in  
24 the city because it completely messes up the financings of the  
25 city, and it has the city then doing ill-advised things that

1 they may not have done otherwise in areas unrelated to that  
2 debt because of the overwhelming burden of this debt on the  
3 city's finances.

4           So it affects everything. It affects water  
5 service, sewer service, police service, fire service, trash  
6 collection, economic development, parks and recreation. All  
7 these departments get cut back to the bone because of this  
8 debt. And so the lives that are lived by the people in the  
9 city have been dramatically negatively affected by the problem  
10 that we're talking about today. And there was an identified  
11 group of people who put this debt together, many of whom  
12 you've heard from last month and today. And I believe that  
13 this debt was simply not self-liquidating.

14           I think the 8110(b) certificate -- I don't agree  
15 with the analysis that there was one project. I remember  
16 before I became a Receiver, around the time I was nominated, I  
17 went over to the Authority, the Harrisburg Authority, and  
18 asked them to put all the bond documents on the table for me.  
19 And I'm an old bond lawyer, so I can go through 10 feet of  
20 bond documents in an afternoon, you know, looking for specific  
21 stuff, and I did look at that ordinance that was enacted in  
22 2007 for the city guaranty of the C and D notes, and I was  
23 reading the project description and it went on and on and on.  
24 I said, why is this project description so long? And then I  
25 get to the end and they define it all as one project. Well,

1 that's an absurd interpretation of the Debt Act, in my  
2 opinion. You might as well not have debt limits, if that's  
3 what you're saying, because that means as long as you think  
4 that the next debt that you're going to issue is going to  
5 solve the problem, you can issue that debt. And if that  
6 doesn't work, then issue more debt and think that that's going  
7 to solve the problem. And meanwhile, you've got all these  
8 numbers here.

9 I agree with Senator Eichelberger, what you said  
10 earlier, Senator. When you read that language in 8110(b),  
11 that's a lookback test. Were there changes in circumstances  
12 that have occurred since the last time you issued debt that  
13 would make you believe that the debt that's outstanding is not  
14 self-liquidating? How can you look at those numbers on that  
15 chart and not come to the conclusion in 2007 that there was a  
16 change in circumstances?

17 Also, defining a project as going from 1993 to  
18 2007, it's just illogical. There were multiple contractors,  
19 multiple boards, multiple administrations, professionals. I  
20 mean, time had gone on; things had changed. There was  
21 before-Barlow, there was Barlow, there was after-Barlow, and  
22 saying all that was one project, when I was reading that  
23 transcript, that ordinance in November of last year, I mean, I  
24 was just sort of dumbfounded.

25 And I said to myself, I know why this is being

1 done. This is being done so you can put it in front of DCED  
2 and have Bernadette Barratini say it's one project and, you  
3 know, put the stamp on it, right? But the purpose of the Debt  
4 Act, the sole -- well, not the sole, but the main purpose of  
5 the Debt Act is to avoid situations in which so much debt is  
6 incurred that the taxpayers can't pay it. That's the reason  
7 that act is there. And every little provision in the 30 pages  
8 of that act are geared to that one purpose. The lawyers  
9 involved should know that, right? And the financial advisors.  
10 I mean, all these people deal with the Debt Act all the time.  
11 They know that's the purpose, and yet to come up with, you  
12 know, in my view, a twisted interpretation that somehow you  
13 can have one project and you can run as much debt into that  
14 one project as you want without ever reckoning with the fact  
15 of whether it's really self-liquidating or not is against the  
16 basic purpose of the Debt Act. So I've beaten that one to  
17 death.

18 But I think this needs to be looked at by a  
19 criminal prosecutor. I'm not a criminal lawyer. When I was  
20 Receiver, I was asked frequently by people when I was out  
21 talking with city folks and others about what do you think of  
22 the criminal aspects of this, and I would say that's not my  
23 job, which is what General Lynch is saying now. It's really  
24 not the Receiver's job.

25 But I got to the point where this thing was so

1 bad, I mean, it stunk like a kettle of rotten fish. And, you  
2 know, that goes through all the testimony you've heard for the  
3 two days of your hearing. Nothing fits together. And you  
4 need a prosecutor, a criminal prosecutor, to get all the  
5 e-mails, at the letters, everything. Take a look at it.  
6 Maybe there was no criminal activity. I don't know. But  
7 there certainly was, as I said publicly before, there  
8 certainly was disdain for the law. I mean, there wasn't a  
9 sense that these laws are here for a purpose, the General  
10 Assembly passed them for a purpose, we've got to give some  
11 respect to what the intent of these laws are, not just to  
12 drive through whatever you can drive through with whatever  
13 interpretation you want of that statute.

14 So I would encourage the General Assembly to ask  
15 the U.S. Attorney and ask the new Attorney General to look at  
16 this, and if there's no reaction there, to consider passing a  
17 statute appointing a special prosecutor to take a look at the  
18 debt situation in Harrisburg.

19 And that's my testimony. Thank you.

20 CHAIRMAN EICHELBERGER: Thank you, Mr. Unkovic.

21 Senator Folmer.

22 SENATOR FOLMER: Yes, you actually answered my  
23 first question I had for you. But my second question would  
24 have been this: It would appear the City of Harrisburg hid a  
25 structural deficit for many years by borrowing and/or dipping

1 into other funds. Is that true or false?

2 MR. UNKOVIC: I think that's right, and--

3 SENATOR FOLMER: Well, could you give us some  
4 background on how it was done?

5 MR. UNKOVIC: Yeah, that would require a forensic  
6 report of its own. So a lot of what I discovered as Receiver  
7 was sort of anecdotal and some here and some there. But, you  
8 know, you've heard a lot of that in the testimony that you've  
9 heard in two days too. So, for example, when Steve Goldfield  
10 testified the first day, he testified about the bond  
11 guarantees and how that money basically went over to the city  
12 when they wouldn't guaranty -- you know, he testified as to  
13 these scoop-and-toss refundings, where they'd push a couple of  
14 years' worth of debt service out of the next two years and off  
15 into the future. When Bruce Barnes testified today, he was  
16 saying that they were entering into some of these transactions  
17 to obtain current moneys. Right?

18 Other things I found when I was Receiver was the  
19 overcharging of utility charges, that the city runs a --  
20 excuse me, the Authority -- actually, the city for the  
21 Authority operates the water system and the sewer system. And  
22 for example, the sewer system serves I think six or seven  
23 suburban municipalities as well as the city, and the charges  
24 that were imposed by the city on suburban residents, and on  
25 city residents, for the administrative costs of the city

1 running the sewer system, were well in excess of the actual  
2 costs. The actual costs were less than a million, and the  
3 amount allocated that they wanted covered allocable to  
4 administrative costs was \$7 million from suburban residents  
5 and city residents. So all that money would get overcharged  
6 and then moved over into the General Fund and run the city.  
7 So in effect, the suburban municipalities were helping to run  
8 the General Fund of the city.

9 Now, some of these things I think are caused by  
10 the fact that the finances for cities generally in the State  
11 are problematic because of the union contracts, the inability  
12 to control the labor costs, you know, the pension costs. I  
13 mean, there are lots of reasons for that. In Harrisburg, it  
14 was all exacerbated by this debt and by lots of other actions,  
15 so it in some ways you want to excuse what happened because  
16 these mayors and city councils are in tough positions. On the  
17 other hand, in Harrisburg it seems that they did it all. I  
18 mean, all the options of how to move money around and create  
19 money and take money from here and put it there were done.

20 So Steve Goldfield testified the first day that  
21 it's a lot like paying your rent on a credit card, which it  
22 was. But to expand that analogy a little bit, it's like  
23 paying the rent on your credit card and then you keep moving  
24 into more and more expensive apartments every year. And so at  
25 some point the whole thing crashes, and that's basically what

1 happened here.

2 Does that answer your question, Senator?

3 SENATOR FOLMER: Yes, I guess it did. Thank you  
4 for that background.

5 Mr. Unkovic, you had many interactions with the  
6 citizens of Harrisburg when you were Receiver. Is there  
7 anything you would want to say now to the citizens of  
8 Harrisburg?

9 MR. UNKOVIC: Yes. I feel bad for them, right?  
10 Now, I show up, become a Receiver, and in talking to all the  
11 people in the city, they really have not been treated well  
12 over the years by their officials and by the public finance  
13 industry. But what I would like to say to them, and I know  
14 because of these problems, they're a very cynical bunch.  
15 Right? I mean, they don't trust anybody, and because of the  
16 experience of them being abused over the years by people that  
17 have had power over them and by people that have been hired by  
18 people that have power over them, and what I would hope that  
19 they would do was at this point is to get less cynical. I  
20 think in my mind that we've reached a tipping point here and  
21 that there really is light at the end of the tunnel.

22 I think General Lynch is doing a very good job as  
23 Receiver. I think the plan that he's following is the plan  
24 that the Commonwealth Court approved back in February. And I  
25 think it's a good plan. I know there are a lot of people in

1 the city that just want to file for bankruptcy and think  
2 that's the answer, but it's very important that there be an  
3 effort to get contributions from people who should contribute  
4 to the solution here, including the creditors. Significant  
5 contributions. And I think that the people of the city have  
6 to be, have to give the Receiver some slack at this point. I  
7 think he's doing the right things. He's got a hard job. I  
8 think he'll do everything he can to get there, and I think he  
9 will. That doesn't mean they shouldn't ask questions and that  
10 doesn't mean they shouldn't push as they always do, but they  
11 should be less cynical.

12 I mean, there's all of you, right? You three  
13 Senators who have courageously decided to hold these hearings,  
14 which you did not have to do, because you, I think, also were  
15 outraged by what's happened to the people of this city. And I  
16 commend you for that, and I ask, you know, the citizens in  
17 Harrisburg to Royce that and to thank you when they see you  
18 for doing these hearings. And these hearings have been very  
19 important, because they've gotten stuff out that hasn't been  
20 gotten out before, and they've had people testifying who  
21 haven't publicly testified as to what they did in these  
22 situations.

23 What needs to happen, there needs to be more  
24 happening, and my own opinion is based on my conversations and  
25 my experiences as Receiver, that it's probably a long shot

1 that the U.S. Attorney is going to handle this. I don't think  
2 they will. I think it really comes down to the State Attorney  
3 General's Office investigating the situation. What could be  
4 more important for an Attorney General of the State to do than  
5 to investigate how the financial condition of the State  
6 capital got ruined? Right? It really calls out, and I hope  
7 the new Attorney General, when she comes in, looks at this.  
8 And she may find no criminal violation, but certainly it needs  
9 to be looked at.

10 Things were not done the right way here. Things  
11 were done in ways that are just hard to explain. They're even  
12 hard to explain to the people who have testified to you,  
13 because they point fingers at each other. It wasn't me, it  
14 was him, or it was her. And I think in part that's because  
15 they're not comfortable with what happened. And some of them  
16 maybe should be a lot more uncomfortable than others that  
17 there will be an investigation of this, and I hope there will  
18 be.

19 SENATOR FOLMER: One last question. What have  
20 these hearings gotten out that hasn't been gotten out before  
21 or should have been previously aired?

22 MR. UNKOVIC: You know, I think when you look at  
23 the forensic audit that was done was really an excellent  
24 report, I think, and it may not have been accurate in all of  
25 its facts, but that's because they couldn't get all the facts.

1 They didn't have subpoena power, and so forth. So I think,  
2 you know, that it was courageous of the Harrisburg Authority  
3 to commission that report, and I think the forensic people did  
4 a great job. But even when you read it, it's like half a  
5 report. There are lots of things that you ask yourself when  
6 you read that thing, and I think that's what you've done today  
7 and on October 4. I think you've gotten people who are  
8 involved in this to testify and say things. And even the fact  
9 that they say they don't remember things, that it might be  
10 incredible that they don't remember, I think it's good to get  
11 that on the record. I think it's good to get as much as you  
12 can.

13 And the answer is, we don't really know what else  
14 there is out there, or what really went into these decisions.  
15 And whether there was really some sort of intentional  
16 violation of the law until you get all the facts out, and  
17 that's not going to happen in this room. As important as what  
18 you've done is, it's only going to happen with an experienced  
19 prosecutor looking at what happened here.

20 SENATOR FOLMER: Thank you.

21 SENATOR BLAKE: Thank you, Mr. Chairman, and thank  
22 you, Attorney Unkovic. I am grateful for your candor and your  
23 professional presentation of important information today.

24 You know, for me, as the Minority Chair of Local  
25 Government, I actually opposed the prohibition of bankruptcy

1 on the floor of the Senate and was a little bit upset about  
2 the rewriting of a new chapter of Act 47, but that's another  
3 issue that I think is parallel to this one.

4 I don't know that you can comment on this, but I'm  
5 going to throw it out there and ask you to consider. I think  
6 that this is an anomaly of a situation because of the scale of  
7 the impact on this small city, but I'm not sure that it's the  
8 only circumstance throughout this Commonwealth that threatens  
9 the fiscal health of a third-class city anywhere in the State,  
10 and I don't know whether or not you can speak to this. I  
11 think Mr. Losty mentioned there were 700 swaps out there. If  
12 there was a gyration in the market, I'm sure that some of our  
13 cities or our municipal authorities could be posing a threat  
14 to their circumstances as well. I don't know if you want to  
15 comment on that, but I do have a specific question too  
16 relating to your comments about whether or not we should even  
17 have a self-liquidating exclusion in LGUDA and the issue of  
18 guarantees and the proliferation.

19 I'm not sure you can comment about the extent to  
20 which you have these third-party guarantees of counties or  
21 municipalities behind municipal debt, and should that not be a  
22 trigger point for additional, more thorough scrutiny on the  
23 part of DCED with regard to municipal finance and debt  
24 issuance?

25 That's a lot of stuff.

1                   MR. UNKOVIC: No, I have to write a note or I'll  
2 forget what point one is. Let me answer the second one first.

3                   I think guarantees are good in a lot of  
4 situations. Where you have your typical township that also  
5 has a water system, it's real hard to sell a township's water  
6 bonds without the municipality behind it, because the system  
7 may not be large enough for an investor to be truly  
8 comfortable that in all situations the system is going to  
9 carry itself. But it may be a system that has carried itself  
10 for 40 years and is well run. And I think townships like that  
11 should have the opportunity to guaranty their Authority's  
12 bonds so they can get sold. So I think most situations in the  
13 Commonwealth are positive ones like that, so I don't think  
14 it's a good idea to say that there shouldn't be  
15 self-liquidating debt. I think in many cases -- in most cases  
16 it's a very good idea.

17                   You know, your question generally about the  
18 finances of cities in Pennsylvania, you know, if you do read  
19 the original recovery plan which I filed with the court in  
20 February, and which they approved in early March, there's a  
21 whole section that talks about financially, you know, the  
22 challenges of the finances of cities in Pennsylvania. And I  
23 specifically put that in the report, because in some ways  
24 Harrisburg is unique because of this disaster with the  
25 incinerator, but in some ways it's emblematic of the problems

1 of all the cities in Pennsylvania. I mean, it's not unusual  
2 that there are overcharges on utilities and the money goes  
3 into the General Fund. For a lot of cities, it's how they  
4 keep going. So you're going to find that in different places  
5 around the State.

6 You know, and that's not my -- my charge here is  
7 to advise you on that. But, I mean, there are large issues  
8 which I know you are going to be dealing with dealing with  
9 pensions and labor, public union contracts, and so forth, that  
10 just have to be dealt with, and taxing power of cities. I  
11 mean, you've got a city here which has half the land is  
12 tax-exempt, and you've got a third of the population that's  
13 below the poverty line. I mean, it's a very poor city.

14 There was testimony here about self-liquidating  
15 debt where as long as you have a rate covenant, the debt is  
16 self-liquidating. I mean, that seems like the ultimate  
17 argument that I was hearing here today. But that's an absurd  
18 argument in Harrisburg. You can only charge these people so  
19 much. I mean, they only have so much money. There have to be  
20 other ways to address these big problems to solve them for all  
21 the cities.

22 SENATOR BLAKE: I appreciate that. I guess, you  
23 know, you already commented on the forensic audit, and it had  
24 been challenged by several of our testifiers, but your  
25 assessment is of high regard here.

1                   MR. UNKOVIC: Well, thank you. And I don't say  
2 that there aren't some mistakes in it, and I'm sure the people  
3 who wrote it would say they might have gotten some of this  
4 wrong, because they didn't have all the facts. They got as  
5 many as they could and they did the best job they did. And  
6 these people worked extremely hard. When I was Receiver, you  
7 know, I was on the horn with them every week, when is that  
8 report coming out? Starting in early December, and it finally  
9 came out in January. They worked all through Christmas  
10 weekend, New Year's weekend. I mean, they worked 20-hour days  
11 to get that report done. So yeah, there might be some things  
12 in it that are wrong, factually wrong. There might be some  
13 conclusions that people would argue with, but I think on a  
14 whole it hits the nail on the head on what happened here.

15                   SENATOR BLAKE: Thank you.

16                   My last point, which is really related to your  
17 prior testimony and your written testimony, and I'm very  
18 grateful for that, because I started this process by  
19 announcing that we were not prosecutors, that we were really  
20 just trying to find out whether there were regulatory or  
21 legislative flaws or weaknesses, and I think that your  
22 recommendations will inform the committee's future  
23 deliberations about legislative action. But I do think that  
24 this issue of fiscal health of our communities, in particular  
25 here, if we incent behavior that allows local government

1 officials to essentially find an easier way to just get the  
2 books balanced at the end of one year versus another, I think  
3 that we're doing a disservice if we don't correct that kind of  
4 incentive.

5 MR. UNKOVIC: I agree with that.

6 SENATOR BLAKE: So thank you very much.

7 CHAIRMAN EICHELBERGER: One point that I've been  
8 trying to get to today was getting an explanation, at least in  
9 theory and maybe factually, how this waterfall of payments and  
10 how this all interplays so that we see the city and the county  
11 which get guaranty fees to take a risk and back up payments  
12 that were missed by the Authority, and then when that happens,  
13 there's refinancing done, there's a side agreement, and the  
14 burden then gets larger in the new borrowing to pay for  
15 another guaranty, and then to pay for the old money that was  
16 paid out under the Guaranty Agreement, the old Guaranty  
17 Agreement. Is that something that you've seen in your 30-plus  
18 years of work in doing bond counsel, that kind of arrangement  
19 where we have this continual increase of debt obligation?

20 MR. UNKOVIC: No, I haven't. And, I mean, one of  
21 the things that tells you that this debt was never  
22 self-liquidating is just looking at the uses of the money. I  
23 mean, if you're constantly issuing -- Steve Goldfield  
24 testified to this in the first day. When I went through those  
25 documents, this was before there was a forensic audit or

1 anything, I mean, it struck me immediately, you look at the  
2 sources and uses of funds for every one of these financings,  
3 and it is like running up your credit card. It's working  
4 capital, I'll pay you back for these debt service payments you  
5 made the last two years, here's some money for your debt  
6 service payments the next two years. I mean, you don't do  
7 that for an operation that's working. You do that for an  
8 operation that's not working. So to have all that going on  
9 and all these financings, and then to be filing certificates  
10 with the State that says this stuff is self-liquidating, I  
11 mean, it struck me right away that that wasn't right.

12 CHAIRMAN EICHELBERGER: And Senator Blake had  
13 talked about guarantees. How about guaranty fees? In your  
14 experience, how much of that have you seen?

15 MR. UNKOVIC: I've never seen any outside of  
16 Harrisburg. And I've probably done 800 bond issues in my  
17 career, like 25 or 30 a year, and most of them under the Debt  
18 Act for all sizes of local government, all across the State.  
19 Yeah, I don't see that. Because it doesn't make any sense.  
20 When you get a guaranty fee, let's say your guaranty fee is a  
21 million dollars. That money doesn't come out of nowhere. You  
22 have to issue another million dollars of bonds to pay that  
23 million dollar fee at closing, right? So now on top of the  
24 problem you've already got, this problem of how you get this  
25 incinerator to work, you've got the guarantors taking money

1 out, not even taking money out, just issuing more debt, which  
2 solves everything in Harrisburg, right? You issue more debt.  
3 And then that debt is amortized over 20 years at 5 percent.  
4 And so it doesn't make sense to take guaranty fees out.

5           There was some testimony today, it might have been  
6 Bruce Barnes who said how did they calculate -- it might have  
7 been somebody else who said, how do they calculate what that  
8 county guaranty fee was going to be, and they said, well, they  
9 sort of present-valued the debt service savings that the  
10 Authority would get by virtue of the guaranty. Well, then  
11 you're not helping the Authority, right? You're helping them  
12 sell the bonds, because otherwise you probably couldn't sell  
13 the bonds, but you're sucking out the savings that the  
14 Authority is going to get by using the county's double A  
15 rating, or whatever it is. So, you know, it's just lots of  
16 absurdities.

17           CHAIRMAN EICHELBERGER: Well, the follow-up  
18 question to that would have been, which is I should have  
19 asked, or maybe somebody should have, and I did ask at the  
20 first day of hearings, is you must reach a breaking point  
21 where you do get somewhat of a discount, but sooner or later  
22 you eat up that discount with all these additional fees, so.

23           MR. UNKOVIC: You mean the discount from what?

24           CHAIRMAN EICHELBERGER: You get a better rate, so  
25 you save a little bit of money, but saving a little bit of

1 money, maybe a million dollars, you would save more than a  
2 million. But if the guaranty fee is \$4 million, you're out \$3  
3 million.

4 MR. UNKOVIC: Right. The best approach is not to  
5 have a guaranty fee and just do it because the government  
6 wants to help the Authority. I mean, the only reason you set  
7 up an Authority is to put what are sort of project operations  
8 separate from your General Fund budget so you can run an  
9 incinerator or run a water system or whatever and put it in an  
10 Authority so they can focus on running it like a business. It  
11 doesn't make any sense to do that, and then suck money out of  
12 that business back into the city government.

13 CHAIRMAN EICHELBERGER: My last recurring question  
14 that I would ask you is, do you see an ethical obligation,  
15 particularly for attorneys, but for anybody, any professional  
16 that's involved or has been involved in this project, to bring  
17 forth significant red flags to the extent that stop the  
18 project or hold things up, do a new analysis, do something,  
19 when they see or when they have knowledge of all the facts  
20 that we've just talked about and they continue to say, well,  
21 it's compartmentalized. I was told to do this, this is what I  
22 did. It checked out. I'm done with my obligation to my  
23 client.

24 MR. UNKOVIC: The short answer is yes. You know,  
25 when you read Judge Jones's opinion in the CIT litigation, and

1 I know he held in favor of CIT against the Authority, but if  
2 you read the last couple paragraphs of that opinion, and he  
3 addressed that specifically. He said, you know, this is just  
4 a terrible set of facts where a lot of smart people with a lot  
5 of experience were working on these financings and they never  
6 said don't do this, don't double down, don't do this next  
7 thing, cut your losses, you know, this has been a disaster,  
8 cut your losses, that's it. And Judge Jones felt that way.  
9 Now, he said these contracts are binding, so I'm going to have  
10 to rule in favor of CIT, but I think anybody that looks at  
11 that wonders why no one did stand up and say don't do this.

12 And sometimes, you know, it's very rare, and Steve  
13 Goldfield said this when he testified, and it's very rare in  
14 my career too, where sometimes you actually don't do something  
15 because it's not right and you walk away from what otherwise  
16 would be a fee. And you don't like to do that or you don't  
17 eat, but at some point you get situations that are bad. And  
18 this is the worst set of financings I've ever seen. And, you  
19 know, if you don't raise the red flag here, I don't know where  
20 you do. So.

21 CHAIRMAN EICHELBERGER: Senator Folmer.

22 SENATOR FOLMER: My last question is, and I  
23 thought of this while you were talking, what value, if any,  
24 would there be to appropriating some State money to complete  
25 or otherwise follow up on the forensic audit but with subpoena

1 power?

2 MR. UNKOVIC: I think it would be good to get the  
3 whole story of what happened. You know, for your purposes,  
4 you have to consider legislation you might want, like some of  
5 the things that I suggested here today. You know, whether you  
6 need more facts to do that, I don't know. I think a lot of  
7 the facts you've got at this point, at the level of coming up  
8 with legislation to fix the Debt Act and so forth. You know,  
9 in terms of whether there were criminal acts here, I think you  
10 need a lot more. And I don't know if that comes from you. It  
11 probably should come from a full-time prosecutor.

12 SENATOR FOLMER: Okay, thank you.

13 CHAIRMAN EICHELBERGER: Senator Blake has some  
14 closing comments. Do you want to address anything to Mr.  
15 Unkovic?

16 SENATOR BLAKE: No, thank you very much.

17 CHAIRMAN EICHELBERGER: Yeah, we want to thank you  
18 for everything. Thank you very much.

19 MR. UNKOVIC: Thanks a lot.

20 (Applause.)

21 SENATOR BLAKE: Just a quick comment. I really,  
22 well, I just want to thank the Chairman for his leadership in  
23 this matter. These are difficult and complex issues to  
24 undertake, but I would be remiss if I didn't extend thanks to  
25 my staff, looking around here, and my Chief of Staff and my

1 Legislative Director, as well as Lee Derr from Senator  
2 Eichelberger's office, for the research that was done here.

3 I also think it important to go on the record, I  
4 think it's important for me to just say this, I've had some  
5 considerable dialogue with Senator-elect Rob Teplitz, who will  
6 be representing Harrisburg come January. He and I have  
7 communicated quite often on this matter, and I know that he'll  
8 want, the moment he takes office in January, to hopefully play  
9 a role, a constructive role in the legislative process that  
10 unfolds in the wake of these hearings, and I thought it would  
11 be important for me to say so. And again, I just want to  
12 thank the Chairman. Thank you.

13 CHAIRMAN EICHELBERGER: Thank you, and this has  
14 been a joint effort with Senator Blake and myself, and really  
15 Mike Folmer, who has been deeply involved in this issue, and  
16 he represents part of Dauphin County. So the staff has been,  
17 I think, outstanding. This has been a lot of work for  
18 everybody, and I appreciate that.

19 And I need to read a statement for the public here  
20 before we adjourn for the record that says that I would  
21 mention that for the information of the public, that  
22 legislative record of these proceedings shall consist of the  
23 stenographer's transcripts of the hearings, plus documents  
24 referenced in those transcripts, testimony submitted to the  
25 committee, and a copy of the forensic investigative report,

1 without exhibits, commissioned by the Harrisburg Authority,  
2 which shall be attached to the transcript. The record will be  
3 made available to the public as soon as the transcript is  
4 ready by placement of a copy by the Secretary of the Senate in  
5 the Senate Library, and on the committee's Web site, as  
6 indicated on the agenda.

7 So, thank you all for attending. We're adjourned.

8 (Whereupon, the proceedings were concluded at 4:51  
9 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

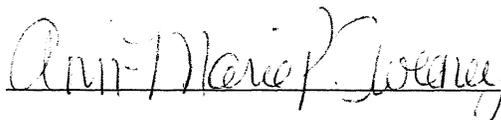
22

23

24

25

1 I hereby certify that the proceedings and evidence  
2 are contained fully and accurately in the notes taken by me  
3 during the hearing of the within cause, and that this is a  
4 true and correct transcript of the same.

5  
6  
7  
8 

9  
10 ANN-MARIE P. SWEENEY  
11 Chief Official Reporter  
12 Senate of Pennsylvania  
13  
14

15 THE FOREGOING CERTIFICATION DOES NOT APPLY TO ANY  
16 REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT  
17 CONTROL AND/OR SUPERVISION OF THE CERTIFYING REPORTER.  
18  
19  
20

21 ANN-MARIE P. SWEENEY  
22 Chief Official Reporter  
23 Senate of Pennsylvania  
24 Room 644, Main Capitol Building  
25 Harrisburg, PA 17120  
(717) 787-4206



# EXHIBITS



# Senate Local Government Committee

Senator John H. Eichelberger, Jr.  
Chairman



Room 460, Main Capitol Building, Senate Box 202030, Harrisburg, PA 17120-0030 • 717.787.5490 • Fax 717.783.5192

## Public Hearing On Debt Structure of Harrisburg Authority

**Tuesday November 13, 2012**  
**Room 8-B, East Wing, Main Capitol**

### ~ Agenda ~

- 9:30 Call to Order
- 9:30\* Jeff Haste, Commissioner, Dauphin County
- 10:00 Robert Kroboth, (Business Manager, City of Harrisburg)
- 10:30 Thomas Mealy (former Director, Harrisburg Authority)
- 11:30 Bruce Barnes (Excel Financial Advisors/Milt Lopus Associates)
- 1:00 James Losty (RBC Capital)
- 2:00 Andrew Giorgione, Esq. (Buchanon Ingersoll)
- 3:00 Carol Cocheres, Esq. (Ekert Seamens)
- 4:00 James Ellison, Esq. (Rhoads & Sinon)
- 4:30 David Unkovic, Esq. (former Receiver, City of Harrisburg)

Adjournment

\* All times are approximate, depending on length of testimony, questions/answers, etc.

\*Information related to these hearings, including copies of testimony submitted to the Committee can be found at <http://pasenategop.com/committees/local-government.htm>



9:30 Jeff Haste, Commissioner, Dauphin County



8110(b) CERTIFICATE

I, Jeffrey T. Haste, Chairman of the Board of Commissioners of the County of Dauphin, Pennsylvania (the "County") in compliance with Section 8110(b) of the Local Government Unit Debt Act (the "Act"), hereby certify that:

1. The County's guaranty of The Harrisburg Authority's University Revenue Bonds, Series of 2007 (The Harrisburg University of Science and Technology Project (the "2007 Revenue Bonds") listed at Paragraph 2(c)(ii) of the foregoing Debt Statement in the original aggregate principal amount of \$15,000,000 has been excluded from the County's total gross indebtedness by approval of the Pennsylvania Department of Community and Economic Development (the "Department") both as to issuance, No. LRA-4570, dated November 17, 2007, and self-exclusion, No. E-4037, dated November 17, 2006; the outstanding principal balance of this debt is \$15,000,000.

2. No decrease in the amount to be excluded is required by any change of circumstances other than decreases resulting from payments of principal of the 2007 Revenue Bonds.

3. The County's guaranty of the Dauphin County General Authority's Guaranteed Revenue Bonds, Series A & B of 2005 (the "2005 Revenue Bonds") listed at Paragraph 2(c)(v) of the foregoing Debt Statement in the original aggregate principal amount of \$11,000,000 has been excluded from the County's total gross indebtedness by approval of the Pennsylvania Department of Community and Economic Development (the "Department") both as to issuance, No. LRA-4290, dated December 30, 2004, and self-exclusion, No. E-3702, dated February 15, 2005; the outstanding principal balance of this debt is \$10,885,000.

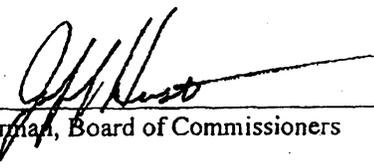
4. No decrease in the amount to be excluded is required by any change of circumstances other than decreases resulting from payments of principal of the 2005 Revenue Bonds.

5. The County's guaranty of The Harrisburg Authority's Guaranteed Resource Recovery Facility Revenue Bonds, Series D and E of 2003 (the "2003 Resource Recovery Bonds") listed at Paragraph 2(c)(viii) of the foregoing Debt Statement in the original aggregate principal amount of \$110,980,000 has been excluded from the County's total gross indebtedness by approval of the Department both as to issuance, No. LRA-4096, and self-exclusion, No. E-3449, both dated December 9, 2003; the outstanding principal balance of this debt is \$110,980,000.

6. No decrease in the amount to be excluded is required by any change of circumstances other than decreases resulting from payments of principal of the 2003 Resource Recovery Bonds.

This Certificate shall be filed with the Department, together with the County's Debt Statement, filed this even date. This Certificate is made this 21<sup>st</sup> day of November, 2007.

COUNTY OF DAUPHIN, PENNSYLVANIA

  
\_\_\_\_\_  
Chairman, Board of Commissioners

10/29/12

**SENATE OF PENNSYLVANIA**  
**LOCAL GOVERNMENT COMMITTEE**

**TESTIMONY OF**

**JEFF HASTE, CHAIRMAN, DAUPHIN COUNTY COMMISSIONERS**

CHAIRMAN EICHELBERGER, CHAIRMAN BLAKE AND MEMBERS OF THE COMMITTEE:

I am Jeff Haste, Chairman of the Dauphin County Board of Commissioners. I was appointed to the Board of Commissioners in December, 2002 and in April, 2003 I was elected Chairman, a position which I have held since that date.

I am pleased to appear before you to assist in your examination of the Harrisburg Incinerator Project which has had serious adverse consequences for the City, the County and the Commonwealth.

Allow me to provide some background of the County's involvement in this project. In 2000, the County's Act 101 Plan directed all municipal solid waste to various regional landfills. Prior to 2000, the County and the City engaged in extensive litigation whereby the City attempted to have its Incinerator included within the County plan. Although the County prevailed in that litigation, the City and the County entered into a Settlement Agreement whereby the County agreed to consider directing a wasteflow to the City's Incinerator in order to assist the City in financing a necessary retrofit of the facility.

From 2000 to 2003, the County took steps to amend its Act 101 Plan to discontinue reliance on landfill disposal and to incorporate resource recovery into its plan. A major concern to the Commissioners was the potential reopening of the

Dauphin Meadows Landfill in the northern portion of Dauphin County unless alternative disposal methods were identified.

By 2003, the Incinerator was closed by environmental agencies leaving \$104 million of existing debt guaranteed by the City. For several years the City had been urgently requesting the County's assistance in financing retrofit of the facility suggesting that bankruptcy was an option if the retrofit could not be accomplished. The County responded by awarding a long-term disposal agreement of County municipal waste to the City Incinerator subject to successful completion of the retrofit. Ultimately the County agreed to guarantee a portion of the debt in order to facilitate financing the project.

By 2003 the City had been working with Barlow for a number of years to develop and plan the project. The County, in considering its guaranty, retained special counsel, consulting engineers and PFM as financial advisor to review the project. Our consulting engineer conducted a review of Barlow's past projects, reviewed the self-liquidating debt certification and the engineering report to City Council. PFM reviewed the financial structure of the Retrofit Bonds to be guaranteed by the County and approved the related SWAPS which were also guaranteed by the County. The County's guaranty was secondary to the City's and at the time the City represented to us that the County's risk would not exceed one year's debt service because the City, if unable to meet debt service in a given year, would appropriate and pay the deficiency from its next year's budget. That of course never happened.

The County knew there were risk factors associated with this project, including:

(i) Barlow's lack of experience with respect to projects of this size; (ii) the lack of a

performance bond; and (iii) the necessity to size the project in order to cover repayment of the City's existing debt.

With respect to the lack of a performance bond from Barlow, the County reviewed and relied upon the alternative security arrangements approved by the Authority, which included a guaranteed maximum price contract, deferred payment for certain equipment until delivered to the site, a 20% retainage on Barlow's contract price and reserve amounts within the Construction Fund.

While the County reviewed and accepted these risks, it certainly could not have anticipated the catastrophic failure of the project which we believe resulted from gross mismanagement and failed oversight by the Authority and the City.

The project was to be completed in 2006. By the end of 2005, the Authority and the City had expended the entire Construction Fund, including the contingency and reserve funds. At that point, the project was not near completion. The City and the Authority then borrowed an additional \$25 million from CIT and a year later, at the end of 2006, those funds were expended and the project was still uncompleted. The security measures which the Authority had put in place were never properly administered or enforced. This colossal collapse cannot be blamed simply on Barlow's failure. Where was the oversight, who approved the overrun payments? Were certificates filed to authorize payments? None of these questions have been answered.

The Forensic Audit reviewed the planning of the project, but there has been no examination of the actual execution of the project. The Authority's records concerning payments and administration of the project should be readily available for review.

No matter how well a project is planned, if it is executed poorly without adequate oversight, then disaster is the likely result. The County had no part to play in the execution of this project and is now paying the cost of its failure.

We understand that you have received testimony concerning the Authority's Forensic Audit. For the record, we have appended to my prepared testimony a copy of the County's response to those portions of the Forensic Audit which deal with the County guarantys.

Before concluding I will address briefly some of the issues with which we understand your Committee has interest.

**COUNTY GUARANTY FEE.** In 2003 we were advised that the City would be imposing a guaranty fee in order to provide funds to balance the City's 2003 budget. We understood that the County's guaranty provided substantially more enhancement to the financing than the City's. We also believed that in order to maintain balance between City taxpayers and County taxpayers, the County should also receive a guaranty fee. The County's guaranty fee was applied to payment of County expenses associated with issuance of the guarantys, including fees of our special counsel and financial advisor. The balance of the fee was paid to our general fund.

**2007 FINANCING.** At the end of 2006, the Authority had terminated the City's Management Agreement and hired Covanta to replace Barlow. It was too little, too late. The City and the Authority then pressed the County to assist in additional financing to complete the project. Initially, the City requested the County to guaranty \$60 million of additional debt. We were reluctant to do so and applied limitations on the amount of financing that the County would guaranty. However, in the end we concluded that the bonds guaranteed by the County, which were of a higher priority than most of the other debt of the facility, could be paid only if the project were completed and fully operational.

**SUGGESTED LEGISLATION.** Currently, DCED approves only the "proceedings" with respect to debt issues, including revenue projects certified to be self-liquidating. There have been suggestions that DCED's review should be more substantive. Any such requirement will add substantial delay and cost to the financing of public projects. We question whether a more critical review by DCED would have averted the crisis in this case which resulted, in our view, from mismanagement of the project. Our suggestion is that DCED be authorized to perform a critical review and analysis of those self-liquidating projects which are supported by a municipal guaranty, where the amount financed represents a certain percentage of the municipality's available borrowing capacity. That would limit the review to those critical projects which may place in jeopardy a municipality's financial health.

Thank you.

Respectfully submitted,

Jeff Haste  
Dauphin County Board of Commissioners

**METTE, EVANS & WOODSIDE**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

HOWELL C. METTE  
ROBERT MOORE  
CHARLES B. ZWALLY  
PETER J. RESSLER  
JAMES A. ULSH  
JEFFREY A. ERNICO

MARY ALICE BUSBY  
KATHRYN L. SIMPSON  
THOMAS F. SMIDA  
PAULA J. LEICHT  
TIMOTHY A. HOY  
HENRY W. VAN ECK

3401 NORTH FRONT STREET  
P.O. BOX 5950  
HARRISBURG, PA 17110-0950

IRS NO.  
23-1985005

TELEPHONE (717) 232-5000 FACSIMILE (717) 236-1816

MARK D. HIPP  
RONALD L. FINCK  
RANDALL G. HURST\*  
MELISSA L. VAN ECK  
HEATHER Z. KELLY  
AARON T. DOMOTO

JAMES W. EVANS  
1926 - 2008

\* MARYLAND BAR

TOLL FREE: 1-800-962-5097

[HTTP://WWW.METTE.COM](http://www.mette.com)

January 30, 2012

Board Members  
The Harrisburg Authority  
212 Locust Street, Suite 302  
Harrisburg, PA 17101

**RE: Resource Recovery Facility Forensic Investigation Report, Dated  
January 12, 2012**

Dear Board Members:

We have reviewed your Resource Recovery Facility Forensic Investigation Report, dated January 12, 2012 (the "Report"), on behalf of the Dauphin County Commissioners (the "County") and the following is our response.

**A. Introduction**

The Report covers an examination of certain financing transactions related to the Resource Recovery Facility (the "Facility") of The Harrisburg Authority (the "Authority"). The 2003 Retrofit financing and the 2007 Retrofit Completion financing involved the guarantees of the City, as primary guarantor, and the County, as secondary guarantor.<sup>1</sup>

Our response is limited to those portions of the Report which directly relate to the County's participation and where we deem the Report inaccurate or containing unsupported assumptions or conclusions.<sup>2</sup>

<sup>1</sup> The terms used herein with an initial capital letter shall have the meanings indicated in the Report, unless otherwise indicated herein.

<sup>2</sup> Many of these may have been averted had the County been requested to comment on a draft of the Report or had County representatives been interviewed. The County received only limited requests for information to which it responded except where attorney/client privilege was asserted. No interview request was made to any County representative.

**B. Summary**

Between 1995 and 2003, the County reviewed its Act 101 Plan and made two policy decisions: (1) to discontinue reliance upon landfills for County municipal waste disposal; and (2) to support the City's retrofit of the Facility in order to provide a state-of-the-art facility to dispose of County waste and to assist the City in dealing with its \$104 million of standard debt. The Report criticizes the County's due diligence in awarding the County Disposal Contract to the City and in providing its guarantees for a portion of the Retrofit Bonds. Twenty-twenty hindsight is always perfect. The Report's conclusion appears to be based on little more than a review of preliminary reports prepared by the County's advisors which simply summarized their conclusions. PFM was the only County advisor interviewed.

The Report reviews only the planning of the Retrofit Project, not its execution. The extent to which the risk factors identified by the Report contributed to the project's catastrophic failure is unknown. A true forensic examination should have reviewed the execution of the project by the Authority, the City and their agents. Presumably the construction fund records are held by the Authority and were available to the investigators.

We believe it was reasonable for the County to anticipate (i) competent execution of the project by the Authority and the City and (ii) performance by the City of its primary full faith and credit guarantees.

We disagree with much of the Report's legal interpretations concerning the 2007 Retrofit Completion financing. The conclusions concerning application of certain working capital limitations under the Debt Act and the Report's interpretation of documents such as the 1998 Indenture and 2003 Retrofit Indenture are misplaced. Indeed, the Report seems to be "reaching" to find some taint or infirmity with respect to the issuance of the 2007 Notes. The Authority's bond counsel approved the validity and enforceability of the 2007 Notes.

To understand the current status of the City's debt obligations with respect to the Facility, it is necessary to review the actions (or inactions) of the parties since 2009, when the Authority and City first defaulted. There were a number of opportunities proposed by the County to resolve or at least mitigate the ongoing exposure. The failures of the Authority and the City to address these issues have resulted in substantial worsening of the burden upon City and County taxpayers in the amount of approximately \$20 million from 2009 to January, 2012.

**C. The 2003 Retrofit Financing**

**(1) Background of County's Involvement**

Under Act 101 of 1988, the County is required to adopt a Municipal Waste Management Plan (the "Plan") and to direct County waste flow to approved disposal facilities. Between 1990 and 1995, the City filed numerous legal challenges to the County Plan, which at that time relied solely upon landfill disposal. The County successfully defended these actions; however, in 1995 the City and County reached a settlement where, *inter alia*, the County agreed to assist the City through the County Plan to obtain a waste stream sufficient to generate revenues to finance a retrofit of the Facility.

In early 2003 the County determined to seek long term waste combustion capacity to address rising landfill costs and to avert the reopening of the Dauphin Meadows Landfill. In September, 2003, following an RFP process, the County entered into a long term disposal agreement with the Authority conditioned upon completion of retrofit of the Facility (the "Disposal Agreement"). Hearings were held throughout the County and subsequently the County Plan was amended to reflect designation of all County municipal waste to the Facility upon completion of the Retrofit Project.

In 2003 the Facility was closed by order of regulatory authorities and had standard debt in the amount of \$104 million guaranteed by the City (the "Existing Debt"). The Report erroneously suggests that the County had some involvement or control over the Existing Debt (R. p. 48).<sup>3</sup> It had none.

The Authority and the City could not have begun to finance the Retrofit Project without the County Disposal Agreement. It was the only large volume long term waste flow available to the Facility. City representatives also made it clear that the City was facing extreme financial distress given the Existing Debt without a revenue stream to repay it.

**(2) The County's Guaranty**

In early 2003, City representatives advised the County that credit enhancement in the form of a County guaranty would be required to finance the Retrofit; otherwise, the financing costs would be prohibitively expensive. We understand that the bond insurer, FSA, advised the City that a County guaranty would be required for it to proceed. The County ultimately agreed to extend its guaranty (on a portion of the bonds) in order to allow the Retrofit Project to proceed and to assist the City in dealing with the Existing Debt.

---

<sup>3</sup> References to the Report will be cited as "R. p. -."

At page 56, the Report suggests that the County could not guaranty debt issued to pay interest costs on the Existing Debt. The County specifically did not guaranty debt issued with respect to such costs. The County's guaranty was limited to the 2003 Series D and Series E Retrofit Bonds. As set forth in the Official Statement, published in connection with the Retrofit Bonds, it was the proceeds of the 2003 Series F Bonds (not guaranteed by the County) which provided for the "Payment of Existing Debt Service."<sup>4</sup>

At page 43, *et seq.*, the Report suggests that the County was aware of the risks associated with the Retrofit Project and for that reason extracted a guaranty fee. That is not accurate. The County initially objected to the City's guaranty fee and was advised that the City required the fee proceeds in order to balance its 2003 budget. The County then requested a guaranty fee simply to maintain some parity with the City.<sup>5</sup>

The County evaluated the risks associated with the project and proceeded based upon the review and advice of its advisors. The County's consulting engineer reviewed Barlow's projects across the country and reported that all were on schedule, or had been completed successfully. The County's consulting engineers and its financial advisor (PFM, a national firm with expertise in Pennsylvania municipal financing) reviewed the project performas and accepted the assumptions as "reasonable." PFM reviewed and approved the financing structure including the Swaps. The County also reviewed the Buchar-Horn evaluation.

Planning and execution of the Retrofit Project was in the hands of the Authority, as owner, and the City, as manager of the Facility. The City devoted extensive effort in planning the Retrofit Project since the late 1990s. The County's opportunity and time for review were limited. In large part the County relied upon the fact that the City was backing the Project with its primary full faith and credit guarantees.

To be critical of the County and its advisors now is no more than second guessing. Indeed, there were risks associated with the project of which the County was aware; typically, revenue bond financing has built in risks associated with construction and operation of a project. Deviations in costs or delays in completion of construction are not uncommon, but typically can be dealt with by restructuring or other adjustments. However, it is a quantum leap to suggest that the County and its advisors could have anticipated the catastrophic failure that occurred with respect to this Project.

---

<sup>4</sup> See December 19, 2003 Official Statement regarding Retrofit Bonds, page 6.

<sup>5</sup> The Report cites a statement by a representative of PFM to the effect that Commissioner Haste "wanted a guaranty fee" (R. p. 45). The County guaranty fee was negotiated by the County's special counsel with little involvement by PFM. All Commissioners approved the County guaranty fee.

**D. Why Did The Project Fail?**

In our view, the greatest failing of the forensic investigation and Report is the lack of any examination or conclusion as to why the project failed. The Report reviews only the financing and planning decisions. Other than a brief review of the pay-out of Barlow's retainage (R. pp. 71-73), there is no examination or conclusion as to what happened during the actual construction of the project. Presumably, all of the construction fund records, requisitions, certificates, etc. are available in the Authority's files. Why were the records not reviewed? Where did the money go? The Report has no answer.

Within a period of two years, the Authority, the City and its agents squandered the Construction Fund of \$82 million, including the contingency, Barlow's retainage and a reserve fund of \$5 million held to construct the steam line<sup>6</sup>, plus an additional \$25 million borrowed from CIT - yet the project remained uncompleted. The Authority required another \$55 million and another two years to complete the project. Most of the construction contracts were GMP (guaranteed maximum price); obviously substantial overruns had to have been authorized. The financial failure of Barlow is only part of the answer.<sup>7</sup> Who was providing construction management? Who authorized expenditures from the Construction Fund and upon whose certification? These are all issues which a proper forensic examination should have addressed and answered.<sup>8</sup>

Whatever the answers, there is no doubt that the project was horribly executed by the Authority, the City and its agents. No "forensic" examination or revisionist history can change the fact that the County had absolutely no participation in execution of the Retrofit Project.<sup>9</sup>

In the final analysis, the County in granting its guarantees relied on two things:

(1) competent execution of the project by the Authority and the City; and

<sup>6</sup> See § 5.01 of the Retrofit Indenture. The steam line was never repaired and now will require reconstruction at substantially more than the \$5 million.

<sup>7</sup> The Authority's "substitute security" for Barlow's performance may have been inadequate; however, as noted by the Report, it also was not properly implemented, since Barlow's retainage was paid out prior to completion of its work (R. pp. 71-73).

<sup>8</sup> Testimony by Daniel Morash in the recently completed CIT trial provides a snapshot of some of the earlier mishaps regarding Barlow's dealings with its boiler fabricator in Tulsa, Oklahoma. If the testimony is to be believed, it is evidence of gross mismanagement.

<sup>9</sup> Authority and City representatives provided very limited status reports to the County during the construction project. The first indication of trouble was when the County was advised in the fall of 2005 that Barlow was financially distressed and was seeking financing from CIT.

(2) satisfaction by the City of its full faith and credit obligations.

Neither was provided.

**D. 2007 Retrofit Completion Project**

The Report's examination of this financing transaction contains a number of conclusions and assumptions which we believe to be inaccurate.

**(1) Background**

In December, 2006, representatives of the Authority and the City advised the County that Barlow was again out of money and its contracts would be terminated. The City was also terminated as manager and Covanta was retained to complete the Retrofit Project and to operate the Facility. City and Authority representatives also advised the County that additional funds would be required to complete the project and sought the County's support and participation. Initially, the Authority requested the County to guaranty an "off-market" swap to provide approximately \$11 million to complete the project. The County objected to the off-market swap and demanded full disclosure of the Facility's completion status as well as operating and construction budgets. The County's initial review indicated that the costs to complete would far exceed \$11 million. The County insisted upon a comprehensive plan approved by both the Authority and the City (including City Council) before it would commit to participate.

Negotiations on the Retrofit Completion financing extended over a year. At one point, in mid-2007, the Authority and the City requested new financing of up to \$60 million. The County refused and limited its participation as a guarantor to \$30 million.<sup>10</sup> Accordingly, the parties finally agreed to a Retrofit Completion Project in two components, with Covanta funding the construction costs in the amount of approximately \$25 million to be guaranteed by the City only and with a working capital component in the amount of \$30 million with a primary guaranty by the City and secondary guaranty by the County.

The parties entered into a series of written agreements with respect to proceeding with the Retrofit Completion Project, as follows: (1) The Cooperation Agreement, dated October 12, 2007 among the City, the County, the Authority and Covanta; (2) the Tri-Party Interim Funding Agreement, dated October 5, 2007 among the Authority, the City and the County and; (3) a First Addendum and Supplement to the Tri-Party Interim Funding Agreement, dated November 27, 2007 among the Authority, the City and the County (herein collectively the "2007 Agreements"). Pursuant to the

---

<sup>10</sup> Members of City Council, in sessions to discuss the Retrofit Completion Project, repeatedly criticized the County for limiting the amount of its guaranty.

2007 Agreements both the City and the County made certain advances to the Authority for working capital purposes, including payments due to Covanta (to keep it on the job) as well as amounts required to cover interest costs coming due during 2007. Pursuant to the 2007 Agreements, the County's working capital advances were to be repaid from proceeds of the working capital component.<sup>11</sup>

In December, 2007, the Authority issued the Covanta Construction Loan Note and issued the Series C and Series D Notes (the "2007 Notes") pursuant to a Trust Indenture, dated as of December 15, 2007 (the "2007 Indenture"). The City and the County issued their respective guarantees with respect to the 2007 Notes. The Covanta Note and the 2007 Notes represent the issuance of subordinated debt by the Authority as referenced in the 1998 and 2003 Indentures.

## **(2) Legal Issues Relating to Retrofit Completion Project**

The Report contains a number of inaccuracies with regard to its discussion of the Retrofit Completion Project.

### **(a) County Debt Statements**

At page 117 the Report claims that it was not until the end of August, 2011 that the County filed debt proceedings which included the "RRF Bonds towards the County's gross outstanding debt." That statement is incorrect. The County did not file a Section 8110(b) report claiming the 2003 RRF debt to be self liquidating in any Debt Act filings after 2008. A review of the County's filings with DCED would reveal this.

### **(b) Working Capital**

At page 118, *et. seq.* of the Report, it is claimed that application of proceeds of the working capital loan for certain purposes, i.e., repayment of County advances under the 2007 Agreements, payment of County system fees, etc. violated working capital limitations as to the "cost of a project" under the Debt Act. This conclusion is based upon a strained interpretation of the 2007 financing. The Report suggests that the 2007 financing was a separate and distinct "project." Clearly it was not. The 2007 financing was to complete the Retrofit Project as originally authorized in 2003 for the purpose of retrofitting the Facility so that it complied with environmental standards and was able to accept municipal waste for processing. That work was not completed in 2007.<sup>12</sup> Thus,

<sup>11</sup> First Addendum and Supplement to Tri-Party Interim Funding Agreement, section 2.

<sup>12</sup> The Report suggests that since there was a change in contractors (from Barlow to Covanta), it was not the same project (R. p. 118). A change in contractors does not change a project. The Report also makes reference to a change in the Barlow technology (R. p. 118); it is our understanding that the Barlow technology was installed in all 3 units and was not removed until approximately 2009. In any event, the use of a different process does not change the ultimate purpose of a "project."

to pay interest costs on any of the outstanding bonds was a proper "cost of project" under the Debt Act. The Debt Act includes within the cost of a project ". . . interest on money borrowed to finance the project [and] . . . a reasonable initial working capital for operating the project . . ." 53 Pa. C.S.A. § 8007. The advances made by the County pursuant to the 2007 Agreements were, in large part, payments made to Covanta pursuant to its operating agreements, which clearly represent working capital for "operating the project," under the Debt Act. Finally, the County's system fees, which were due pursuant to the Disposal Agreement, are also project operating costs permitted to be capitalized and included within costs of a project under the Debt Act.

(c) Reimbursements to County

At pages 120 *et seq*, the Report suggests that payments to the County for advances made to the Authority pursuant to the 2007 Agreements and repaid from the proceeds of the 2007 Notes were somehow improper and should have been treated as reimbursements to the County pursuant to the 2003 Reimbursement Agreement. This position is not supported by the documents.

The Authority approved and authorized the 2007 Agreements, which approved the County's advances and contained the Authority's agreement to repay the advances from proceeds of the 2007 Notes.<sup>13</sup> These payments cannot be considered as reimbursements to the County under the 2003 Reimbursement Agreement. First the Reimbursement Agreement applies only to the County's 2003 guarantees of the payment of debt service. The advances to the Authority for payment of operating costs to Covanta clearly are not debt service and are not covered by the guarantees or the Reimbursement Agreement. Furthermore, the advances for interest costs made by the County during 2007 were not then required under its guarantees. The 2003 County Bond Guaranty only requires payment from the County in the event of deficiencies in the Debt Service Reserve Fund. See Section 3.15 of the 2003 County Bond Guaranty. In 2007, there were no deficiencies in the Debt Service Reserve Fund and no demands had been made by the Trustee on the County guarantees.<sup>14</sup>

(d) Fees

The Report suggests that fees payable to the County's professionals covered services provided in the "prior two to three years" (R. p. 121). This is not accurate. The only fees payable to County professionals from the proceeds of the Retrofit Completion Project were payments to its special counsel and financial advisor. In both cases the fees covered services from approximately December, 2006 to December, 2007, all

---

<sup>13</sup> See First Addendum and Supplement to Tri-Party Interim Funding Agreement, section 2.

<sup>14</sup> The Report appears to concede that the advances made by the County technically were not payments made pursuant to the County's guarantees (R. p. 123).

related to the negotiation and structuring of the Retrofit Completion Project. Finally, it should be noted that the complaint that these financings were "fee driven" is not applicable to the County. The fees of the County's professionals in the case of both the 2003 financing and the 2007 financing were charged on an hourly rate basis and were payable irrespective of whether the financings closed or not.

(e) Compliance with Indenture Documents

At pages 122 *et seq.*, the Report attempts to maintain that the issuance of the Covanta Note and 2007 Notes and application of the proceeds thereof violated the 1998 Indenture and 2003 Indenture. The suggestion is that the loan proceeds were "receipts and revenues" as defined in the Indentures and thus should have been paid into the revenue account and required to flow through the "waterfall" applicable to receipts and revenues (R. p. 124). This is simply wrong.

Loan proceeds for completion of a project are not "receipts and revenues" which typically represent gross income from operation of a project, not the proceeds of debt. The Authority's financial statements do not treat loan proceeds as "revenues".

The Covanta construction loan and the 2007 Notes represent the issuance of subordinated debt by the Authority. Both the 1998 Indenture in Section 3.05 and the 2003 Retrofit Indenture in Section 3.05 permit the Authority to issue subordinated debt, limiting only the priority of repayments if receipts and revenues are pledged. In the case of the 2007 Notes, the 2007 Indenture securing the same does not pledge receipts and revenues.

The Report's contention is also inconsistent with other Indenture provisions. Both the 1998 Indenture and the 2003 Retrofit Indenture authorize the issuance of additional bonds for additional construction or completion of a project. In both cases the proceeds of any additional bonds to complete a project are required to be paid to a "construction fund" as created by a supplemental indenture. See Sections 3.03(8) respectively of both the 1998 Indenture and the 2003 Retrofit Indenture. If, indeed loan proceeds to complete a project were to be treated as receipts and revenues, then the proceeds of the additional bonds would have to be deposited in the revenue account. Obviously that makes no sense and specifically is inconsistent with the provisions of the Indentures.

Finally the Report's position on the treatment of loan proceeds of the 2007 financing is inconsistent with its discussion with respect to the 2003 Retrofit financing. The Retrofit financing was also the issuance of subordinated debt under the 1998 Indenture. Nowhere in the Report's discussions does it suggest that the proceeds of the 2003 Retrofit financing should have flowed into the 1998 revenue account and through the waterfall under the 1998 Indenture. The position cannot be sustained.

**E. Subsequent Failures to Address Facility Debt**

We suggest that the Report should have reviewed the ongoing failures of the City and the Authority to address the Facility's debt. Since 2009, the County has made multiple attempts to address issues related to the Facility's debt, proposing solutions, in whole or in part, designed to mitigate the escalating damage to City and County taxpayers. These efforts have elicited little or no response from either the Authority or the City.<sup>15</sup> Examples of these failed efforts follow.

In early 2009 City and County representatives engaged in discussions in an effort to develop a plan for resolution of the Facility's debt. In August 2009, representatives of the County presented a detailed proposal for restructuring the Facility's debt to representatives of the Authority, the Mayor's staff and some Members of City Council. The County's proposal was very similar to the plan presented to the City by Management Partners in early 2010 and to the plan recommended by the Act 47 Coordinator in 2011. Indeed we suspect that the Receiver's plan for dealing with the Facility's debt will contain similar elements. The County never received any response from any of the parties to that proposal.

Had the parties in 2009 engaged in negotiating a plan resolving the Facility's debt, we estimate that approximately \$20 million representing debt service to be borne by City and County taxpayers could have been avoided or saved. City and Authority officials are well aware that the failure to engage and resolve these issues results in escalating costs to City and County taxpayers of approximately \$1 million per month.

On several occasions during the past two years, the County's financial advisor requested the Authority and its financial advisor to consider a termination of the three Swaps applicable to the Retrofit Bonds which cost the Authority net payments of several hundred thousand dollars each June and December. The County's financial advisor concluded that the three Swaps could be terminated at a net cost of \$0 to the Authority. The timing of the termination is critical since market conditions determine the cost of termination at any particular time. At several points in 2011, all three Swaps could have been terminated at no cost. The Authority's financial advisor advised County representatives that there was no support by the Authority Board for termination. Now, it will no longer be possible to terminate the two remaining Swaps at no cost.

During 2010 the County, on several occasions, requested the Authority and the City to join it in refinancing the 2007 Notes which matured on December 15, 2010. The Authority covenanted in the 2007 Indenture "... to use its best efforts to take all action as necessary to issue bonds or other obligations in amounts sufficient to provide funds

---

<sup>15</sup> One exception was the recent effort by Mayor Thompson to engage representatives of the Authority, City and major creditors prior to the appointment of the City Receiver.

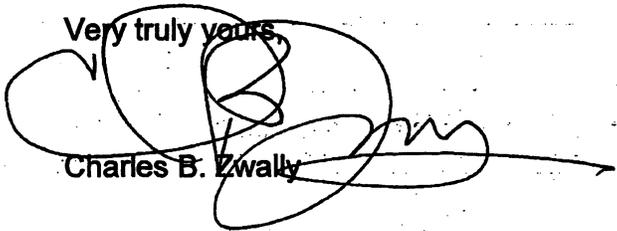
The Harrisburg Authority  
January 30, 2012  
Page 11

to pay the Maturity Value of or Accreted Value of the Series 2007 Notes on or before the maturity date ...." 2007 Indenture, Section 8.01. These requests also were met with little or no response. At a meeting in the fall of 2010 among Authority, City and County representatives, a member of City Council agreed to take the issue before City Council; the County never received any indication of whether it was considered. The Authority refused to formally place the issue before City Council or to take any action, despite its covenant to the contrary, to proceed with a refinancing of the 2007 Notes.

In late 2011, the City approved a financing, at extremely unfavorable rates and terms, by the Harrisburg Parking Authority for the short term purpose of providing approximately \$7 million of funds to balance the City's 2011 budget and to provide approximately \$3.5 million of funds for the 2012 budget. This is a continuation of the City's short sighted approach to its financial problems and in this case resulted in depressing the value of the parking system in the event of any sale or lease to assist in resolving the Facility's debt.

The County looks forward to a constructive plan from the City Receiver which hopefully will relieve the City and County taxpayers from these continuing failures.

Very truly yours,

  
Charles B. Zwally

CBZ:njc

cc via email:

The Honorable Jeffrey Haste  
The Honorable George P. Hartwick, III  
The Honorable Michael Pries  
David Unkovic, Esquire, Office of the Receiver for the City of Harrisburg  
Royce Morris, Esquire  
Klehr Harrison Harvey Branzburg, LLP  
Jason Hess, Esquire, Solicitor for City of Harrisburg  
Mark Kauffman, Esquire

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

SUITE 400  
200 LOCUST STREET  
HARRISBURG, PA 17101

(717) 234-9730  
FAX (717) 234-9734  
[www.obermayer.com](http://www.obermayer.com)

FILE NO. 57285-030

ANDREW J. GIORGIONE  
EXTENSION: 1315  
E-MAIL: [Andrew.Giorgione@Obermayer.com](mailto:Andrew.Giorgione@Obermayer.com)

August 1, 2003

**PRIVILEGED AND CONFIDENTIAL**

*VIA REGULAR MAIL*

Hon. Stephen R. Reed  
Mayor, City of Harrisburg  
Rev. Dr. Martin L. King, Jr.,  
City Government Center  
10 North Second Street  
Harrisburg, PA 17101

**Re: County Intent Resolution**

Dear Mayor Reed:

On July 28, 2003, Jim Losty and I met with County Solicitor William Tully and Chuck Zwally, Esq. and Tom Smida, Esq. of the Mette Evans firm to discuss the County's secondary guaranty of The Harrisburg Authority's \$125 M Resource Recovery Retrofit Bonds. County Chairman Jeff Haste called in the morning and expressed his regret that he could not make the meeting. However, I briefed him on the subjects to be covered and obtained his authorization to proceed as outlined below.

Mr. Losty and I discussed the status of the project including much of the component parts of the project necessary to complete the financing, i.e. permits, cost estimates, contracts, etc. We also discussed the Authority and City's timetables for approving the transaction (late September) and closing on the bonds (mid-November). We then requested that the County confirm its agreement to guaranty the bonds with the introduction and approval of an "intent" Resolution on August 7, 2003 and final approval of the guaranty on October 7, 2003, subject to conditions. We also suggested that the County consider the engagement of Mette Evans as counsel to the County for the intent Resolution and subsequent Guaranty Ordinance and filing with DCED.

**PRIVILEGED AND CONFIDENTIAL**

Hon. Stephen R. Reed  
August 1, 2003  
Page 2

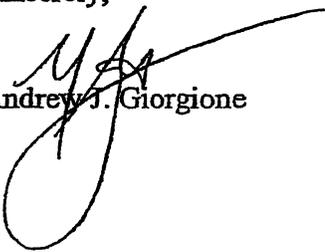
As authorized by Chairman Haste, the County confirmed that it would provide the Guaranty and would approve the intent Resolution on August 7 and the Guaranty Ordinance on October 7, subject to conditions. The County also agreed to engage Mette Evans and authorized the firm to participate in the finance team meetings on behalf of the County. We then provided Mette Evans with a draft intent Resolution, which was slightly amended by them and provided to the County and us for comment. For your information, a copy of the Resolution is attached. We do not intend to suggest any further changes, since the Resolution clearly sets forth the intent to provide the Guaranty and sets forth conditions that are readily acceptable.

We cautioned Chairman Haste that the Resolution could cause a stir. His response was simply, any of those who would object to this transaction are not supporters of the County or City and would not support either administration. In sum, he expressed little concern and confirmed the County's support of this financing as being in the best interests of the County and City.

When the Resolution is approved next week, we will obtain an immediate copy for you and would suggest that, contemporaneous with reports of the Resolution by the media, that you may want to supply a copy to the members of City Council.

Please contact me if you have any questions concerning this matter.

Sincerely,

  
Andrew J. Giorgione

Enclosure

c: Mr. Daniel Lispi  
Mr. James Losty

**CONFIDENTIAL**

December 29, 2006

TO: Mayor Stephen R. Reed

FROM: Daniel R. Lispi

SUBJECT: Resource Recovery Update

1) **Covanta Agreement**

Meetings were conducted ( Bruce Foreman, Andrew Giorgione and I ) with Covanta all this week to negotiate the Interim Operating Agreement, and negotiations concluded today. The Agreement attached provides that on January 2, 2007 Covanta will assume all aspects of the operation of the Facility with their employees. The term is 90 days, and Covanta is to be paid/reimbursed for actual costs incurred with no mark-up. Covanta will work on an offer for sale or lease during the interim period and the Agreement provides a Right of First Refusal during the Interim Period and for an additional 30 days thereafter.

**The Agreement has been conditionally executed by the Chairman of the Authority who will be out of town from now until next week. The executed Agreement has not yet been given to Covanta but it will be effective January 2, 2007 unless you object.**

2) **Labor Issues**

A meeting was held this morning with the Authority, Covanta and AFSCME to discuss the situation. The Authority and Covanta made it clear that the intent is that the Facility be staffed with Covanta employees after January 2, 2007. City employees will be interviewed for available positions and qualified employees would be offered jobs. AFSCME representatives indicated that they have not been notified by the City as to the status of the current Facility employees. Further discussions between the City and AFSCME are planned to effect an orderly transition.

3) **Swap**

Andrew and I met with George Hartwick yesterday to discuss the proposed swap agreement. George had received the "benefit" of a briefing by Nick DiFrancesco and was initially very negative. At the end, he did not say that he would not support it, but also did not say he would. He indicated that he wanted to discuss the matter with Jeff Haste. I spoke to Jeff after the meeting and briefed him on the content of the meeting with George. Jeff remains supportive of the swap or the loan to complete the

**Facility.** It is very important that you contact both Jeff and George as soon as possible.

Obviously, timing is critical the funds are needed immediately to support the operation in the short term and to get moving on the improvements.

## **Sutherland, Hugh**

---

**From:** Giorgione, Andrew  
**Sent:** Friday, September 05, 2003 11:52 AM  
**To:** Sutherland, Hugh; Daniel R. Lispi (E-mail); James Losty (E-mail); Richard D. Michael Esquire (E-mail); 'cpc@escm.com'  
**Subject:** 1998A Indenture  
**Contacts:** Hugh Sutherland

Anyone - I need a copy of the 98A Trust Indenture for the County asap. Can you email it?

I spoke with Chuck Z. He indicated that the County was concerned with the size of the City Guaranty Fee. I explained its a matter of risk and not negotiable.

He also indicated that the County would have a list of things they want by next week. This will include an operating reserve, which Dan and I discussed and believe is necessary and doable.

Finally, he asked that we consider a subordinate series of bonds for Transition and Existing Debt Service Costs, such that there is no County guaranty for those costs and separate DSRF are created. I assume this may be an insurer issue, but wanted your thoughts.

Andrew

## **COUNTY BOND GUARANTY AGREEMENT**

**THIS COUNTY BOND GUARANTY AGREEMENT**, dated as of the 1<sup>st</sup>. day of December, 2003 (the "County Bond Guaranty"), by and among **COUNTY OF DAUPHIN**, Pennsylvania, a third class county and a municipal corporation of the Commonwealth of Pennsylvania, as guarantor (the "County"), **THE HARRISBURG AUTHORITY**, a body corporate and politic existing under the Municipality Authorities Act, as amended and supplemented, of the Commonwealth of Pennsylvania (the "Authority") and **COMMERCE BANK/PENNSYLVANIA, NATIONAL ASSOCIATION**, with a corporate trust office located in Philadelphia, Pennsylvania (the "Retrofit Trustee").

### **WITNESSETH:**

**WHEREAS**, the County is a municipal corporation of the Commonwealth of Pennsylvania (the "Commonwealth") and is a "local government unit" under provisions of the Act of the General Assembly of the Commonwealth, as reenacted, amended and supplemented, from time to time, known as the Local Government Unit Debt Act (the "Debt Act"); and

**WHEREAS**, the Authority is a body politic and corporate organized and existing under the Municipality Authorities Act, as amended and supplemented, of the Commonwealth (the "Act"); and

**WHEREAS**, the Authority pursuant to authority vested in it by law: (i) acquired from the City of Harrisburg (the "City") a certain mass burn solid waste disposal, resource recovery, steam generation and related facilities, including ash disposal facilities (the "Resource Recovery Facility"), and certain assets, property and machinery for the cogeneration of electric energy (the "Cogeneration Facility"); and (ii) determined to undertake the acquisition, construction and equipping of certain alterations, additions, extensions and improvements to the Resource Recovery Facility and the Cogeneration Facility, including the retrofit and modernization (the "Retrofit") thereof (collectively, the "Improvements") (the Resource Recovery Facility and the Cogeneration Facility, together with all additions, extensions and alterations and improvements, including the Improvements, thereto which may be made or acquired, from time to time, are hereinafter collectively referred to as the "Facility"); and

**WHEREAS**, pursuant to a Solid Waste Management Agreement, dated as of December 1, 1993, as amended (the "Management Agreement"), between the City and the Authority, the County manages, operates and performs certain other functions with respect to the Waste Management Facility (as defined herein), including the supervision and oversight of the construction, acquisition and equipping of the Improvements; and

**WHEREAS**, the Authority, in order to provide funds to finance a portion of the costs of acquisition of the Facility and the financing of a portion of the costs of the Improvements, heretofore issued its \$31,230,000, original principal amount, Guaranteed Resource Recovery Facility Revenue Bonds, Series A of 1993 (the "1993A Bonds") and its \$9,435,000, original principal amount, Guaranteed Taxable Resource Recovery Facility Revenue Bonds, Series B of

*Comm 2074 11/06/03' jr*

COUNTY OF DAUPHIN,

Dauphin County, Pennsylvania

Ordinance

No. 4-2003

November 6, 2003

AN ORDINANCE OF THE COUNTY COMMISSIONERS OF DAUPHIN COUNTY, PENNSYLVANIA (THE "COUNTY"), APPROVING A PROJECT OF THE HARRISBURG AUTHORITY (THE "AUTHORITY"); AUTHORIZING AND DIRECTING THE INCURRENCE OF LEASE RENTAL DEBT, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED THIRTEEN MILLION DOLLARS (\$113,000,000), PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, APPROVED APRIL 28, 1978, ACT NO. 52, AS REENACTED AND CODIFIED BY ACT NO. 177, APPROVED DECEMBER 19, 1996, AS AMENDED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "DEBT ACT"); DETERMINING THAT SUCH DEBT SHALL BE INCURRED UNDER THE DEBT ACT AS LEASE RENTAL DEBT TO BE EVIDENCED BY A GUARANTY AGREEMENT OF THE COUNTY SECURING GUARANTEED RESOURCE RECOVERY FACILITY REVENUE BONDS, SERIES D OF 2003 (THE "2003D BONDS"), AND GUARANTEED FEDERALLY TAXABLE RESOURCE RECOVERY FACILITY REVENUE BONDS, SERIES E OF 2003 (THE "2003E BONDS") TO BE ISSUED BY THE AUTHORITY, TOGETHER WITH ITS GUARANTEED FEDERALLY TAXABLE RESOURCE

owners of the 2003 D and 2003 E Bonds at or prior to the closing for the issuance of the Retrofit Bonds. Pursuant to the Disclosure Certificate, this County will provide certain financial and operating information on an annual basis and notice of certain events to each Nationally Recognized Municipal Securities Information Repository, the appropriate state repository, if any, and the Municipal Securities Rulemaking Board, if applicable, in accordance with Securities and Exchange Commission Rule 15c2-12. The Chairman, the Vice Chairman or the Chief Clerk of this County, as appropriate, are hereby authorized and directed to execute and deliver the Disclosure Certificate on behalf of this County with such changes as have been approved by Special Counsel and Bond Counsel.

13. In the event that the Authority fails to make payment of fees, costs, expenses and charges for which the Authority is liable or responsible with respect to the 2003 D and 2003 E Bonds and the Retrofit Indenture and the Qualified Interest Rate Management Agreement other than periodic payments thereunder, including, but not limited to, the fees, costs, expenses and charges payable by the Authority to the Retrofit Bond Insurer and the Retrofit Trustee, and the providers of the Qualified Interest Rate Management Agreement, the County agrees to make payment of such fees, costs, expenses and charges to the extent not paid by the Authority or the City; provided that, such amounts payable by the County pursuant to this Paragraph 13 shall *not* constitute lease rental debt of the County or the guarantee of periodic payments under the Qualified Interest Rate Management Agreement pursuant to the County Swap Guaranty and shall *not* be subject to the pledge of the County's full faith, credit and taxing power; and provided further that, nothing herein shall preclude the County from seeking reimbursement from the Authority or the City of the amounts so paid by the County.

14. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

15. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of this County that the remainder of the Ordinance shall remain in full force and effect.

16. All resolutions or ordinances or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

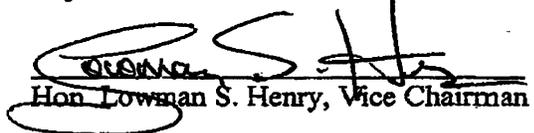
ADOPTED AND ORDAINED, this 6<sup>th</sup> day of November, 2003, by the Board of Commissioners of Dauphin County.

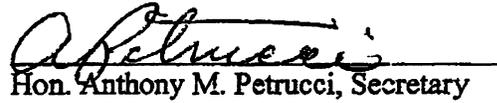
ATTEST:

  
Robert Burns  
Chief Clerk/Chief of Staff

DAUPHIN COUNTY BOARD  
OF COMMISSIONERS

  
Hon. Jeffrey T. Haste, Chairman

  
Hon. Lowman S. Henry, Vice Chairman

  
Hon. Anthony M. Petrucci, Secretary

*In the opinion of Bond Counsel, assuming continuing compliance by the Authority with certain covenants, the interest on the 2003D Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax. Interest on and accruals of original issue discount with respect to the 2003E Bonds and the 2003F Bonds are not excluded from gross income for federal income tax purposes. The 2003 Bonds are exempt from Pennsylvania personal property taxes; and the interest on the 2003 Bonds is exempt from Pennsylvania Corporate Net Income Tax and from personal income taxation by the Commonwealth of Pennsylvania, or by any of its political subdivisions, under existing law. (See "Tax Matters - 2003D Bonds" and "Tax Matters - 2003E Bonds and 2003F Bonds" herein.)*

**The Harrisburg Authority  
(Dauphin County, Pennsylvania)  
\$96,480,000 Guaranteed Resource  
Recovery Facility Revenue Bonds, Series D of 2003  
consisting of  
\$31,480,000 Subseries D-1  
\$65,000,000 Subseries D-2  
\$14,500,000 Guaranteed Federally Taxable  
Resource Recovery Facility Revenue Bonds, Series E of 2003  
\$14,020,000 Guaranteed Federally Taxable  
Resource Recovery Facility Revenue Bonds, Series F of 2003**

Dated: See inside cover

Due: December 1, as shown on inside front cover

Interest Payable: June 1 and December 1

First Interest Payment: June 1, 2004

The Harrisburg Authority (the "Authority") will issue its Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "2003D Bonds"), its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 (the "2003E Bonds") and its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the "2003F Bonds") (the 2003D Bonds, 2003E Bonds and 2003F Bonds, collectively, the "2003 Bonds") in the aggregate principal amounts shown above. The 2003 Bonds are issuable only in fully-registered form, without coupons, and, when issued, will be registered and held in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). So long as Cede & Co. is the registered owner of 2003 Bonds as nominee of DTC, reference herein to the registered owners shall mean Cede & Co. and not the Beneficial Owners (as such phrase is defined herein). Purchases of the 2003 Bonds will be made in book-entry form and certificates representing ownership interests in the 2003 Bonds will not be issued to the purchasers of the 2003 Bonds. See "THE 2003 BONDS - Book-Entry-Only System" herein.

The 2003 Bonds are limited obligations of the Authority and will be issued under and secured under a Trust Indenture, dated as of December 1, 2003 (the "Indenture"), between the Authority and Commerce Bank/Pennsylvania, National Association, as trustee (the "Trustee"). The 2003 Bonds are payable solely from (i) Receipts and Revenues as such term is defined in the Indenture; (ii) certain funds and accounts held under the Indenture; (iii) moneys which may be made available pursuant to a City Bond Guaranty Agreement, dated as of December 1, 2003 (the "City Bond Guaranty"), among the City of Harrisburg, Dauphin County, Pennsylvania (the "City"), as guarantor, the Authority and the Trustee; and (iv) all other property from time to time pledged to the payment of the principal of, premium, if any, and interest on the 2003 Bonds. See "SECURITY FOR THE 2003 BONDS" herein. In addition, the 2003D Bonds and the 2003E Bonds are payable from moneys which may be made available pursuant to a County Bond Guaranty Agreement, dated as of December 1, 2003 (the "County Bond Guaranty"), among the County of Dauphin, Pennsylvania (the "County"), as guarantor, the Authority and the Trustee. The County Bond Guaranty does not secure the 2003F Bonds.

Under the City Bond Guaranty, the City has unconditionally guaranteed, for the benefit of the registered owners of the 2003 Bonds, the full and prompt payment of principal of and interest on the 2003 Bonds when due according to the terms of the City Bond Guaranty, for which obligation the City has pledged its full faith, credit and taxing power. Under the County Bond Guaranty, the County has unconditionally guaranteed, for the benefit of the registered owners of the 2003D Bonds and the 2003E Bonds, the full and prompt payment of principal of and interest on the 2003D Bonds and the 2003E Bonds when due according to the terms of the County Bond Guaranty, for which obligation the County has pledged its full faith, credit and taxing power. The County Bond Guaranty does not secure the 2003F Bonds. See "SECURITY FOR THE 2003 BONDS - City Bond Guaranty for the 2003 Bonds" and "SECURITY FOR THE 2003 BONDS - County Bond Guaranty for the 2003D Bonds and 2003E Bonds" herein.

Interest on the 2003 Bonds is payable on June 1 and December 1 in each year until maturity or earlier redemption, commencing June 1, 2004, by the Trustee. So long as Cede & Co. is the registered owner of the 2003 Bonds, the Trustee will pay principal of, premium, if any, and interest on the 2003 Bonds to DTC, which will remit such principal, premium, if any, and interest to DTC Participants (as such phrase is defined herein), who will in turn remit such principal, premium, if any, and interest to the Beneficial Owners of the 2003 Bonds, as more fully described herein.

The 2003 Bonds are subject to redemption prior to maturity as described herein.

The 2003D Bonds are subject to mandatory tender for purchase as described herein.

Payment of the principal of and interest on the 2003 Bonds when due will be guaranteed by municipal bond insurance policies (collectively, the "Bond Insurance Policy") to be issued simultaneously with the delivery of the 2003 Bonds by Financial Security Assurance Inc. (the "Bond Insurer").



Maturity Schedule shown on inside front cover

THE 2003 BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND NOT A DEBT OF THE COMMONWEALTH OF PENNSYLVANIA (THE "COMMONWEALTH"), OR ANY POLITICAL SUBDIVISION THEREOF EXCEPT THE CITY AS PROVIDED IN THE CITY BOND GUARANTY AND THE COUNTY, SOLELY WITH RESPECT TO THE 2003D BONDS AND 2003E BONDS, AS PROVIDED IN THE COUNTY BOND GUARANTY. NEITHER THE GENERAL CREDIT OF THE AUTHORITY NOR THE TAXING POWER OR THE GENERAL CREDIT OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF EXCEPT THE CITY AS PROVIDED IN THE CITY BOND GUARANTY AND THE COUNTY, SOLELY WITH RESPECT TO THE 2003D BONDS AND THE 2003E BONDS, AS PROVIDED IN THE COUNTY BOND GUARANTY, IS PLEDGED FOR PAYMENT OF PRINCIPAL OF OR INTEREST ON THE 2003 BONDS. THE AUTHORITY HAS NO TAXING POWER.

This cover page contains certain information for reference purposes only. It is not a complete summary of the issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The 2003 Bonds are offered for delivery when, as and if issued by the Authority and received by the Underwriters and subject to the approving legal opinion of Obermayer Rebbmann Maxwell & Hippel LLP, Harrisburg and Philadelphia, Pennsylvania, and Stanley H. Mitchell, Esquire, Harrisburg, Pennsylvania, Co-Bond Counsel. Certain legal matters will be passed upon for the Authority by its Solicitor, Rhoads & Sinon LLP, Harrisburg, Pennsylvania; for the Underwriters by their counsel, Eckert Seamans Cherin & Mellott, LLC, Harrisburg, Pennsylvania; for the City by Steven R. Dade, City Solicitor; and for the County by Mette, Evans & Woodside, County Special Counsel. It is expected that the 2003 Bonds will be available for delivery in New York, New York on or about December 30, 2003.

RBC DAIN RAUSCHER

THE WILLIAMS CAPITAL GROUP, L.P.

ALLISON-WILLIAMS COMPANY

ARTHURS, LESTRANGE &amp; COMPANY, INC.

COMMERCE CAPITAL MARKETS, INC.

MESIROW FINANCIAL, INC.

MERRILL LYNCH &amp; CO., INC.

*In the opinion of Bond Counsel, assuming continuing compliance by the Authority with certain covenants, the interest on the 2003C Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax. Interest on the 2003A Bonds and the 2003B Notes is not excluded from gross income for federal income tax purposes. Bond Counsel is expected to issue its opinion that after the conversion of the mode of the 2003B Notes on June 15, 2010, the interest on the 2003B Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The 2003 Notes are exempt from Pennsylvania personal property taxes; and the interest on the 2003 Notes is exempt from Pennsylvania Corporate Net Income Tax and from personal income taxation by the Commonwealth of Pennsylvania, or by any of its political subdivisions, under existing law. (See "Tax Matters – 2003C Notes" and "Tax Matters - 2003A Bonds and 2003B Notes" herein).*

**The Harrisburg Authority  
(Dauphin County, Pennsylvania)  
\$22,555,000 Guaranteed Federally Taxable Resource Recovery  
Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003  
\$29,085,000 Guaranteed Federally Taxable Resource Recovery Facility  
Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003  
\$24,285,000 Guaranteed Resource Recovery Facility Subordinate  
Refunding Revenue Notes, Series C of 2003**

**Dated: See inside cover****Due: September 1, as shown on inside front cover****Interest Payable: March 1 and September 1****First Interest Payment: September 1, 2003**

The Harrisburg Authority (the "Authority") will issue its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003 (the "2003A Bonds"), its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003 and its Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 (the "2003C Notes") (the 2003A Bonds, 2003B Notes and 2003C Notes, collectively, the "2003 Notes") in the aggregate principal amounts shown above. The 2003 Notes are issuable only in fully-registered form, without coupons, and, when issued, will be registered and held in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). So long as Cede & Co. is the registered owner of 2003 Notes as nominee of DTC, reference herein to the registered owners shall mean Cede & Co. and not the Beneficial Owners (as such phrase is defined herein).

The 2003 Notes are limited obligations of the Authority and will be issued under and secured under a Trust Indenture, dated as of June 4, 2003 (the "Indenture"), between the Authority and Commerce Bank/Pennsylvania, National Association, Philadelphia, Pennsylvania, as trustee (the "Trustee"). The 2003 Notes are payable solely from (i) certain funds and accounts held under the Indenture; (ii) money which may be made available pursuant to a Guaranty Agreement, dated as of June 4, 2003 (the "Guaranty Agreement"), among the City of Harrisburg, Dauphin County, Pennsylvania (the "City"), as guarantor, the Authority and the Trustee; and (iii) all other property from time to time pledged to the payment of the principal of, premium, if any, and interest on the 2003 Notes. See "SECURITY FOR THE 2003 NOTES" herein.

Under the Guaranty Agreement, the City has unconditionally guaranteed, for the benefit of the registered owners of the 2003 Notes, the full and prompt payment of principal of and interest on the 2003 Notes when due according to the terms of the Guaranty Agreement, for which obligation the City has pledged its full faith, credit and taxing power. See "SECURITY FOR THE 2003 NOTES – Guaranty Agreement" herein.

Interest on the 2003 Notes is payable on March 1 and September 1 in each year until maturity or earlier redemption, commencing September 1, 2003, by the Trustee. So long as Cede & Co. is the registered owner of the 2003 Notes, the Trustee will pay principal of, premium, if any, and interest on the 2003 Notes to DTC, which will remit such principal, premium, if any, and interest to DTC Participants (as such phrase is defined herein), which will in turn remit such principal, premium, if any, and interest to the Beneficial Owners of the 2003 Notes, as more fully described herein.

The 2003 Notes are subject to optional and mandatory redemption prior to maturity as described herein.

The 2003B Notes are subject to mandatory tender for purchase as described herein.

The scheduled payment of the principal of and interest on the 2003 Notes when due will be guaranteed by a municipal bond insurance policy (the "Bond Insurance Policy") to be issued simultaneously with the delivery of the 2003 Notes by Financial Security Assurance Inc. (the "Bond Insurer").



Maturity Schedule shown on inside front cover

**THE 2003 NOTES ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND NOT A DEBT OF THE COMMONWEALTH OF PENNSYLVANIA (THE "COMMONWEALTH"), OR ANY POLITICAL SUBDIVISION THEREOF EXCEPT THE CITY AS PROVIDED IN THE GUARANTY AGREEMENT. NEITHER THE GENERAL CREDIT OF THE AUTHORITY NOR THE TAXING POWER OR THE GENERAL CREDIT OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF EXCEPT THE CITY AS PROVIDED IN THE GUARANTY AGREEMENT IS PLEDGED FOR PAYMENT OF PRINCIPAL OF OR INTEREST ON THE 2003 NOTES. THE AUTHORITY HAS NO TAXING POWER.**

**This cover page contains certain information for reference purposes only. It is not a complete summary of the issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.**

The 2003 Notes are offered for delivery when, as and if issued by the Authority and received by the Underwriters and subject to the approving legal opinion of Obermayer Rebmann Maxwell & Hippel LLP, Harrisburg and Philadelphia, Pennsylvania, and Stanley Mitchell, Esquire, Harrisburg, Pennsylvania, Co-Bond Counsel. Certain legal matters will be passed upon for the Authority by its Solicitor, Rhoads & Sinon LLP, Harrisburg, Pennsylvania; for the Underwriters by their counsel, Eckert Seamans Cherin & Mellott, LLC, Harrisburg, Pennsylvania; for the City by Judith B. Schimmel, City Solicitor; and for the City and the Authority by their special counsel, Obermayer Rebmann Maxwell & Hippel LLP, Harrisburg and Philadelphia, Pennsylvania. It is expected that the 2003 Notes will be available for delivery in New York, New York on or about June 4, 2003.

RBC DAIN RAUSCHER

MESIROW FINANCIAL, INC.

*In the opinion of Bond Counsel, assuming continuing compliance by the Authority with certain covenants, the interest on the 2003C Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax. Interest on the 2003A Bonds and the 2003B Notes is not excluded from gross income for federal income tax purposes. Bond Counsel is expected to issue its opinion that after the conversion of the mode of the 2003B Notes on June 15, 2010, the interest on the 2003B Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The 2003 Notes are exempt from Pennsylvania personal property taxes; and the interest on the 2003 Notes is exempt from Pennsylvania Corporate Net Income Tax and from personal income taxation by the Commonwealth of Pennsylvania, or by any of its political subdivisions, under existing law. (See “Tax Matters – 2003C Notes” and “Tax Matters - 2003A Bonds and 2003B Notes” herein.)*

**The Harrisburg Authority**  
**(Dauphin County, Pennsylvania)**  
**\$22,555,000 Guaranteed Federally Taxable Resource Recovery**  
**Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003**  
**\$29,085,000 Guaranteed Federally Taxable Resource Recovery Facility**  
**Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003**  
**\$24,285,000 Guaranteed Resource Recovery Facility Subordinate**  
**Refunding Revenue Notes, Series C of 2003**

**Dated: See inside cover****Due: September 1, as shown on inside front cover****Interest Payable: March 1 and September 1****First Interest Payment: September 1, 2003**

The Harrisburg Authority (the “Authority”) will issue its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003 (the “2003A Bonds”), its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003 and its Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 (the “2003C Notes”) (the 2003A Bonds, 2003B Notes and 2003C Notes, collectively, the “2003 Notes”) in the aggregate principal amounts shown above. The 2003 Notes are issuable only in fully-registered form, without coupons, and, when issued, will be registered and held in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). So long as Cede & Co. is the registered owner of 2003 Notes as nominee of DTC, reference herein to the registered owners shall mean Cede & Co. and not the Beneficial Owners (as such phrase is defined herein).

The 2003 Notes are limited obligations of the Authority and will be issued under and secured under a Trust Indenture, dated as of June 4, 2003 (the “Indenture”), between the Authority and Commerce Bank/Pennsylvania, National Association, Philadelphia, Pennsylvania, as trustee (the “Trustee”). The 2003 Notes are payable solely from (i) certain funds and accounts held under the Indenture; (ii) money which may be made available pursuant to a Guaranty Agreement, dated as of June 4, 2003 (the “Guaranty Agreement”), among the City of Harrisburg, Dauphin County, Pennsylvania (the “City”), as guarantor, the Authority and the Trustee; and (iii) all other property from time to time pledged to the payment of the principal of, premium, if any, and interest on the 2003 Notes. See “SECURITY FOR THE 2003 NOTES” herein.

Under the Guaranty Agreement, the City has unconditionally guaranteed, for the benefit of the registered owners of the 2003 Notes, the full and prompt payment of principal of and interest on the 2003 Notes when due according to the terms of the Guaranty Agreement, for which obligation the City has pledged its full faith, credit and taxing power. See “SECURITY FOR THE 2003 NOTES – Guaranty Agreement” herein.

Interest on the 2003 Notes is payable on March 1 and September 1 in each year until maturity or earlier redemption, commencing September 1, 2003, by the Trustee. So long as Cede & Co. is the registered owner of the 2003 Notes, the Trustee will pay principal of, premium, if any, and interest on the 2003 Notes to DTC, which will remit such principal, premium, if any, and interest to DTC Participants (as such phrase is defined herein), which will in turn remit such principal, premium, if any, and interest to the Beneficial Owners of the 2003 Notes, as more fully described herein.

The 2003 Notes are subject to optional and mandatory redemption prior to maturity as described herein.

The 2003B Notes are subject to mandatory tender for purchase as described herein.

The scheduled payment of the principal of and interest on the 2003 Notes when due will be guaranteed by a municipal bond insurance policy (the “Bond Insurance Policy”) to be issued simultaneously with the delivery of the 2003 Notes by Financial Security Assurance Inc. (the “Bond Insurer”).



Maturity Schedule shown on inside front cover

**THE 2003 NOTES ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND NOT A DEBT OF THE COMMONWEALTH OF PENNSYLVANIA (THE “COMMONWEALTH”), OR ANY POLITICAL SUBDIVISION THEREOF EXCEPT THE CITY AS PROVIDED IN THE GUARANTY AGREEMENT. NEITHER THE GENERAL CREDIT OF THE AUTHORITY NOR THE TAXING POWER OR THE GENERAL CREDIT OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF EXCEPT THE CITY AS PROVIDED IN THE GUARANTY AGREEMENT IS PLEDGED FOR PAYMENT OF PRINCIPAL OF OR INTEREST ON THE 2003 NOTES. THE AUTHORITY HAS NO TAXING POWER.**

**This cover page contains certain information for reference purposes only. It is not a complete summary of the issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.**

The 2003 Notes are offered for delivery when, as and if issued by the Authority and received by the Underwriters and subject to the approving legal opinion of Obermayer Rebmann Maxwell & Hippel LLP, Harrisburg and Philadelphia, Pennsylvania, and Stanley Mitchell, Esquire, Harrisburg, Pennsylvania, Co-Bond Counsel. Certain legal matters will be passed upon for the Authority by its Solicitor, Rhoads & Sinon LLP, Harrisburg, Pennsylvania; for the Underwriters by their counsel, Eckert Seamans Cherin & Mellott, LLC, Harrisburg, Pennsylvania; for the City by Judith B. Schimmel, City Solicitor; and for the City and the Authority by their special counsel, Obermayer Rebmann Maxwell & Hippel LLP, Harrisburg and Philadelphia, Pennsylvania. It is expected that the 2003 Notes will be available for delivery in New York, New York on or about June 4, 2003.

RBC DAIN RAUSCHER

MESIROW FINANCIAL, INC.

## OFFICIAL STATEMENT

### THE HARRISBURG AUTHORITY Dauphin County, Pennsylvania

**\$22,555,000**

**Guaranteed Federally Taxable Resource Recovery Facility  
Subordinate Revenue and Refunding Revenue Bonds  
Series A of 2003**

**\$29,085,000**

**Guaranteed Federally Taxable Resource Recovery Facility  
Subordinate Variable Rate Refunding Revenue Notes  
Series B of 2003**

**\$24,285,000**

**Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes  
Series C of 2003**

## INTRODUCTION

**Purpose of this Official Statement.** The purpose of this Official Statement, including the cover page and the Appendices attached hereto, is to provide certain information in connection with the offering by The Harrisburg Authority (the "Authority") of its \$22,555,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003 (the "2003A Bonds"), its \$29,085,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003 (the "2003B Notes") and its \$24,285,000 Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 (the "2003C Notes," and with the 2003A Bonds and the 2003B Notes, collectively, the "2003 Notes"). The 2003 Notes will be issued pursuant to a Trust Indenture, dated as of June 4, 2003 (the "Indenture"), between the Authority and Commerce Bank/Pennsylvania, National Association, Philadelphia, Pennsylvania, as trustee (the "Trustee"). The Trustee shall also act as registrar and paying agent under the Indenture. The proceeds of the sale of the 2003 Notes will be used by the Authority to finance the 2003 Restructuring Project as described herein. For a more detailed description of the application of the proceeds of the 2003 Notes, see "PURPOSE AND PLAN OF FINANCING - The 2003 Restructuring Project" and "PURPOSE AND PLAN OF FINANCING - Estimated Sources and Uses of Funds" herein.

**The Authority.** The Authority is a body corporate and politic incorporated under the laws of the Commonwealth of Pennsylvania (the "Commonwealth") pursuant to the Municipality Authorities Act, as amended and supplemented, 53 Pa.C.S. § 5601 *et seq.* (the "Act"). The Authority was created by the Council of the City of Harrisburg, Dauphin County, Pennsylvania (the "City") in 1957. See "THE AUTHORITY" herein.

**The Waste Management Facility.** The Waste Management Facility or "Facility" includes two mass burn municipal waste combustors (the "MWCs") originally rated at 360 tons per day, electrostatic precipitators (ESPs) for particulate air pollution control of the MWCs, water treatment equipment for wastewater discharge, a stack to which emissions from the two MWCs are exhausted, a turbine/generator set for the cogeneration of electric energy and an ash disposal landfill (the "Resource Recovery Facility"), and a regional transfer station (the "Transfer Station"). In December 2000, certain revised federal air quality regulations became applicable to mass burn municipal waste combustors with a capacity greater than or equal to 250 tons per day. The Resource Recovery Facility has been unable to meet such revised regulations. Pursuant to agreements (the "Derating Agreements") reached on January 9, 2001 by the City,

as management agent and operator of the Resource Recovery Facility for the Authority, with the United States Environmental Protection Agency ("EPA") and the Pennsylvania Department of Environmental Protection ("DEP"), the Resource Recovery Facility has reduced or derated its permitted through-put capacity for each MWC to below 250 tons per day. Under the Derating Agreements, the City must permanently cease operations of the MWCs at the Resource Recovery Facility no later than midnight on June 18, 2003, unless the Resource Recovery Facility has undergone the extensive repair, retrofit and modernization (the "Retrofit") necessary to achieve compliance with such revised regulations. Although the Authority and the City are presently evaluating the feasibility of achieving such compliance, the Authority and the City have not yet begun to undertake the Retrofit. Therefore, the MWCs will cease operations no later than midnight on June 18, 2003, and will not be operated thereafter, unless and until such time as the Retrofit is completed, enabling the MWCs to comply with the revised regulations. See "INTRODUCTION - Special Considerations," "SPECIAL CONSIDERATIONS" and "WASTE MANAGEMENT FACILITY FINANCES" herein.

Each MWC includes a solid waste fuel feed system, a grate system, a flue gas system, a bottom ash system, and a combustor water system. The Waste Management Facility is permitted to accept municipal solid waste, approved residual waste, approved disinfected medical waste and construction and demolition waste and the Resource Recovery Facility is permitted to combust municipal solid waste, approved residual waste, approved disinfected medical waste and certain combustible construction and demolition wastes, excluding painted or treated wood. For a more detailed description of the Waste Management Facility and the de-rating of the capacity of the Resource Recovery Facility, see "THE WASTE MANAGEMENT FACILITY" herein.

**Sources of Payment of the 2003 Notes.** The 2003 Notes will be subordinate in priority of payment to other outstanding Authority indebtedness issued in 1998 and 2002 for the Waste Management Facility and to future Authority indebtedness relating to the Retrofit, if the Retrofit is undertaken by the Authority. Debt service on the 2003 Notes will be payable from the receipts and revenues of the Waste Management Facility (the "Receipts and Revenues") *only after* (1) payment of all operating expenses of the Waste Management Facility, (2) payment of debt service on other Authority indebtedness having priority of payment to the 2003 Notes, including any future bonds issued for the financing of the Retrofit, as described in more detail hereinafter in the section entitled "INTRODUCTION - Subordination and Priority of Indebtedness," and (3) the funding and replenishment of certain reserves established in connection with Authority indebtedness having priority of payment to the 2003 Notes. The 2003 Notes will *not* be secured by a pledge of or grant of a security interest in any of the Receipts and Revenues. If the Retrofit is not undertaken, it is not likely that the Receipts and Revenues would be sufficient to pay debt service on the 2003 Notes. For a more detailed description of the subordination of payment of the 2003 Notes, see "INTRODUCTION - Subordination and Priority of Indebtedness" herein.

As security for the 2003 Notes, the Authority has pledged money to be made available by the City pursuant to a Guaranty Agreement, dated as of June 4, 2003 (the "Guaranty Agreement"), among the City, as guarantor, the Authority and the Trustee. For a discussion of the terms and provisions of the Guaranty Agreement, see "SECURITY FOR THE 2003 NOTES - Guaranty Agreement" herein. To the extent that the Receipts and Revenues are not available to pay debt service on the 2003 Notes, the 2003 Notes would be payable to such extent from amounts payable under the Guaranty Agreement. If the Authority does not undertake the Retrofit, the 2003 Notes are expected to be payable *solely* from moneys provided by the City under the Guaranty Agreement. In addition, the 2003 Notes shall be secured by certain cash and investments from time to time held in any fund (except the 2003 Rebate Fund) by the Trustee under the Indenture.



**Office of the Mayor  
The City of Harrisburg**

M.L.K. City Government Center  
10 North Second Street  
Harrisburg, PA 17101-1678

**Stephen R. Reed**  
Mayor

(717) 255-3040

July 9, 2007

to - Hon. Jeff Haste 

A few thoughts regarding the Resource Recovery Facility and its present state of not being finished.

It would be extraordinary understatement to say that how this project has thus far turned out has been frustrating, angering and a most unwelcome challenge.

Contrary to how some have characterized it, the plant has not "failed." It simply has not been completed. Turns out the technology in use does, in fact, work and apparently works fine.

The outstanding issues are (a) Barlow Associates ran out of money and could not complete the entire retrofit, leaving one of the three units uncompleted, and (b) as the money was waning, Barlow cut corners to reduce costs and under-designed or poorly designed certain project components, which now need to be either replaced or upgraded in their capacity.

The history of how the project got into this situation certainly deserves some intense review. It is crystal clear Barlow grossly under-estimated project costs. While it is true that steel and other building material costs rose sharply during the construction period (as it has for essentially every construction project in America), that is only a part of the answer. The truth is they got the project costs numbers terribly wrong and that was the origin of everything else that has (or has not) happened. Barlow claims to have used-up all their own company's reserves to put into the project to try to make good on getting it done. (Since then, James Barlow has created a separate, new business which we are advised is open and functioning in Colorado.) Full effort to hold them accountable financially is underway but for all the claims against them, the fear is that their probable filing of bankruptcy will make collection impossible, unless it can be proven assets once with Barlow Associates got transferred to others or the new firm.

With these difficulties, the inevitable finger-pointing has ensued. For purely personal political reasons, certain Council Members see this as a great opportunity for making political hay. We must note this was not a city project. The city did not organize or manage the project. Had the city had this role, the outcome may have been very different, as no city project has ever produced this kind of effect.

It is impossible to undo the past. Today, the plant runs a deficit of \$29,000 per day. Revenues have actually increased as a result of some work Covanta has done at the plant, so this deficit number otherwise would be higher.

If the plant's third unit is not completed, and certain other replacement or upgrade work done, this circumstance will not change and the certain result is major debt to be absorbed and paid by the city and, to a lesser extent, the county. If that would lead to a plant close-down, there will be zero sites in Dauphin County for solid waste disposal (which would revive efforts to reopen and expand the former Dauphin Meadows landfill, no doubt). A plant close-down would create instantly higher costs for businesses and residents for the transport and disposal of their trash---thus increasing the cost of living and doing business here.

None of the above scenario can be allowed to occur. The alternative is to complete the plant, so it runs at maximum efficiency and capacity, which then maximizes income.

It is clear that Covanta wants to buy the plant, but only after the third unit and other work are completed and they have a 6 to 8 month or more history and baseline of the plant running as it should. Whether they come in with a purchase price equal to the then outstanding debt is doubtful (not impossible). No one will buy the plant in its present "as is" condition except at a fire-sale price, meaning most of the debt remains on the table for the city and county to pay.

Covanta indicates their purchase offer will be submitted in the Fall of 2008 with the goal of completing a sales agreement by that year's end, although there is an extra one year extension to that if needed.

The best news is that, according to Covanta and others, the new plant (when completed) will have a useful life of up to 50 or more years, as long as it is properly maintained. That allows for longer term debt, which allows annual debt service costs.

As you know, Covanta prepared---with the assistance and direct engagement of others--- a Recovery Plan, which I assume you have received and read. It remains an accurate and comprehensive solution to the present circumstance.

City Council was asked to do their part, by approving city guaranties on a total of \$43 million in added borrowing--\$28 million to complete the plant and \$15 million as working capital to cover deficits in 2007 and 2008. They were also asked to increase the Ready-to-Serve fee for city trash customers (which has not been increased in at least 12 years and was due for an increase anyway).

I forewarned all that it was very unlikely Council would do anything. When they approved the debt borrowing ordinances, amending them to make the city a second guaranty, they did more than I ever expected them to do--but they threw us all the obvious curve of "putting it on the county" to go as first guarantor--even after the county directly told Linda Thompson the county does not agree to such.

Of course, they refused to pass the Ready-to-Serve fee.

We can all engage Council all we want on this and it will not produce a different outcome. They think they have positioned themselves such that they approved the new debt to complete the plant and cover two years' deficit--meaning they did something--and then passed it on to everyone else to do the rest. They think that gets them off the hook with enough political cover that they cannot be labeled obstructionists.

Re-engaging them only delays the inevitable and Council will not do anything beyond what has been done.

So, what to do.

Do not put much (or any) stock in the prospect that state will be contributing any money toward this project, the letter to the Governor notwithstanding. There is no funding source we know of that they could tap for this purpose, assuming the state would want to get into this at all.

The decisive action steps that put an end to the present, recurring \$29,000 deficit on a day-to-day basis would be these:

- (1) Provide a county guaranty for the two borrowings, which total \$43 million, on condition that when the plant is sold, this debt must be the first paid-off with the sale proceeds.
- (2) Increase the countywide trash fee from present \$50 per ton to \$63 per ton (or even \$65 per ton, which would be better), effective not later than September 1, 2007.
- (3) Refinance all outstanding debt on the facility to attain (a) lower interest rates and (b) extend the term of the bonds since the useful life will be so much longer for the plant. The best timing for this is when the plant is completed, the third unit is on line, and at least 6 months of operating patterns with all three units provide predictability as to output and revenues. That makes a refinancing easier in the public finance market and will lower annual debt service costs because of the extended term and whatever lower interest rates could be achieved. The CIT loan, a component of project financing, should be refinanced even before plant sale, if possible, as it has a much higher interest rate than all the other bonds.
- (4) Reconstitute the board of directors of The Harrisburg Authority such that two members are appointed by the mayor, two by City Council and one by the County Commissioners, all with staggered terms such that one seat is up each year. This should only be done if City Council rescinds the ordinance giving them exclusive appointment authority for this and other boards. With such a rescission, it would also end the present litigation challenging the ordinance, which is using-up taxdollars.

Page Four

Concurrent with the completion of construction by Covanta, using the \$28 million of the \$43 million total borrowing, there must be oversight and that \$28 million budget includes monies to pay for such. Included in this oversight should be a citizen advisory panel, community outreach effort, and a web site to give project updates. All this was agreed to by The Harrisburg Authority, incidently, and designees named, although lately, THA is "revising" their commitments on this. (Candidly, while the general assumption is that the mayor "controls" the THA board, the truth is they have given us fits on more than a few occasions--and this is confidential.)

There are some more minor items that should also be done but the aforelisted steps are the crucial ones.

I will give a call once you have had a chance to look this over. I assume none of this is good news. Agreed. My job--our job--is to find a solution and to do so now, as allowing the current condition to fester longer will only exact a greater cost and impact later---and of that, there is 100% certainty.



---

Mayor Stephen R. Reed



10:00

**Robert Kroboth, (Business Manager, City of Harrisburg)**



2

**Kroboth, Robert**

**From:** Lingle, Linda  
**Sent:** Tuesday, April 24, 2007 3:57 PM  
**To:** Kroboth, Robert  
**Subject:** RE: Attached File Per Your Request

Bob: I recognize why you made the clarification but we're in hot water either way -- with the bond holders if we "make the debt service payment" and with AFSCME if we "subsidize THA/Incinerator operating expenses." Perhaps we can just make a short term loan to THA to meet their payroll for the next several months.

Linda Lingle  
 Business Administrator

**From:** Kroboth, Robert  
**Sent:** Tuesday, April 24, 2007 3:51 PM  
**To:** Lingle, Linda; 'Giorgione, Andrew J.'; Dade, Steven; Leinberger, William; 'tharambrose@aol.com'; 'JKeller@nextel.blackberry.net'; 'JKeller641@gmail.com'; 'thaboard@aol.com'; Lukens, John; 'Bruce Foreman'; 'Bruce Barnes'  
**Subject:** RE: Attached File Per Your Request

All: recall that it may behoove us to subsidize \$310,000 of THA/Incinerator operating expenses rather than subsidize the 5/1/07 debt service payment. Also, I recall Carol mentioning that the debt service needs to be funded for well in advance of 5/1. Karen or Bruce B., what is that date?

Bob K.

-----Original Message-----

**From:** Lingle, Linda  
**Sent:** Tuesday, April 24, 2007 3:33 PM  
**To:** Giorgione, Andrew J.; Dade, Steven; Kroboth, Robert; Leinberger, William; tharambrose@aol.com; JKeller@nextel.blackberry.net; JKeller641@gmail.com; thaboard@aol.com; Lukens, John; Bruce Foreman; Bruce Barnes  
**Subject:** FW: Attached File Per Your Request  
**Importance:** High

Attached is an updated report identifying 2006 outstanding bills associated with the ISGF. Pursuant to our discussion last Friday, the total page has been reconfigured to further identify amounts due to the City.

Andy: for purposes of your discussions with the County, I believe we would need them to fund the following for the City:

\$597,957.66 in bills to vendors which do not include the City, THA, the County or Waste Management and  
 \$1,340,000 in 2007 loans from the General Fund which includes the 5/1 debt service payment of \$310,000.

If anyone has a different take, let me know.

Bill: please use this total page configuration going forward.

4/24/2007



Mayor Stephen R. Reed

**Memo from the desk of:**

TO: ROBERT F. KROBOTH, CGFM *RFK* 4/12/03  
Deputy Business Administrator for Finance

TO: MAYOR REED *SR*

VIA: LINDA LINGLE *LL*

RE: DAMAGED ARTIFACTS

CONSIDERING OUR TENUOUS GENERAL  
FUND CASH POSITION, WOULD YOU BE  
AMENABLE TO REQUESTING THE HARRISBURG  
AUTHORITY PURCHASING THESE ARTIFACTS?  
WE WOULD STILL PURSUE THE INSURANCE  
COVERAGE REIMBURSEMENT AND ACQUIRE A RELEASE  
AND HOLD HARMLESS AGREEMENT FROM SHERWOOD.  
CC: FILE

I doubt THA has the funds to cover this expense  
at this time but you can ask them. If they do  
not have the money, then we simply hold the  
billing until one of us does.

*SR*  
S. Reed 4-15-03

**CITY OF HARRISBURG**

**INTEROFFICE MEMORANDUM**

**LAW BUREAU**



**DATE: October 31, 2003**

**TO: Mayor Stephen R. Reed**

**FROM: Steven R. Dade**  
**Acting City Solicitor** *(Signature)*

**SUBJECT: City Council Special Project Fund**

Attached please find a draft memo to Richard House regarding funds for City Council Special Projects. It is my understanding, from Andrew Giorgione and Richard House, that you have agreed in principal to this proposal. I have spoken to Robert Kroboth, Ginger Miller and Tom Mealy regarding this issue and all agree that the attached proposal is the best way to address this matter. I have advised President House that I would have this memo to him first thing Monday morning. Please advise if this memo is in keeping with your discussions with President House.

Encl.

cc w/ Encl.: Robert Kroboth  
Thomas Mealy  
Ginger Miller  
Andrew Giorgione, Esq.

If all of you keep this up, you will permanently kill the prospect of the retrofit bonds being adopted by Council. The draft you provided does even remotely resemble what was agreed to and, unchanged, what was drafted would almost certainly trigger a negative reaction. With so little time available to this office, I find myself again having to edit and rewrite staff work products. Send the attached as amended.

*(Signature)*

S. Reed 11-3-03

attachments

CITY OF HARRISBURG

INTEROFFICE MEMORANDUM

LAW BUREAU



**DATE:** October 31, 2003

**TO:** Honorable Richard K. House, Sr.  
President Harrisburg City Council

**FROM:** Steven Richard Dade  
Acting City Solicitor

**SUBJECT:** City Council Special Project Funds

This will address the establishment of a Council Special Projects Fund, which can be accomplished in either of the below listed ways.

(1) The sum of \$500,000, <sup>designated</sup> representing the settlement and closing cost fee payable to The Harrisburg Authority on the closing of the retrofit bonds, would be placed into an Authority special project account for the exclusive draw and use of Council Members. Funds could be expended for any lawful purpose related to a public project or activity. It would be your option as to whether you would want the fund drawn upon directly by individual ~~eligible~~ eligible Council Members by their submitting a requisition under their signature to the Authority or whether Council would want to first have every individual Council Member's requisition first approved by a Council Resolution. Since these are not city funds, you are not legally required to have a Council Resolution.

The Authority already has in place a requisition and payment process, which involves submittal of the requisition or invoice, using a form provided by the Authority. The Authority then accepts the requisition or invoice on pre-approval and sends to the submitting Council Member a final payment voucher, for the Council Member's signature. The Authority then issues the check either to the named vendor or sends the check to the Council Member for his or her ~~signature~~ sending it to the vendor.

All Authority funds are expended in accordance with law, of course, and are annually audited by an independent auditor and this would apply to the Council Special Projects Fund, <sup>of course,</sup>

The funds would remain in the account until ultimately drawn and expended and need not be entirely spent in 2004. These are non-lapsing monies that continue in place and under investment until used.

BIRHBG029419

Page Two

(2) Alternatively, the \$500,000 could be paid by The Harrisburg Authority to the City and the City would insert the allocation into the 2004 Budget within the Department of General Expenses with the sub-heading of Council Special Projects Fund. Funds received by the city, and therefore being city monies, require a different requisition process, which is set forth below.

(New paragraph)

This allocation need not be spent within the 2004 fiscal year, but will remain within the Councilmanic Special Projects account until spent. These funds may be used for any lawful public purpose and must be approved by Resolution of Harrisburg City Council. All such Resolutions should be drafted by the City Solicitor, but at a minimum must be reviewed by the City Solicitor (acknowledged by the Solicitor's signature) prior to introduction at a legislative session. In addition, all resolutions for charitable donations/gifts will include the following language; "Be it hereby further resolved, the City Controller or other appropriate City officials may audit and/or request financial documentation from the recipient to ensure compliance with this Resolution."

After a Resolution has been passed by City Council, availability of funding must be confirmed by the City Clerk. A statement of each member's account will be sent to the City Clerk on a monthly basis. This statement, as well as any Resolutions that had been adopted since the date of that report, should be used to determine each member's available balance. If there is any question regarding the balance in any member's account, the City Clerk should contact the Budget Manager.

After verification of funding availability, if the amount to be given is under \$1,000.00, a request for payment can be entered into the Pentamation System, using the Resolution as documentation for the request. This request should then be sent up to the Controller's Office for review to ensure that it is in compliance with all City guidelines for procurement and payment. Upon review and approval by the Controller's Office, it will be forwarded to the City's Accounting Office to have a warrant (check) cut. These warrants will be issued in accordance with the pre-established cycle of bi-weekly check runs, which coincide with the City's disbursement of payroll.

If the amount is over \$1,000.00, a requisition to obtain a purchase order must be entered into the Pentamation System. A copy of the Resolution should be sent to the Purchasing Office as documentation for the necessity of the requisition. The requisition will then go through the four-step approval process:

- 1) Review by Office of Budget and Analysis for verification of availability of funding, and use of the proper budget unit and account code(s)
- 2) Review by Office Head (City Clerk or designee)
- 3) Review by Purchasing Office to ensure compliance with all City purchasing policies and guidelines, such as need for public bidding process, quotes, etc. (if applicable)
- 4) Review by Office of City Controller to ensure compliance with all City policies and guidelines

BIRHBG029420

Page Three

After all four approvals have been obtained, the Purchasing Office will convert the requisition into a purchase order and prepare it for all legally required signatures. Per the Optional Charter that the City abides by, all bonds, notes, contracts and written obligations of the City shall be executed on its behalf by the Mayor and the Controller. The original purchase order will be mailed to the recipient of the funds. A copy of the purchase order will be sent to the Office of City Council/City Clerk for record keeping purposes and entering of request for payment.

After the copy of the purchase order has been received in Office of City Council/City Clerk, a request for payment should be entered into Pentamation. The same policies and procedures that were described above for the amount less than \$1,000.00 will apply here and should be followed.

Warrants for payment will be available 5 business days following the date of issuance.

BIRHBG029421

**INTER-OFFICE MEMORANDUM**

*NOTE: Not needed @ 2/27/07.  
THA has aligned funds  
available to meet this request.  
CITY OF HARRISBURG  
February 7, 2007  
27*

**TO:** Karen O'Neill, Deputy City Treasurer  
Office of Treasurer

**FROM:** Robert F. Kroboth, CGFM *[Signature]*  
Deputy Business Administrator

**SUBJECT:** Wire Transfer Request

Please wire funds February <sup>27</sup> 7, 2007 from the General Fund to the Resource Recovery Facility in the amount of ~~\$222,000.00~~ to be charged as follows:

*\$100,000.00*

01-138028  
(Cash Account 110000)

The wire will be deposited as follows:

28-230001  
(Cash Account 110000)

This amount represents a short-term loan from the General Fund to the Resource Recovery Fund to fund the attached operating expenses.

Thank you.

cc: James J. McCarthy Jr.  
Paul P. Wambach (Memo Only)  
Linda Lingle (Memo Only)  
John Lukens  
William P. Leinberger, CMA, CFM  
MF - Incinerator Fund - Wire Transfer Requests

**Kroboth, Robert**

**From:** Giorgione, Andrew J. [andrew.giorgione@bipc.com]  
**Sent:** Wednesday, April 25, 2007 10:36 AM  
**To:** Lingle, Linda; Kroboth, Robert; tharambrose@aol.com; bruce@foreman-foreman.com; Dade, Steven; Lukens, John  
**Subject:** Covanta Contract

All -

Paul Stauder called this morning. The continued negative press on the Incinerator and the fact that THA is falling behind in its monthly payments is starting to spook the company. He asked that we attempt to move as quickly as possible to sure up the long-term agreement. I advised him that we are committed to do so, but reminded him that Covanta did just take 8 days to turn around the last draft. I do not think Covanta expected the Comm. Court to back the dissidents in the Appeal. Bob and Bruce, make sure to keep me update on what is going on so that we can share it with Covanta and the County.

As an aside, the County is also very concerned about the Court ruling and is looking at the issue of taking over control of the Facility to avoid any disruption of our efforts. This is highly confidential and the Mayor is aware of it and would support such actions as a last resort if disruption occurs. We can discuss this more on Friday.

I hope to have for you shortly a summary of the key points in the amended document for your consideration and direction tomorrow during negotiations. At this point, I am not sure we are far from completing the O&M Agmt., but we still need to see a draft of the Construction Mgmt. Agreement.

**Andrew J. Giorgione, Esquire**  
**BUCHANAN INGERSOLL & ROONEY**  
17 N. Second Street, 15th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-4863  
Fax: (717) 233-0852  
andrew.giorgione@bipc.com

**TAX ADVICE DISCLAIMER:** Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein. If you would like such advice, please contact us.

Above email is for intended recipient only and may be confidential and protected by attorney/client privilege.

If you are not the intended recipient, please advise the sender immediately.

Unauthorized use or distribution is prohibited and may be unlawful.

4/25/2007

---

**Giorgione, Andrew J.**

**From:** Lingle, Linda [LLingle@CityofHBG.com]  
**Sent:** Thursday, April 26, 2007 10:09 AM  
**To:** Giorgione, Andrew J.  
**Cc:** tharambrose@aol.com; Kroboth, Robert; Dade, Steven; Stuart, Jeb  
**Subject:** RE: contract comments

Andy: the proceeds from the sale of City-owned artifacts are earmarked to payoff the long-term \$7 million loan the City had to take out last year to retire the TRAN. Although records indicate that about \$7 million was paid to acquire the artifacts, I have no idea how much they will bring at auction, the first one of which is scheduled for October of this year. As for the THA-owned artifacts, I understand that \$165,110.74 was paid to acquire such. Although the Mayor agreed to sell THA-owned artifacts in conjunction with the sale of the City-owned artifacts, it was not specified what would happen to the proceeds of the sale of THA-owned artifacts.

Linda Lingle  
Business Administrator

**From:** Giorgione, Andrew J. [mailto:andrew.giorgione@bipc.com]  
**Sent:** Wednesday, April 25, 2007 3:38 PM  
**To:** Lingle, Linda  
**Cc:** tharambrose@aol.com  
**Subject:** FW: contract comments

Linda -

Based on Bob's answer below, I need to know the City's position with regard to the sale of the Western Artifacts. The County wants to know what the Mayor intends to do with the proceeds.

**Andrew J. Giorgione, Esquire**  
BUCHANAN INGERSOLL & ROONEY  
17 N. Second Street, 15th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-4863  
Fax: (717) 233-0852  
andrew.giorgione@bipc.com

**From:** tharambrose@aol.com [mailto:tharambrose@aol.com]  
**Sent:** Wednesday, April 25, 2007 3:33 PM  
**To:** Giorgione, Andrew J.  
**Subject:** Re: contract comments

A potential security risk was detected and removed from this email.

About \$165,000 worth of artifacts are owned by the Authority. The rest by the City. I believe the amount is about \$7,000,000? These amounts represent the cost of the artifacts. No valuation has been established to my knowledge. Any costs incurred in selling the artifacts will reduce the proceeds. Several questions arise: Will all the artifacts be sold and what will a purchaser be willing to pay?

4/26/2007

**BIRHBG039686**



Mayor Stephen R. Reed

**Memo from the desk of:**

To: ROBERT F. KROBOTH, CGFM  
Deputy Business Administrator for Finance

4/12/03

To: MAYOR REED

VIA: LINDA LINGLE

RE: DAMAGED ARTIFACTS

CONSIDERING OUR TENUOUS GENERAL  
FUND CASH POSITION, WOULD YOU BE  
AMENABLE TO REQUESTING THE HARRISBURG  
AUTHORITY PURCHASING THESE ARTIFACTS?  
WE WOULD STILL PURSUE THE INSURANCE  
COVERAGE REIMBURSEMENT AND ACQUIRE A RELEASE  
AND HOLD HARMLESS AGREEMENT FROM SHERWOOD.  
CC: FILE

I doubt THA has the funds to cover this expense  
at this time but you can ask them. If they do  
not have the money, then we simply hold the  
billing until one of us does.

S. Reed 4-15-03



Mayor Stephen R. Reed

APR 25 2003

**Memo from the desk of:**

ROBERT F. KROBOTH, CGFM  
Deputy Business Administrator for Finance

4/25/03

TO: TOM MEDLY, EXECUTIVE DIRECTOR  
THE HARRISBURG AUTHORITY

RE: ATTACHED ARTIFACTS INVOICE AND  
RELATED RELEASE

PLEASE PROCESS THIS INVOICE FOR PAYMENT  
FROM THE CITY'S SPECIAL PROTECTS ACCOUNT  
OR OTHER APPROPRIATE FUNDING SOURCE  
AT YOUR EARLIEST CONVENIENCE.

THANKS!

CC: LINDA LANGLE  
GRENDA KELLER  
FILE

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

May 19, 2003

*To - Thomas J. Mealy*

The Honorable Stephen R. Reed, Mayor  
City of Harrisburg  
Martin L. King Jr. City Government Center  
10 North Second Street  
Harrisburg, PA 17101-1678

*In re: City Special Projects Reserve Fund*

Dear Mayor Reed:

I am enclosing for your consideration, a requisition for disbursement of funds from the City Special Projects Reserve Fund.

Per your instructions to Bob Kroboth, the Harrisburg Parking Authority has agreed to pay this outstanding invoice and in turn the City has agreed to reimburse the Harrisburg Parking Authority upon the receipt of funds estimated to be received in September 2003. The requisition includes:

1. Payment to Sherwoods Spirit of America in the amount of \$32,130.00 (Requisition No. 767)

Please call the Authority office at 232-3777 once the requisition has been signed. We will promptly pick up the requisition and deliver the check to the City.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

*Thomas J. Mealy*

Thomas J. Mealy  
Executive Director

TJM:ts

Enclosures

cc: THA Board Members (w/encs)

Robert Kroboth (w/encs)

Richard Kotz, HP<sub>A</sub> (w/enc)

CITY SPECIAL PROJECTS RESERVE FUND

REQUISITION FOR PAYMENT

TO: THE HARRISBURG AUTHORITY  
One Keystone Plaza, Suite 104  
Front and Market Street  
Harrisburg, PA 17101

Requisition No. 767

1. The undersigned, Mayor of the City of Harrisburg, hereby requisitions the following amount of money constituting a request for payment to:

Payee: Sherwoods Spirit of America  
130 Lincoln Avenue  
Santa Fe, NM 87501

Purpose of Payment: Various items listed for the City of Harrisburg Archives

Amount: \$32,130.00

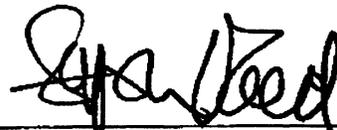
The foregoing amount is requisitioned from the City Special Projects Reserve Fund, which fund was set up in accordance with The Harrisburg Authority's Resolution No. 1991-001 dated January 17, 1991. Said "City Special Projects Reserve Fund" has been set up at the M & T Bank - Account No. 37408-89864.

2. The undersigned certifies that said amount is unpaid and has not been the basis of any previous requisition for payment from the City Special Projects Reserve Fund.

CITY OF HARRISBURG

Dated: May 19, 2003

By: \_\_\_\_\_



Stephen R. Reed, Mayor

Copies: The Harrisburg Authority, Original  
Stephen R. Reed, Mayor  
Robert F. Kroboth, City Finance Director  
Daniel R. Lispi  
George Hicks - National Civil War Museum

**PAID** \$32,130.00  
CHECK NO. 1532  
DATE 5/19/03

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

## MEMORANDUM

TO: Stephen R. Reed, Mayor

FROM: Thomas J. Mealy, Executive Director *TJ Mealy*

DATED: May 19, 2003

IN RE: City Special Projects Reserve Fund

On May 16, 2003 we received the sum of \$138,000.00 in unencumbered funds from the Harrisburg Parking Authority which has been deposited into the City Special Projects Reserve Fund yielding a total fund balance in that account of \$138,195.48.

TJM:kmm

**SHERWOODS SPIRIT OF AMERICA  
F A X**

**From:**

April 22, 2003

*Sherwoods Spirit of America*  
130 Lincoln Avenue  
Santa Fe NM, 87501  
Tel: (505) 988-1776  
Fax: (505) 992-1812

**TO: Joni Willingham**  
City of Harrisburg  
717/255-7278 - 4 pages

Dear Joni,

Thank you for your fax of April 22, regarding the damaged property. Attached you will find a copy of the release concerning this unfortunate occurrence. A hard copy has been sent to you via FedEx. Please advise how you want the damaged items returned to you.

I look forward to receiving your check in the amount of \$32,130.00. Thanking you in advance.

Yours truly,



Michael D. Kokin

P. S. We have also enclosed a copy of our invoice #7259.

**RELEASE**

**FOR PROPERTY DAMAGE ONLY**

In consideration of the payment to me of the sum of Thirty Two Thousand One Hundred and Thirty Dollars (\$32,130), by or on behalf of CITY OF HARRISBURG (Payer), the receipt of which is hereby acknowledged, I Michael Kokin of Sherwoods Spirit of America do hereby release and forever discharge the said Payer from any and all liability for damages to any and all property resulting from an accident, casualty or event occurring on or about the 28<sup>th</sup> day of February, 2003, regarding damages to the following artifacts:

- Item 5342 - Sioux Pipe Stem with Steatite Bowl
- Item 5927 - Northern Plains Pipe bow & Catlinite Stem
- Item 6196 - Photograph of Spanish American War Officer. Frame damaged.
- Item SF1441 - Oglala Sioux Head Ornament
- Item 5336 - Hoop bound w/leather.

Witness my hand and seal this 22nd day of April, 2003.

  
 \_\_\_\_\_  
 Witness  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Notary & My commission  
 expired on 5/04/05.



**Sherwoods**

Spirit of America

130 Lincoln Avenue  
Santa Fe, NM 87501-4713

(505) 988-1776  
Fax (505) 992-1812

INVOICE NO: 7259

**Sales Receipt**

Page 1 of 2

FFL#S-85-049-01-4D-35113

**SOLD TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

**Workorder No:**

**SHIP TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

<b>INVOICE DATE:</b>	<b>SHIP DATE:</b>	<b>SALESPERSON</b>	<b>SHIPPED VIA:</b>	<b>TERMS:</b>
4/22/03	4/22/03	Mike		Net receipt of invoice

Item	Description		Price
6336	Northern Plains Medicine Wand Deer antler handle w/6 incised circles painted red, thong attachment, tightly wrapped hide strips attach a hoop shaped piece of hide that is partly wrapped in tanned hide tied w/string. 13" Long	3500 / 0	3,500.00
5342	Sioux Pipe Stem W/Catlinite Bowl Twisted wood stem w/incised circles, pipe bowl w/inset catlinite hearts outlined in lead. 32" long	16000 / 0	16,000.00
5927	Northern Plains Pipe Bowl & Catlinite Stem Exquisitely carved pipe bowl out of catlinite in the form of a rams head or bighorn, and catlinite stem carved in a twisted form. Unusual to find this animal depicted in sculptural form as it more commonly appears in Native American graphic art. This particular bowl has the distinctive thick, curling horns, well-defined ears, holes for nostrils, raised protuberances for eyes and an incised mouth. Fitted wood mouthpiece. Few pipes of this caliber are in museum collections and other examples can be seen in the book "Plains Indian Sculpture - A Traditional Art from America's Heartland" by John C. Ewers. Pgs. 19, Plate 4; pg. 56, Figure 22 and 23; pg. 57, Figure 24. 18 1/4" Long overall	12500 / 0	12,500.00
Repair	Repair of 6196 - Picture frame Repair	100 / 0	100.00
Repair	Repair of SF1441 Repair	30 / 0	30.00

Returns are accepted for GALLERY CREDIT ONLY, unless defective, and must be made within 10 days of delivery at Purchaser's destination. This sale is subject to, and Purchaser hereby agrees to terms conditions stated herein. **TERMS CONDITIONS:** Due and payable all delivery of goods. A finance charge (1.3% monthly, annual rate of 15%) will be charged on all past due balances. Purchaser agrees to pay all collection costs including attorney's fees in the event that the collection of the purchase price or any part thereof is referred to a collection agency or attorney. The Gallery is required to deliver the items hereof to Purchaser or Purchaser's destination chosen herein. Title of the items described shall pass to Purchaser subject to Gallery's security interest upon tender at Purchaser's destination. The Gallery retains and Purchaser grants to the Gallery a security interest in the works of art described herein to secure the purchase stated in this invoice/receipt. Security interest can be secured to term by the Gallery's retaining possession of the works of art until full payment for them has been received. If the Purchaser defaults in the payment, Gallery shall have the right and remediation granted by the Uniform Commercial Code. Consistent with copyright laws, the Gallery retains the exclusive right to reproduce the art by any means and in any form and the Purchaser agrees not to reproduce the work of art in any form without the prior written consent of the Gallery. This sale is subject to Federal State legislation such as those related to fine art sales, copyright laws, insurance, artist-dealer relationships, etc., which might be promulgated from time to time.

**Sherwoods**  
Spirit of America

130 Lincoln Avenue  
Santa Fe, NM 87501-4713

(505) 988-1776  
Fax (505) 992-1812

INVOICE NO: 7259

# Sales Receipt

Page 2 of 2

FFL#5-85-049-01-4D-35113

**SOLD TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

**Workorder No:**

**SHIP TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

<b>INVOICE DATE:</b>	<b>SHIP DATE:</b>	<b>SALESPERSON</b>	<b>SHIPPED VIA:</b>	<b>TERMS:</b>
4/22/03	4/22/03	Mike		Net receipt of invoice

Item	Description	Price
------	-------------	-------

As per Release Agreement dated April 22, 2003.  
Items returned:  
5330, 6342, and 5827

Payment Information

Net Invoice	32,130.00
VOC	0.00
Trade	0.00
Shipping & Handling	0.00
Sub Total	32,130.00
Sales Tax	0.00
<b>Invoice Total</b>	<b>32,130.00</b>
Total Payments	0.00
<b>Final Balance</b>	<b>32,130.00</b>

Remits are accepted for GALLERY CREDIT ONLY, unless defective, and must be made within 10 days of delivery at Purchaser's destination. This sale is subject to, and Purchaser hereby agrees to terms, conditions stated herein. **TERMS CONDITIONS:** One and payable all delivery of goods. A finance charge (1.5% monthly, annual rate of 18%) will be charged on all past due balances. Purchaser agrees to pay all collection costs including attorney's fees in the event that the collection of the purchase price or any past balance is referred to a collection agency or attorney. The Gallery is required to deliver the same kind as Purchaser or Purchaser's destination shown herein. Title of the items described shall pass to Purchaser subject to Gallery's security interest upon receipt at Purchaser's destination. The Gallery retains and Purchaser grants to the Gallery a security interest in the works of art described herein to secure the purchase price in this invoice/receipt. Security interest can be secured in art by the Gallery's retaining possession of the works of art until full payment for them has been received. If the Purchaser defaults in the payment, Gallery shall have the right and remedies granted by the Uniform Commercial Code. Consistent with copyright laws, the Gallery reserves the exclusive right to reproduce the art by any means and in any form and the Purchaser agrees not to reproduce the work of art in any form without the prior written consent of the Gallery. This sale is subject to Federal State legislation such as those related to fine art sales, consignments, insurance, artist-dealer relationships, etc., which might be promulgated from time to time.

**King, Randy**

---

**From:** Giorgione, Andrew [andrew.giorgione@obermayer.com]  
**Sent:** Monday, October 27, 2003 4:34 PM  
**To:** Richard House (E-mail)  
**Cc:** Lispi, Dan  
**Subject:** CITY COUNCIL SPECIAL PROJECTS ACCOUNT  
Richard -

Below is the summary of the Special Projects Account, in the manner you discussed it with the Mayor. We spoke to him and he said to conform it to your discussion with him.

Is this acceptable?

Andrew  
<<@JRX011.DOC>>

10/27/2003

---

**CITY COUNCIL  
SPECIAL PROJECTS ACCOUNT**

**A. How will the Account be established?**

The Harrisburg Authority will establish a Special Projects Account for City Council.

**B. How and in what amount will the Account be funded?**

The Authority will fund the Account at \$500,000.

**C. How can the money be spent?**

City Council will make requisitions to the Authority for the expenditure of funds for any lawful purpose. City Council should request that the City Solicitor provide guidelines under the Optional Charter Law and Third Class City Code for lawful expenditures by Council of funds in the Account. Moreover, the City Solicitor can provide guidance on how such funds must be requisitioned for payment, particularly funds in excess of \$10,000. Finally, depending on the parameters provided by the City Solicitor, Council may want to consider establishment of its own internal request, review and approval processes for use of funds, which your Solicitor could draft for you.

**King, Randy**

---

**From:** Giorgione, Andrew [andrew.giorgione@obermayer.com]

**Sent:** Monday, October 27, 2003 4:34 PM

**To:** Richard House (E-mail)

**Cc:** Lispi, Dan

**Subject:** CITY COUNCIL SPECIAL PROJECTS ACCOUNT

Richard -

Below is the summary of the Special Projects Account, in the manner you discussed it with the Mayor. We spoke to him and he said to conform it to your discussion with him.

Is this acceptable?

Andrew

<<@JRX01!.DOC>>

10/27/2003

---

**CITY COUNCIL  
SPECIAL PROJECTS ACCOUNT**

**A. How will the Account be established?**

The Harrisburg Authority will establish a Special Projects Account for City Council.

**B. How and in what amount will the Account be funded?**

The Authority will fund the Account at \$500,000.

**C. How can the money be spent?**

City Council will make requisitions to the Authority for the expenditure of funds for any lawful purpose. City Council should request that the City Solicitor provide guidelines under the Optional Charter Law and Third Class City Code for lawful expenditures by Council of funds in the Account. Moreover, the City Solicitor can provide guidance on how such funds must be requisitioned for payment, particularly funds in excess of \$10,000. Finally, depending on the parameters provided by the City Solicitor, Council may want to consider establishment of its own internal request, review and approval processes for use of funds, which your Solicitor could draft for you.

**INTER-OFFICE MEMORANDUM**

**CITY OF HARRISBURG**

August 9, 2007

**CONFIDENTIAL**

**TO:** Mayor Stephen R. Reed

**VIA:** Linda Lingle  
Business Administrator

**FROM:** Robert F. Kroboth, CGFM  
Deputy Business Administrator

**SUBJECT:** Councilmanic Support *of Harrisburg Capital Loans*

Mayor, we are compelled to share with you our concerns regarding an apparent lack of councilmanic support for approval of legislation that would provide adequate working capital, if any, to reimburse the City for its 2007 loans to THA/Incinerator, as well as other funds to assure debt service and other operational commitments are met during time of construction. Political considerations notwithstanding, the situation is simply this: the Incinerator cannot even generate enough revenue to meet its \$360,125 bi-weekly obligation to Covanta, evidenced by the fact that THA still owes Covanta \$3.3 million. There is nothing short of a financial miracle that will change this circumstance until after the 3<sup>rd</sup> unit is up and generating revenue. This means there will be no money from THA to pay its debt service at least through the construction and de-bugging period, which at this point is likely to be mid-2008.

I've attached schedules to reflect remaining 2007 and all of 2008 THA/Incinerator debt service obligations, as well as an impact analysis on how the General Fund's 2007

Budget performance will be affected by the lack of any working capital proceeds to reimburse the General Fund. The impact will be devastating. By the end of 2007, the General Fund is projected to have an \$8,364,633 deficit if approximately \$9,648,000 in loans are ultimately made, from what source we have no idea.

Aside from the budgetary impact of all this, the cash flow impact is equally concerning.

~~Because of not~~ <sup>cancel</sup> getting the full \$10.5 million TRAN proceeds as ultimately requested from Council last year, we received \$7.2 million. Since our cumulative budget deficits from 2005 and 2006 were not entirely covered, the General Fund ended up with a structural deficit to begin 2007, meaning there was little or no cash balance to begin the year. With no cash reserves, the General Fund can not absorb a \$9.6 million hit. The end result could be missed payrolls as early as October.

Finally, to just not honor the City's guarantee fund, <sup>to</sup> ~~The Harrisburg Authority's~~ <sup>THA's</sup> debt service shortfalls is ill-advised due to the ramifications of not being able to borrow at affordable interest rates in future years.

cc: Linda Lingle  
File

I:\Mayor\memo to mayor council\manic support.doc

CITY OF HARRISBURG

INTEROFFICE MEMORANDUM

LAW BUREAU



DATE: October 31, 2003

TO: Mayor Stephen R. Reed

To

FROM: Steven R. Dade  
Acting City Solicitor

A handwritten signature in black ink, appearing to read "S. Dade", written over the printed name of the sender.

SUBJECT: City Council Special Project Fund

Attached please find a draft memo to Richard House regarding funds for City Council Special Projects. It is my understanding, from Andrew Giorgione and Richard House, that you have agreed in principal to this proposal. I have spoken to Robert Kroboth, Ginger Miller and Tom Mealy regarding this issue and all agree that the attached proposal is the best way to address this matter. I have advised President House that I would have this memo to him first thing Monday morning. Please advise if this memo is in keeping with your discussions with President House.

Encl.

cc w/ Encl.: Robert Kroboth  
Thomas Mealy  
Ginger Miller  
Andrew Giorgione, Esq.

cc

If all of you keep this up, you will permanently kill the prospect of the retrofit bonds being adopted by Council. The draft you provided does even remotely resemble what was agreed to and, unchanged, what was drafted would almost certainly trigger a negative reaction. With so little time available to this office, I find myself again having to edit and rewrite staff work products. Send the attached as amended.

A handwritten signature in black ink, appearing to read "S. Reed", written over the printed name of the recipient.

S. Reed 11-3-03

attachments

**Kroboth, Robert**

**From:** Kroboth, Robert  
**Sent:** Wednesday, October 25, 2006 7:23 PM  
**To:** 'Losty, James (RBCCM-USDM)'; CCocheres@eckertseamans.com  
**Cc:** Lingle, Linda; Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
**Subject:** RE: Conference Call at 11:00 Am Thursday for final review of circular

Jim: thank you for the thorough explanation. This message will be shared with the Mayor.

Bob

-----Original Message-----  
**From:** Losty, James (RBCCM-USDM) [mailto:James.Losty@Rbcdain.com]  
**Sent:** Wednesday, October 25, 2006 2:27 PM  
**To:** Kroboth, Robert; CCocheres@eckertseamans.com  
**Cc:** Lingle, Linda; Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
**Subject:** RE: Conference Call at 11:00 Am Thursday for final review of circular

Bob,  
Certainly my email attached below concerning the call tomorrow identifies some of the issues of concern to us as remarketing agent and specifically to our legal and compliance professionals here at RBC.

However, as a general statement, I will tell you as a underwriter or remarketing agent for the sale of municipal securities we are governed by a number of regulatory agencies including The Securities and Exchange Commission and the National Association of Securities Dealers. Both oversight agencies have explicit rules and regulations concerning the sale of securities (I will not go into the myriad details about areas they Focus on). Of particular note here is the explicit requirement that offering circulars give full and complete disclosure to investors of everything known and relevant at the time the circular is printed and "deemed final". Typically, the issuer is asked to sign a certificate indicating that all information in the offering circular is full, accurate and complete as of the time of printing. There have been several significant rulings courts and oversight Authorities in recent years on this very point-the failure to give complete accurate information in an offering circular (including for the Forum Place in the City of Harrisburg).

Consequently, given all the known facts surrounding the retrofit of the resource recovery facility and the problems encountered in completing project as well as the operating difficulties in start-up, the gap in funding to complete required improvements, the difficulty with the major contractor/engineer, the very high debt associated with the incinerator, and the subordinate nature of these Notes below all other incinerator debt, it is imperative that the Offering Circular alert potential investors to these facts and highlight the distinct possibility that if all the aforementioned problems with the retrofit are not addressed and corrected almost immediately, there is a high likelihood that some source of funds other than revenues from the resource recovery facility will be needed to pay the Notes. Given that the Notes are backed by a General Obligation of the City, it is imperative that investors are made aware of these factors and directed to the City's credit as the possible source of repayment of debt service.

Bob, unfortunately this is not something that is optional. To comply with US Securities rules and regulations this is imperative.

I hope this is helpful and I am happy to discuss with you if that would be useful. Thanks,  
Jim -----Original Message-----  
**From:** Kroboth, Robert [mailto:RKroboth@CityofHBG.com]  
**Sent:** Wednesday, October 25, 2006 1:50 PM  
**To:** Losty, James (RBCCM-USDM); CCocheres@eckertseamans.com  
**Cc:** Lingle, Linda  
**Subject:** FW: Conference Call at 11:00 Am Thursday for final review of circular

*Carol and Jim: I know you are extremely busy with this transaction, which probably explains why I have yet to receive a brief narrative explaining to the Mayor why we must*

represent that the City's guarantee MAY be called upon, as we discussed during Monday's conference call. Thanks.

Bob

p.s. Carol, I'm working on the stuff I owe you.

-----Original Message-----

From: Lingle, Linda  
Sent: Wednesday, October 25, 2006 1:40 PM  
To: Losty, James (RBCCM-USDM); CCocheres@eckertseamans.com; BBarnes@miltlopus.com; Andrew.Giorgione@bipc.com; Kenneth.Luttinger@bipc.com; Ertel, Kevin (RBCCM-USDM); Kroboth, Robert; bruce@foreman-foreman.com; Dade, Steven; Lukens, John; ddispi@drlconsultingdev.com; hspumberg@fsa.com  
Cc: RMichael@eckertseamans.com; Ertel, Kevin (RBCCM-USDM); Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
Subject: RE: Conference Call at 11:00 Am Thursday for final review of circular

Please bear in mind that the Mayor will have to review the language before the circular is issued. And I recommend that the areas of concern be highlighted so that he can focus on them immediately.

Linda Lingle  
Business Administrator

-----Original Message-----

From: Losty, James (RBCCM-USDM) [mailto:James.Losty@Rbcdain.com]  
Sent: Wednesday, October 25, 2006 12:44 PM  
To: CCocheres@eckertseamans.com; BBarnes@miltlopus.com; Andrew.Giorgione@bipc.com; Kenneth.Luttinger@bipc.com; Ertel, Kevin (RBCCM-USDM); Kroboth, Robert; Lingle, Linda; bruce@foreman-foreman.com; Dade, Steven; Lukens, John; ddispi@drlconsultingdev.com; hspumberg@fsa.com  
Cc: RMichael@eckertseamans.com; Ertel, Kevin (RBCCM-USDM); Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
Subject: RE: Conference Call at 11:00 Am Thursday for final review of circular

There is a conference call scheduled for 11 am tomorrow for a final review of proposed remarketing circular. Carol Cocheres will circulate another draft some time today that will be the focus of the call. Please pay particular note to blacklined sections that highlight the following:

1. Uncertainty with regard to plans for funding the additional \$10 million barlow estimates will be necessary to complete retrofit
2. Language will be explicit about the potential shortfalls of revenues at incinerator and the distinct possibility that the City will be forced to pay debt service through tax revenues or other revenues.
3. The difficult current budgetary pressures on this year's budget and the ongoing TRAN difficulty will be moved to front of OS (currently is in the City Appendix).

These are the major areas of focus that I wanted to bring to everyone's attention. These are a direct result of direction from internal RBC Compliance and Legal professionals and are a requirement of RBC in order to proceed with a remarketing of these Notes.

Please email me or call me if there are any questions on this. The timing of transaction is now down to a final couple of days and a remarketing circular must be "deemed final" and circulated to potential buyers almost immediately. Thanks, Jim

-----Original Message-----

From: PHedenberg@eckertseamans.com [mailto:PHedenberg@eckertseamans.com]  
On Behalf Of CCocheres@eckertseamans.com  
Sent: Sunday, October 22, 2006 6:58 PM  
To: Losty, James (RBCCM-USDM); BBarnes@miltlopus.com; Andrew.Giorgione@bipc.com; Kenneth.Luttinger@bipc.com; Ertel, Kevin (RBCCM-USDM); rkroboth@cityofhbg.com; llingle@cityofhbg.com; bruce@foreman-foreman.com; sdade@cityofhbg.com;

jlukens@cityofhbg.com; ddispi@drllconsultingdev.com; hspumberg@fsa.com  
Cc: RMichael@eckertseamans.com  
Subject: Limited Offering Remarketing Circular

Attached for your review and comment is the draft front part Remarketing Circular revised on the basis of comments received and meetings held last week. Both a clean copy and a blacklined copy showing changes are attached.

There are still some unanswered questions and sections to be completed with information needed from persons on this list.

In addition, attached is Appendix A relating to the City of Harrisburg.

Howard Spumberg of FSA is being forwarded copies of the forepart and Appendix A with this e-mail. Are there any other persons who should receive copies? With Barlow discussed so much in the text, perhaps a representative of Barlow should be sent this e-mail for review and comment. Dan and Andy, what do you think? And do you have any suggested name at Barlow?

If you have any questions or comments prior to the Monday afternoon call, please call me. Any written comments will be appreciated as soon as possible due to the tight schedule for posting or printing the Remarketing Circular.

Clean Copy	Blacklined Copy	Appendix A
(See attached file: 10319546.doc)		(See attached file:
10320011.doc)		10319892.doc)

Please note my new email address is ccocheres@eckertseamans.com.

Carol P. Cocheres, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
Harrisburg, Pa. 17101  
Phone 717-237-6023  
Fax 717-237-6019  
E-Mail ccocheres@eckertseamans.com

This communication may contain federal tax advice. Recent IRS regulations require us to advise you that any discussion of federal tax issues in this communication was not intended or written to be used and cannot be used to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm's Tax partners if you have any questions regarding federal tax advice.

Scanned by Symantec Anti-Virus and Content Filtering before delivery.

This e-mail message and any files transmitted with it are subject to attorney-client privilege and contain confidential information intended only for the person(s) to whom this email message is addressed. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.



"Kroboth, Robert"  
<RKroboth@CityofHBG.com>

06/29/2007 08:56 AM

To "Gabler, Beth Ann" <bgabler@CityofHBG.com>  
cc "Lingle, Linda" <LLingle@CityofHBG.com>, "Dade, Steven"  
<SDade@CityofHBG.com>, <tharambrose@aol.com>,  
"Bruce Foreman" <Bruce@foreman-foreman.com>,  
"Giorgione, Andrew J." <andrew.giorgione@bipc.com>,  
Carol Cocheres/ESCM@ESCM, "Bruce Barnes"  
<BBarnes@miltopus.com>

bcc

Subject Council's Requests From 6/18/07 Meeting re: Incinerator

Good morning, Beth Ann:

At the joint Budget & Finance/Public Works committee meeting on June 18<sup>th</sup>, Mr. Miller requested an explanation on how the City will treat the payment to THA for debt service for accounting purposes. The City expects to record the \$1.6 million draw on the Guarantee Agreement as a short-term loan/advance to THA, as the City anticipates that THA will be reimbursing the City pursuant to terms of the Reimbursement Agreement before the end of the year.

I'd be happy to answer any questions Council may have in this regard.

Bob

THA-ES003126

MOVED BY MR. ALBERT H. STRAUB, FEBRUARY 24, 1970.

AN ORDINANCE

Supplementing the provisions of the Mayor-Council Plan A as set forth in the Optional Third Class City Charter Law; establishing an administrative organization for the city; providing for the manner of appointment of the city solicitor and the coordinator of human services and for the manner of appointment and removal of members of boards and commissions; providing for the functions, powers and duties of the city treasurer and the city controller; establishing certain legislative procedures for the city; providing fiscal and budget procedures and a system of work programs and quarterly allotments for the operation of the budget; providing an effective date hereof.

BE IT ORDAINED by the Council of the City of Harrisburg and it is hereby ordained by authority of the same as follows:

ARTICLE I.  
SHORT TITLE

SECTION 101. SHORT TITLE.

This Ordinance shall be known and may be cited as the "Administrative Code of the City of Harrisburg".

ARTICLE II  
ADMINISTRATIVE ORGANIZATION

SECTION 201. MAYOR'S OFFICE.

The following personnel shall be assigned for administrative purposes to the office of the mayor.

- (a) one or more administrative assistants as may be necessary from time to time;
- (b) city solicitor and such assistant city solicitors and staff as may be necessary from time to time, comprising the law bureau; and
- (c) coordinator of human services and such assistants and staff as may be necessary from time to time, comprising the bureau of human services.

SECTION 405. APPROPRIATIONS.

No monies shall be paid out of the city treasury except upon appropriation previously made by council, unless otherwise specifically provided by law or ordinance, and upon written request pursuant to such appropriation, which request shall explicitly state the purpose for which the money is to be drawn. Upon approval of the department of administration, the request, together with a copy of the bill or other documentation, will be delivered to the controller, who shall ascertain whether the expenditure is within the appropriations made by council. If he finds that the expenditure is within the appropriations, he shall approve the same and forward a warrant therefor, together with a copy of the bill or other documentation, to the treasurer, who shall countersign the warrant and issue the same to the payee thereof. No warrant shall be payable without the signature of the controller, countersigned by the treasurer. If the controller finds the expenditure exceeds the appropriations, he shall return the request to the department of administration together with an explanation thereof. No work shall be hired to be done, no materials purchased, no contracts made, and no order issued for the payment of any monies in any amount which will cause the sums appropriated to specific purposes to be exceeded. The council may make supplemental appropriations for any lawful purpose from funds on hand or estimated to be received within the fiscal year and not appropriated to any other purposes. The business administrator shall have the power to authorize the transfer of any unexpended balance of any appropriation item, or any portion thereof, within a department; but if the amount transferred is more than ten percent of the appropriation item, the approval of council shall be required before such transfer shall be made. Expenditures from amounts budgeted for contingencies shall be made only upon the express approval of council.



( ) 10:30

Thomas Mealy (former Director, Harrisburg Authority)



October 26, 2005

Thomas E. Stone, CFO/Treasurer  
Cianbro Corporation  
1 Hunnewell Square  
Pittsfield, ME 04967

***In re: The Harrisburg Authority Waste to Energy Plant  
Barlow Projects Harrisburg, LLC – Cianbro***

Dear Mr. Stone:

Your letter dated October 20, 2005, to Thomas J. Mealy, Executive Director of The Harrisburg Authority has been forwarded to me for response. In your letter you refer to payment bonds as required under Pennsylvania Statute Title 8, Chapter 13. You note that there is a bond requirement but no bond in place and request that The Harrisburg Authority retain funds to pay Cianbro for your asserted non-payment.

It is our understanding that the provision which you site to is the Public Works Contractors' Bond Law of 1969, as amended, and particularly 8 P.S. § 193.1(2) P.L. 869, as amended.

First, I note that the dispute between Cianbro and Barlow Projects Harrisburg, LLC begins as a dispute as to whether or not funds are due. It is my understanding that the parties do not agree what payments are due. Secondly, I note that the requirement to obtain the bond is on the prime contractor, in this case, Barlow and not The Harrisburg Authority. Since the bond law places the duty to furnish a payment bond on the contractor rather than the contracting authority (The Harrisburg Authority), unpaid subcontractors have no cause of action against a contracting governmental entity, such as The Harrisburg Authority, for failure to obtain payment bonds. See Cassady-Pierce Co., Inc. v. Spagnol, 160 Pa. Cmwlth. 666, 635 A.2d 746 (1993), appeal denied, 538 Pa. 653, 648 A.2d. See also, Penstan Supply, Inc. v. Pennsylvania State University, 44 Pa. Cmwlth. 347, 403 A.2d 1054 (1979).

I must again advise you that we will not become involved in the contractually based claims between Cianbro and Barlow Projects Harrisburg, LLC over a contract in which we have no privity.

We will not be preparing documents in response to questions. If you have particular documents already in existence which you are requesting, please specify the documents which you desire.

Very truly yours,

Bruce D. Foreman

BDF.mam

Cc: Thomas J. Mealy, Executive Director  
The Harrisburg Authority

BIRHBG003359

to - Members, Board of Directors  
The Harrisburg Authority

As this office stated publicly in January, 1990, when legislation was being considered by City Council to expand the scope of authority of the Harrisburg Water & Sewer Authority, it was and is our view that The Harrisburg Authority, expanded to serve as a general purpose authority for the City, could be a viable vehicle for financings by other tax-exempt and taxable entities. In serving such a role, The Harrisburg Authority, in charging issuer fees and annual service fees on bonds issued for other clients and entities, would raise new revenues without risk or liability to the City or the Authority.

THA has now served as a financing vehicle for the PHEAA project. There are similar such prospects under consideration for possible presentation to the THA Board in the coming months.

Thus, as planned, a new revenue source has been developed. The law does not prescribe any particular manner in which such funds should be utilized.

Therefore, the City of Harrisburg hereby formally requests that the Board, by Resolution, create a City Special Projects Reserve Fund, as one of the THA accounts, into which all issuer and service fees, and any other revenues derived from such transactions, would be placed. We request that the funds, which should be reinvested at the maximum available yield, be available for drawdown by the City upon presentation of an appropriate transmittal requisition and/or voucher by the City, which document would provide the correct and complete payee for the issuance of a THA check that disburses the requisitioned funds. The exact same process already exists for drawdown of monies from the Water System Sale Proceeds Account, utilizing a transmittal form fashioned by our Department of Administration and effectively already utilized for fund disbursement. The same Department would use a similar or identical form with regard to this new City Special Projects Reserve Fund.

This way, these new revenues would accrue to the benefit of the City, as planned, thus fulfilling one of the purposes associated with expanding the Authority's scope of authority.

Page Two  
THA Board of Directors  
December 24, 1990

---

The City appreciates your consideration of this recommendation for the proper set-aside of such funds for City purposes and the restriction of such funds for uses as determined solely by the City.



---

Mayor Stephen R. Reed

cc: Napoleon Saunders  
Robert Kroboth  
Bradley Bechtel, Esq.  
Thomas J. Mealy

THE HARRISBURG AUTHORITY

RESOLUTION  
No. 1991-001

WHEREAS, In January, 1990, The Harrisburg Authority proposed to Harrisburg City Council that its Articles of Incorporation be amended to expand its powers to operate as a general purpose authority, and

WHEREAS, Harrisburg City Council adopted and approved the amendment to the Articles of Incorporation of The Harrisburg Authority making it a general purpose authority; and

WHEREAS, The Harrisburg Authority -has an extensive and experienced track record associated with issuing tax exempt and taxable bonds and notes; and

WHEREAS, The Harrisburg Authority is now capable of serving as a viable vehicle for financing non-city related projects by non-city tax exempt and taxable entities without risk or liability to the City of Harrisburg or to The Harrisburg Authority; and

WHEREAS, The undertaking of issuing tax exempt and taxable bond and notes for non-city related entities would create an additional revenue source from the issuer fees and annual service fees charged on such bonds and notes; and

WHEREAS, The City of Harrisburg has requested The Harrisburg Authority to create a "City Special Projects Reserve Fund" in which all non-city issuer fees and service fees and any other revenues derived from such transactions be deposited and placed; and

WHEREAS, all such funds in the "City Special Projects Reserve Fund" should be invested and reinvested at the maximum available yield and available for drawdown determined solely by the City of Harrisburg as represented and requisitioned by the Mayor and the Authority shall disburse funds from this account as directed.

NOW THEREFORE BE IT RESOLVED that all non-city related issuer fees, service fees and any other revenues derived from the financing of non-city related projects by non-city tax exempt and taxable entities be set aside, restricted for uses determined solely by the City of Harrisburg and be deposited into a "City Special Projects Reserve Fund" created by The Harrisburg Authority; and

BE IT FURTHER RESOLVED, that all funds in the "City Special Projects Reserve Fund" be invested and reinvested at the maximum available yield; and

BE IT FURTHER RESOLVED, that the funds in the "City Special Projects Reserve Fund" be available for drawdown by the City of Harrisburg as represented and requisitioned by the Mayor upon

presentation of a Requisition Certificate which provides the correct and complete payee for the issuance of an Authority check disbursing the requisitioned funds; and

BE IT FINALLY RESOLVED, that the Authority's Executive Director and Chairman be and are hereby authorized and directed on behalf of The Harrisburg Authority and under its seal, to take any action that is necessary or required to carry out the intent and purpose of this Resolution.

Duly adopted this 17th day of January, 1991, by the Board of The Harrisburg Authority in lawful session duly assembled.

ATTEST:

THE HARRISBURG AUTHORITY

Thomas J. Mealy  
Assistant Secretary-Treasurer

By: Trent Ferguson  
Chairman

(SEAL)

CERTIFICATE

I, the undersigned Assistant Secretary-Treasurer of The Harrisburg Authority, certify that the foregoing Resolution was adopted by a majority vote of the entire Board of the Authority at a meeting duly convened according to law and held on January 17, 1991, at which meeting a quorum was present; said Resolution was adopted by an aye or nay vote; said Resolution and the vote thereon showing how each member voted have been recorded in the minutes of said Board; and said Resolution remains in effect, unaltered and unamended as of the date of this Certificate.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Authority, this 17th day of January, 1991.

Thomas J. Mealy  
Assistant Secretary-Treasurer

(SEAL)

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

June 21, 1996

The Honorable Stephen R. Reed, Mayor  
City of Harrisburg  
Martin L. King Jr. City Government Center  
Ten North Second Street  
Harrisburg, PA 17101-1678

*In re: City Special Projects Fund*

Dear Mayor Reed:

In response to your recent inquiry regarding the administration fee due to The Harrisburg Authority relative to the Greene County Prison issue, please be advised that the \$125,000.00 was deposited into the Authority's account and the following distribution was made out of the initial \$125,000.00:

Public Facilities Development Corporation .....	\$ 10,000.00
Balaban and Balaban .....	5,000.00
Milt Lopus Associates, Inc. ....	5,000.00
Rhoads & Sinon .....	5,000.00
The Harrisburg Authority .....	<u>100,000.00</u>
 Total .....	 \$ 125,000.00

Please note that as of today, the current balance in the City Special Projects Fund is \$102,855.14.

Sincerely yours,

Thomas J. Mealy  
Executive Director

December 16, 1996

to - Thomas J. Mealy  
The Harrisburg Authority

This memorandum serves to requisition the amount of \$30,000.00, payable to the City of Harrisburg, from the City Special Projects Fund for transmittal to this office. The purpose of this requisition is to provide funding for professional services for the Sports Hall of Fame and War Museum.

---

Mayor Stephen R. Reed

cc: Robert F. Kroboth  
Nate Saunders

**INTEROFFICE MEMORANDUM**

**CITY OF HARRISBURG  
OCTOBER 5, 1998**

**TO:** Sherry L. Givens  
Deputy Director for Finance

**FROM:** Michael L. Patterson   
Accounting Manager

**RE:** Archives Purchases

The Harrisburg Authority currently maintains an account known as the City Special Projects Reserve Fund. This account has been used by the Mayor to purchase historical and archival items since January, 1997. Over the past several months, I have had discussions with Tom Mealy and Jeff Davis of KPMG Peat Marwick regarding the disposition of these items. Although they were purchased by the Authority, the Authority considers these purchases as donations to the City based on THA Resolution No. 1991-001, dated January 17, 1991. The Mayor has the authority to instruct THA on how funds are to be expended from this account. The City is currently in possession of the purchased items. In meetings with Linda Louwerse, she stated that the Mayor assumes these items are included in the City's inventory. Although I have written each requisition up as a single purchase based on individual THA requisitions, they will in fact, be entered into the inventory as one asset in the Capital Projects Fund with the TAG number 013649. As these items were not purchased from Capital Project Funds, they will become a reconciling item at year end. The total amount of items purchased through October 7, 1998 is \$209,691.20. The individual TAG numbers assigned are from 013649 to 013719. I will ensure that the necessary journal entries are posted.

**Enclosures**

**cc:** Napoleon A. Saunders  
Robert F. Kroboth  
~~Thomas J. Mealy, THA~~  
~~Linda Louwerse~~  
Jeffrey Davis, KPMG

# RHOADS & SINON LLP

ATTORNEYS AT LAW  
DAUPHIN BANK BUILDING  
TWELFTH FLOOR  
ONE SOUTH MARKET SQUARE  
P.O. BOX 1146  
HARRISBURG, PA 17108-1146

TELEPHONE (717) 233-5731

FAX (717) 231-6600

EMAIL [jwalter@rhoads-sinon.com](mailto:jwalter@rhoads-sinon.com)

November 20, 1998

OF COUNSEL  
FRANK A. SINON  
JOHN C. DOWLING  
R. STEPHEN SHIBLA  
NATHAN H. WATERS, JR.

PAUL H. RHOADS  
1907-1984  
JOHN M. MUSSELMAN  
1919-1980  
CLYDE R. HENDERSHOT  
1922-1980

DIRECT DIAL NO.  
233-5731

FILE NO.

6661/01

Re. Harrisburg School District Foundation

Trent Hargrove, Chairman  
The Harrisburg Authority  
Front and Market Streets  
One Keystone Plaza, Ste. 104  
Harrisburg, PA 17101

*\$12,500.00 - City  
Special Projects  
invoice.*

Dear Trent:

You have inquired as to whether certain funds of the Authority, contained in a discretionary fund of the Authority, and which we understand to be not pledged for any purpose, can be utilized by providing funds to the Harrisburg School District Foundation for purposes of a feasibility study, which will study the feasibility of raising funds for programs and other operations of the Harrisburg School District.

The Harrisburg Authority is a municipal authority created under the Pennsylvania Municipality Authorities Act of 1945, 53 P.S. §301 et seq., as amended (the "Act"). As a statutory creature, its powers must derive from the wording of the statute itself. Also, Article 9, §9, of the Constitution of Pennsylvania must be examined. This section, however, has consistently been interpreted to permit the appropriation of public money when it is spent on a proper municipal purpose. Sambor v. Hadley, 291 Pa. 395 (1928).

Section 4 of the Act, found at 53 P.S. §306 provides that every Authority incorporated under this Act shall be for the purpose of "acquiring, holding, constructing, improving, maintaining and operating, owing, leasing, either the capacity of lessor or lessee, Projects of the following kinds and character" .... These projects include, at Section 4(a)(2), public school buildings and facilities. The definition of "Project", under Section 2 of the Act, includes any structure, facility or undertaking which an authority is authorized to acquire, construct, finance, improve, maintain or operate under the provisions of the Act.

YORK OFFICE:  
119 EAST MARKET STREET, YORK, PA 17401, TELEPHONE (717) 843-8968, FAX (717) 843-5664

LANCASTER OFFICE:  
15 NORTH LIME STREET, LANCASTER, PA 17602, TELEPHONE (717) 397-5127, FAX (717) 397-5267

AFFILIATED OFFICE  
SUITE 2-C 1700 SOUTH DIXIE HIGHWAY BOCA RATON, FL 33432 TELEPHONE (561) 305-5505 FAX (561) 305-6107

**RHOADS & SINON LLP**

November 20, 1998

Page 2

The Authority is not limited by its incorporation documents to a particular purpose. We therefore understand it to have all the powers and purposes provided for under the Act. Under Section 4(B), the Authority is granted and may exercise all powers necessary and convenient for the carrying out of previously mentioned purposes, including the right at 4(B)(j) to make contracts of every name and nature and execute all instruments necessary and convenient for the carrying on of its business. These provisions have always been interpreted to permit the Authority to hire engineers, financial advisors and the like in order to facilitate projects for which it has been authorized, including feasibility studies.

We would therefore conclude that since the "Project" includes an "undertaking" which the Authority is authorized to undertake, the expenditure of special project funds, when limited to payment for a feasibility study to determine a method to improve the operations of the Harrisburg School District, including its programs, would be a proper purpose of the Authority and a proper expenditure of Authority funds.

Very truly yours,

RHOADS & SINON LLP

By:

  
J. Bruce Walter

JBW/dah

cc: Nathan H. Waters, Jr., Esquire  
James E. Ellison, Esquire

The Harrisburg Authority  
City Special Project Fund

Revenue Source	1991	1992	1993	1994	1995	1996	1997	1998	TOTAL
PHEAA Building Project Bonds - Series of 1991									
Settlement Fee	7,500.00	---	---	---	---	---	---	---	7,500.00
Administration Fee	0.00	22,500.00	15,000.00	15,000.00	15,000.00	15,000.00	7,500.00	15,000.00	105,000.00
Commonwealth Lease Rev. Bonds - Series of 1991									
Settlement Fee (Greene Co. Prison)	50,000.00	---	---	---	---	100,000.00	---	---	150,000.00
Administration Fee	15,000.00	0.00	15,000.00	15,000.00	15,000.00	---	---	---	60,000.00
Lutheran Welfare Service Projects - Series of 1991									
Settlement Fee (Luzerne Co.)	---	14,500.00	---	---	---	---	---	---	14,500.00
Administration Fee	---	4,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	16,000.00
PHEAA Building Project Bonds - Series of 1992									
Settlement Fee	---	8,500.00	---	---	---	---	---	---	8,500.00
Administration Fee	---	0.00	---	---	---	---	---	---	0.00
Harrisburg School Revenue Bonds - Series of 1992									
Settlement Fee	---	19,000.00	---	---	---	---	---	---	19,000.00
Administration Fee	---	0.00	4,000.00	4,000.00	4,000.00	4,000.00	4,000.00	0.00	20,000.00
Jewish Home of Greater Harrisburg - Series 1993									
Settlement Fee	---	---	1,000.00	---	---	---	---	---	1,000.00
Administration Fee	---	---	1,500.00	---	---	---	---	---	1,500.00
Adjustable Rate Bond Pool - Series Of 1996									
Settlement Fee	---	---	---	---	---	245,000.00	---	---	245,000.00
Administration Fee	---	---	---	---	---	0.00	---	---	0.00
PNC CAPS - Series 1996									
Settlement Fee	---	---	---	---	---	38,922.50	---	---	38,922.50
Administration Fee	---	---	---	---	---	0.00	1,500.00	1,500.00	3,000.00
PNC CAPS - Series 1997									
Settlement Fee	---	---	---	---	---	---	33,365.00	9,000.00	42,365.00
Administration Fee	---	---	---	---	---	---	---	---	0.00
Capital Associates - Series 1998									
Settlement Fee	---	---	---	---	---	---	---	98,000.00	98,000.00
Administration Fee	---	---	---	---	---	---	---	---	0.00
Total Deposits	72,500.00	68,500.00	38,500.00	36,000.00	36,000.00	404,922.50	48,365.00	125,500.00	830,287.50
Interest on Savings	565.09	3,474.09	3,152.86	1,237.45	503.72	492.39	45.42	0.00	9,471.02
Miscellaneous	0.00	0.53	0.00	0.00	0.00	0.00	0.00	0.00	0.53
<b>TOTAL REVENUES</b>	<b>73,065.09</b>	<b>71,974.62</b>	<b>41,652.86</b>	<b>37,237.45</b>	<b>36,503.72</b>	<b>405,414.89</b>	<b>48,410.42</b>	<b>125,500.00</b>	<b>839,759.05</b>



**Office of the Mayor**  
**The City of Harrisburg**  
**City Government Center**  
**Harrisburg, PA 17101-1678**

**Stephen R. Reed**  
**Mayor**

April 8, 1996

to - Thomas J. Mealy  
The Harrisburg Authority

As a result of the April 4, 1996 closing on the Pooled Financing, THA, as conduit financier, has received \$250,000 plus whatever unused expense monies were in the closing statement. These funds, by prior arrangement, are to have been placed in the city's escrow account for subsequent draw by the city.

This memorandum therefore serves to requisition the full amount, payable to the City of Harrisburg, for transmittal to this office. Upon receipt of the same, this office will have it deposited into the Emmaus Bond Pool III account, as a means of reimbursement and replenishment to the account.

Mayor Stephen R. Reed

cc: Robert F. Kroboth

**FINANCIAL ADVISOR'S REPORT:**

Mr. Barnes reported that he had distributed a written report to the board, and that an update to the Harrisburg School District financing will be in the approximate amount of \$64 or \$74 Million. He also advised that he believes the financing will be ready for the next Authority meeting in July. He will keep the board updated.

Mr. Clark inquired as to whether the future financing of the retrofit for the incinerator would be an Authority financing with a City guarantee. Mr. Clark then requested that a meeting and/or conference call be set up as soon as possible between himself, the Authority's Solicitor and it's Executive Director to discuss the participation of Mr. Clark in another role regarding the Authority's retrofit project of the incinerator.

Mr. Clark also requested a meeting with Mr. Barnes, to discuss a diversity role for the Resource Recovery Retrofit financing project.

**REPORT OF COUNSEL:**

It was noted by Mr. Walter that a written report had been prepared and distributed to the board. There were no questions or comments to the written report.

**GENERAL PUBLIC COMMENTS:**

No individuals present expressed a desire or requested an opportunity to speak to the members of the board or to make a public comment.

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

A motion was made by Mr. House, seconded by Mr. Clark, that the Chairman be authorized to execute the following Change Order No. 8 issued to *Natgun Corporation* relative to the *Lower Reservoir Replacement Project*, to provide all labor, materials and equipment necessary to establish the modified final grade elevations as determined by The Harrisburg Authority and to provide a discharge hose to transport overflow from the system to a storm water catch basis, *resulting in a total net contract price increase of \$8,849.75 and no change to the contract completion date.* The motion was unanimously approved.

A motion was made by Mr. House, seconded by Mr. Clark, that the Chairman be authorized to execute the following Change Order No. 9 issued to *Natgun Corporation* relative to the *Lower*

# RHOADS & SINON LLP

ATTORNEYS AT LAW

TWELFTH FLOOR

ONE SOUTH MARKET SQUARE

P.O. BOX 1146

HARRISBURG, PA 17108-1146

TELEPHONE (717) 233-5731

FAX (717) 231-6600

EMAIL [jwalter@rroads-sinon.com](mailto:jwalter@rroads-sinon.com)

WEBSITE: [www.rroads-sinon.com](http://www.rroads-sinon.com)

June 26, 2003

OF COUNSEL  
HENRY W. RHOADS

RETIREE  
JOHN C. DOWLING

PAUL H. RHOADS  
1907-1984

FRANK A. SINON  
1910-2003

JOHN M. MUSSELMAN  
1919-1980

CYCLE R. HENDERSHOT  
1922-1980

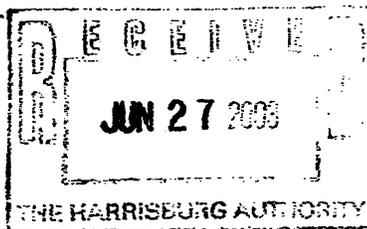
DIRECT DIAL NO.  
(717) 233-5731

FILE NO.

6661/01

Re: The Harrisburg Authority – Conflict of Interest

The Harrisburg Authority  
Attn: Thomas J. Mealy, Executive Director  
One Keystone Plaza, Suite 104  
Front & Market Streets  
Harrisburg, PA 17101



Dear Tom:

A question has arisen concerning members of the Authority and conflicts of interest in business where they may be involved.

There are essentially two pieces of legislation to be concerned with, the Public Official and Employee Ethics Law, 65 P.S. 401 et seq., and the Municipality Authorities Act, 53 P.S. 301 et seq., repealed, now at 53 Pa. C.S. 5601, et seq. The Public Official and Employee Ethics Law excuses from the definition of "Conflict of Interest" a diminimus economic impact situation. This would exclude any transaction in which the financial interest of the member does not comprise more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness. Given that definition, the Ethics Act does not appear to be a difficulty for the facts as presented.

The provisions of the Municipality Authorities Act is more problematical. At Section 5614(e), the term "conflict of interest" is defined in the following fashion:

"No member of the Authority or officer or employee of the Authority may directly or indirectly be a party to or be interested in any contract or agreement with the Authority if the contract or agreement establishes liability against or indebtedness of the Authority."

Under this definition, any member of the Authority who indirectly is interested in any contract or agreement with the Authority would violate the conflict of interest provisions. Similarly, any contract with the City which requires the Authority to pay or otherwise establish an Authority liability would violate this provision.

**RHOADS & SINON LLP**

June 26, 2003

Page 2

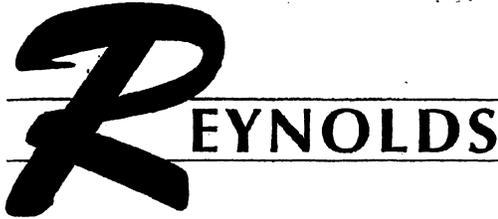
It is of note that the Municipality Authorities Section is self-executing and any contract or agreement made in violation of the Section is void. This provision would need to be kept in mind in any future dealings of the Authority. The two Acts are to be construed separately. A violation of either one is a problem.

Very truly yours,

RHOADS & SINON LLP

By: 

J. Bruce Walter



BUILDING PARTNERS

101  
3300 NORTH THIRD STREET, HARRISBURG, PA 17110  
(717) 238-5737 ♦ (717) 238-9410 FAX

WWW.REYNOLDSCONSTRUCTION.COM

August 6, 2003

Mr. Dan Lispi  
City of Harrisburg  
City Government Center  
10 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101

Dear Mr. Lispi:

Thank you for meeting with Rick, Jessica, and myself on Friday, July 25, 2003 to discuss the proposed waste to energy facility project. Reynolds is very interested in providing services to the City of Harrisburg which will assist them in making this a successful project.

Subsequent to our meeting on July 25, 2003, we met with representatives from Barlow Projects, Inc., to review the technical aspects of the project and to listen to their thoughts on how Reynolds could contribute to the project as a member of the project team. Based on their recommendations and our telephone conversation on Tuesday, August 5<sup>th</sup>, we are submitting a proposal for agency construction management services for the project as well as a proposal to provide an Owner's Representative.

Reynolds believes that the agency construction management approach will provide the most benefit to the City on this project for the following reasons:

- The City will maintain greater control of the project
- The public bidding laws will be more easily met
- MBE/WBE participation can be controlled (please note that both proposals include management of the MBE/WBE program.)
- Bonding can be allocated to multiple primes with the aggregate equaling the project cost
- Multiple prime contracts will encourage local bid participation

Enclosed you will find two proposals for:

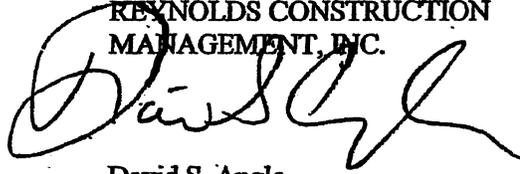
- Owner's Representative Services and
- Construction Management Services

Each proposal includes a delineation of work tasks, estimated hours, proposed rates, and projected costs. We would be glad to meet with you and the appropriate members of the project team to review our proposals and answer any questions. We will consider any adjustments to the scope of work based on your input, and adjust our proposal accordingly.

Reynolds looks forward to working with the City and their project team on this exciting project, and to be a part of the continued growth and improvement of the City of Harrisburg. Please call me if you should have any questions regarding our proposals.

Sincerely,

REYNOLDS CONSTRUCTION  
MANAGEMENT, INC.



David S. Angle  
President

DSA:jem

**Attachments**

cc: Fred Rimmer, The Harrisburg Authority  
Tom Mealy, The Harrisburg Authority  
Joel Baker, Reynolds Construction Management  
File - 101

# HARRISBURG WASTE TO ENERGY FACILITY PROPOSAL FOR SERVICES

---

The City of Harrisburg is planning to retrofit their existing incinerator facility, using the latest technology available. The designer and builder of the new waste to energy facility is Barlow Projects Inc. from Fort Collins, Colorado. The City has requested that Reynolds Construction Management Inc. submit a proposal to provide an Owner's Representative during the final design and bid phases and during the construction and commissioning phases of the project.

Reynolds has met with the City's representative for the project, Dan Lispi, on several occasions in order to fully understand the scope of work of the project. We have also met with Barlow Projects' executives Ron Barmore and Jack Akins to review the technical aspects of the project and to discuss their role on the project. The meeting with Barlow was very informative and Reynolds came away with a great deal of information including a partial set of design documents.

Based on the input from Barlow Projects Inc., Reynolds is submitting two proposals to the City for their consideration; one is for providing an Owner's Representative for the duration of the project and the other is for full construction management of the project.

## **A. Owner's Representative Option**

Reynolds proposes to provide an onsite project manager to act as the Owner's Representative during the duration of the project. This person will have the full staff of Reynolds Construction Management Inc. as a resource and will have necessary clerical support. Reynolds project manager will be an integral member of the Owner's team. In addition, Reynolds will provide staff and consulting services to manage the MBE/WBE program.

### Scope of Work:

- Project Planning and Administration
- Review /Comment on Budgets and Estimates
- Review/Comment on Schedule
- Attend Meetings
- Management of the MBE/WBE Program
- Review/Comment on Bid Documents
- Assist with Bidding and Local Participation
- Assist with Receipt of Bids and Contract Awards
- Project Oversight/Administration
- Attend Meetings
- Manage MBE/WBE Program During Construction
- Quality Enhancement
- Budget and Cost Control
- Review Schedules
- Project Documentation
- Coordinate with Commissioning
- Coordinate Inspection/Punchlist
- Coordinate Close-Out Documents



# HARRISBURG WASTE TO ENERGY FACILITY PROPOSAL FOR SERVICES

---

## B. Construction Management Option

Barlow Projects has proposed that the construction, beyond the core facility, be broken down into multiple bid packages and be publicly bid utilizing a construction manager.

Barlow would be responsible for the design and construction of the core facility including but not limited to the equipment from the feed chute to the economizer. Work outside this area, including services such as electric; steam piping, etc. to their equipment, would be part of the bid packages managed by the construction manager.

Reynolds proposes to provide agency construction management services to assist the city with the management of the entire project, acting as the owner's agent, and to manage the construction of the work outside the core facility. In addition, Reynolds will provide staff and consulting services to manage the MBE/WBE program. Reynolds will provide a full on site staff including a Project Manager, Project Superintendent, Project Coordinator and technical support as required.

### Scope of Work:

- Project Management, Planning and Administration
- Prepare Budgets and Estimates
- Prepare Project Schedule
- Attend Meetings
- Management of the MBE/WBE Program
- Prepare Bid Packages
- Bid Project
- Assist with Receipt of Bids and Contract Awards
- Project Oversight/Administration
- Chair Meetings
- Manage MBE/WBE Program During Construction
- Budget and Cost Control
- Update Schedules and Schedule Control
- Project Documentation
- Quality Enhancement
- Contractor Coordination
- Coordinate with Commissioning
- Coordinate Inspections/Punchlist
- Coordinate Clout-Out Documents



## HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR OWNER'S REPRESENTATIVE SERVICES

### *Pre-Construction/Bidding Phase (12 Weeks)*

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Planning & Administration	80	\$100	\$8,000
Sr. Project Mgr.	Review/Comment on Budgets & Estimates	60	\$100	\$6,000
Sr. Project Mgr.	Review/Comment on Schedule	20	\$100	\$2,000
Sr. Project Mgr.	Attend Meetings	40	\$100	\$4,000
Sr. Project Mgr.	Coordinate with MBE/WBE Program	40	\$100	\$4,000
Sr. Project Mgr.	Review/Comment on Bid Documents	40	\$100	\$4,000
Sr. Project Mgr.	Assist with Bidding and Local Participation	80	\$100	\$8,000
Sr. Project Mgr.	Assist with Receipt of Bids and Contract Awards	60	\$100	\$6,000
Arch./Civil/Structural Est.	Review Budgets and Estimates	40	\$100	\$4,000
Mechanical Est.	Review Budgets and Estimates	40	\$100	\$4,000
Electrical Est.	Review Budgets and Estimates	40	\$80	\$3,200
Clercial		80	\$40	\$3,200
<b>Sub-Total</b>		<b>620</b>		<b>\$56,400</b>

### *Construction Phase (78 Weeks)*

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	3,000	\$100	\$300,000
Sr. Project Mgr.	Attend Meetings			
Sr. Project Mgr.	Coordinate with MBE/WBE Program			
Sr. Project Mgr.	Quality Enhancement			
Sr. Project Mgr.	Budget and Cost Control			
Sr. Project Mgr.	Review Schedules			
Sr. Project Mgr.	Project Documentation			
Arch./Civil/Structural Est.	Technical Support	100	\$100	\$10,000
Mechanical Est.	Technical Support	100	\$100	\$10,000



**HARRISBURG WASTE TO ENERGY FACILITY FEE  
PROPOSAL FOR OWNER'S REPRESENTATIVE SERVICES**

Electrical Est.	Technical Support	100	\$80	\$8,000
Clerical		800	\$40	\$32,000
<b>Sub-Total</b>		<b>4,100</b>		<b>\$360,000</b>

**MBE/WBE Program**

Staff Position	Task	Hours	Rate	Amount
Consultants		21	\$5,000	\$105,000
Fred Clark	Coordination of MBE/WBE	300	\$110	\$33,000
Clerical		300	\$40	\$12,000
<b>Sub-Total</b>		<b>621</b>		<b>\$150,000</b>

**Commissioning Close-Out Phase (12 Weeks)**

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	480	\$100	\$48,000
Sr. Project Mgr.	Attend Meetings			
Sr. Project Mgr.	Coordinate with Commissioning			
Sr. Project Mgr.	Coordinate Inspections/Punchlist			
Sr. Project Mgr.	Coordinate Close-Out Documents			
Clerical		100	\$40	\$4,000
<b>Sub-Total</b>		<b>580</b>		<b>\$52,000</b>

**Reimbursable Expenses**

Expense	Months	Unit Price	Amount
Pre-Construction Reimbursable Expenses	3	\$300	\$900
Photocopies	21	\$150	\$3,150
Postage/UPS	21	\$100	\$2,100
Jobsite Office Space	21	\$250	\$5,250
Jobsite Office Equipment/Computer	21	\$250	\$5,250



**HARRISBURG WASTE TO ENERGY FACILITY FEE  
PROPOSAL FOR OWNER'S REPRESENTATIVE SERVICES**

Jobsite Office Supplies	21	\$50	\$1,050
Jobsite Office Telephone	21	\$150	\$3,150
Miscellaneous Costs	Flamp Sum	N/A	\$1,050
<b>Sub-Total</b>			<b>\$21,900</b>

**TOTAL FEE**

Pre-Construction/Bidding Phase .....	\$56,400
Construction Phase .....	\$360,000
MBE/WBE Program .....	\$150,000
Commissioning/Close-Out .....	\$52,000
Reimbursables .....	\$21,900
<b>TOTAL .....</b>	<b>\$640,300</b>



**HARRISBURG WASTE TO ENERGY FACILITY FEE  
PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES**

***Pre-Construction/Bidding Phase (12 Weeks)***

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Management, Planning & Administration	80	\$100	\$8,000
Sr. Project Mgr.	Prepare Budgets & Estimates	80	\$100	\$8,000
Sr. Project Mgr.	Prepare Project Schedule	40	\$100	\$4,000
Sr. Project Mgr.	Attend Meetings	40	\$100	\$4,000
Sr. Project Mgr.	Coordinate with MBE/WBE Program	40	\$100	\$4,000
Sr. Project Mgr.	Assist with Receipt of Bids and Contract Awards	60	\$100	\$6,000
Asst. Project Mgr.	Prepare Bid Packages	60	\$68	\$4,080
Asst. Project Mgr.	Bid Project	120	\$68	\$8,160
Arch./Civil/Structural Est.	Prepare Budgets and Estimates	80	\$100	\$8,000
Mechanical Est.	Prepare Budgets and Estimates	100	\$100	\$10,000
Electrical Est.	Prepare Budgets and Estimates	100	\$80	\$8,000
Scheduler	Prepare Project Schedule	40	\$68	\$2,720
Clerical		120	\$40	\$4,800
<b>Sub-Total</b>		<b>960</b>		<b>\$79,760</b>

***Construction Phase (78 Weeks)***

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	3,000	\$100	\$300,000
Sr. Project Mgr.	Chair Meetings			
Sr. Project Mgr.	Coordinate with MBE/WBE Program			
Sr. Project Mgr.	Budget and Cost Control			
Sr. Project Mgr.	Update Schedules and Schedule Control			
Sr. Project Mgr.	Technical Support			
Asst. Project Mgr.	Project Documentation	3,000	\$68	\$204,000
Project Superintendent	Quality Enhancement	3,000	\$90	\$270,000



**HARRISBURG WASTE TO ENERGY FACILITY FEE  
PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES**

Project Superintendent	Contractor Coordination			
Project Superintendent	Technical Support			
Electrical Est.	Technical Support	200	\$80	\$16,000
Scheduler	Update Schedules	200	\$68	\$13,600
Project Coordinator		3,000	\$40	\$120,000
<b>Sub-Total</b>		<b>12,400</b>		<b>\$923,600</b>

***MBE/WBE Program***

Staff Position	Task	Hours	Rate	Amount
Consultants		21	\$5,000	\$105,000
Fred Clark	Coordination of MBE/WBE	300	\$110	\$33,000
Clerical		300	\$40	\$12,000
<b>Sub-Total</b>		<b>621</b>		<b>\$150,000</b>

***Commissioning Close-Out Phase (12 Weeks)***

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	480	\$100	\$48,000
Sr. Project Mgr.	Attend Meetings			
Sr. Project Mgr.	Coordinate with Commissioning			
Sr. Project Mgr.	Coordinate Inspections/Punchlist			
Sr. Project Mgr.	Coordinate Close-Out Documents			
Project Superintendent	Quality Enhancement	240	\$90	\$21,600
	Contractor Coordination			
Clerical		480	\$40	\$19,200
<b>Sub-Total</b>		<b>1,200</b>		<b>\$88,800</b>



**HARRISBURG WASTE TO ENERGY FACILITY FEE  
PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES**

**Reimbursable Expenses**

Expense	Months	Unit Price	Amount
Pre-Construction Reimbursable Expenses	3	\$500	\$1,500
Photocopies	21	\$300	\$6,300
Postage/UPS	21	\$200	\$4,200
Faxes	30	\$200	\$6,000
Jobsite Office Space	21	\$350	\$7,350
Jobsite Office Equipment/Computer	21	\$500	\$10,500
Jobsite Office Supplies	21	\$100	\$2,100
Jobsite Office Telephone	21	\$200	\$4,200
Miscellaneous Costs	Lump Sum	N/A	\$1,350
<b>Sub-Total</b>			<b>\$43,500</b>

**TOTAL FEE**

Pre-Construction/Bidding Phase .....	\$79,760
Construction Phase .....	\$923,600
MBE/WBE Program .....	\$150,000
Commissioning/Close-Out .....	\$88,800
Reimbursables .....	\$43,500
<b>TOTAL .....</b>	<b>\$1,285,660</b>



# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

## MEMORANDUM

TO: Stephen R. Reed, Mayor  
FROM: Thomas J. Mealy, Executive Director *TJ Mealy*  
DATED: May 19, 2003  
IN RE: City Special Projects Reserve Fund

On May 16, 2003 we received the sum of \$138,000.00 in unencumbered funds from the Harrisburg Parking Authority which has been deposited into the City Special Projects Reserve Fund yielding a total fund balance in that account of \$138,195.48.

TJM:kmm

**SHERWOODS SPIRIT OF AMERICA**  
**F A X****From:**

April 22, 2003

*Sherwoods Spirit of America*  
130 Lincoln Avenue  
Santa Fe NM, 87501  
Tel: (505) 988-1776  
Fax: (505) 992-1812

**TO:** Joni Willingham  
City of Harrisburg  
717/255-7278 - 4 pages

Dear Joni,

Thank you for your fax of April 22, regarding the damaged property. Attached you will find a copy of the release concerning this unfortunate occurrence. A hard copy has been sent to you via FedEx. Please advise how you want the damaged items returned to you.

I look forward to receiving your check in the amount of \$32,130.00. Thanking you in advance.

Yours truly,



Michael D. Kokin

P. S. We have also enclosed a copy of our invoice #7259.

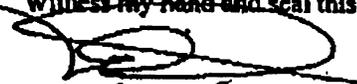
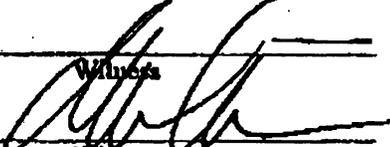
**RELEASE**

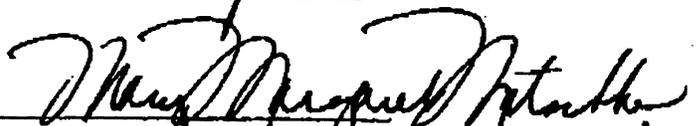
**FOR PROPERTY DAMAGE ONLY**

In consideration of the payment to me of the sum of Thirty Two Thousand One Hundred and Thirty Dollars (\$32,130), by or on behalf of **CITY OF HARRISBURG** (Payer), the receipt of which is hereby acknowledged, I Micheal Kokin of Sherwoods Spirit of America do hereby release and forever discharge the said Payer from any and all liability for damages to any and all property resulting from an accident, casualty or event occurring on or about the 28<sup>th</sup> day of February, 2003, regarding damages to the following artifacts:

- Item 5342 - Sioux Pipe Stem with Steatite Bowl
- Item 5927 - Northern Plains Pipe bow & Catlinite Stem
- Item 6196 - Photograph of Spanish American War Officer. Frame damaged.
- Item SF1441 - Oglala Sioux Head Ornament
- Item 5336 - Hoop bound w/leather.

Witness my hand and seal this 27th day of April, 2003.

  
 \_\_\_\_\_  
 Witness  
  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Notary & My Commission  
 expires on 5/04/05.



**Sherwoods**

Spirit of America

130 Lincoln Avenue  
Santa Fe, NM 87501-4713

(505) 988-1776

Fax (505) 992-1812

INVOICE NO: 7259

**Sales Receipt**

Page 1 of 2

FFL#5-85-049-01-4D-35113

**SOLD TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

**Workorder No:**

**SHIP TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

<b>INVOICE DATE:</b>	<b>SHIP DATE:</b>	<b>SALESPERSON</b>	<b>SHIPPED VIA:</b>	<b>TERMS:</b>
4/22/03	4/22/03	Mike		Net receipt of invoice

Item	Description		Price
5336	Northern Plains Medicine Wand Dear artler handle w/6 incised circles painted red, strong attachment, tightly wrapped hide strips attach a hoop shaped piece of hide that is partly wrapped in tanned hide tied w/string. 13" Long	3500 / 0	3,500.00
5342	Sioux Pipe Stem W/Steatite Bowl Twisted wood stem w/incised circles, pipe bowl w/steatite hearts outlined in lead. 32" long	16000 / 0	16,000.00
5927	Northern Plains Pipe Bowl & Catlinite Stem Exquisitely carved pipe bowl out of catlinite in the form of a rams head or bighorn, and catlinite stem carved in a twisted form. Unusual to find this animal depicted in sculptural form as it more commonly appears in Native American graphic art. This particular bowl has the distinctive thick, curling horns, well-defined ears, holes for nostrils, raised protuberances for eyes and an incised mouth. Fitted wood mouthpiece. Few pipes of this caliber are in museum collections and other examples can be seen in the book "Plains Indian Sculpture - A Traditional Art from America's Heartland" by John C. Ewers. Pgs. 19, Plate 4; pg. 56, Figure 22 and 23; pg. 57, Figure 24. 19 1/4" Long overall	12500 / 0	12,500.00
Repair	Repair of 6196 - Picture frame Repair	100 / 0	100.00
Repair	Repair of SF1441 Repair	30 / 0	30.00

Refrains are accepted for GALLERY CREDIT ONLY, unless defective, and must be made within 10 days of delivery at Purchaser's destination. This sale is subject to, and Purchaser hereby agrees to terms, conditions stated herein. **TERMS CONDITIONS:** Due and payable at delivery of goods. A finance charge (1.3% monthly, annual rate of 15%) will be charged on all past due balances. Purchaser agrees to pay all collection costs including attorney's fees in the event that the collection of the purchase price or any part thereof is referred to a collection agency or attorney. The Gallery is required to deliver the items here to Purchaser or Purchaser's destination upon receipt. Title of the items described shall pass to Purchaser subject to Gallery's security interest upon tender at Purchaser's destination. The Gallery retains and Purchaser grants to the Gallery a security interest in the works of art described herein to secure the purchase stated in this invoice/receipt. Security interest can be secured in turn by the Gallery's retaining possession of the works of art until full payment for them has been received. If the Purchaser defaults on the payment, Gallery shall have the right and remedies granted by the Uniform Commercial Code. Consistent with copyright laws, the Gallery retains the exclusive right to reproduce the art by any means and in any form and the Purchaser agrees not to reproduce the work of art in any form without the prior written consent of the Gallery. This sale is subject to Federal, State legislation such as those related to fine art sales, consignment, insurance, artist-dealer relationships, etc., which might be promulgated from time to time.

**Sherwoods**

Spirit of America

130 Lincoln Avenue  
Santa Fe, NM 87501-4713

(505) 988-1776

Fax (505) 992-1812

INVOICE NO: 7259

**Sales Receipt**

Page 2 of 2

FFL#5-85-049-01-4D-35113

**SOLD TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

Workorder No:

**SHIP TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

<b>INVOICE DATE:</b>	<b>SHIP DATE:</b>	<b>SALESPERSON</b>	<b>SHIPPED VIA:</b>	<b>TERMS:</b>
4/22/03	4/22/03	Mike		Net receipt of Invoice

Item	Description	Price
------	-------------	-------

As per Release Agreement dated April 22, 2003.  
Items returned:  
5336, 5342, and 5927

Net Invoice	32,130.00
VOC	0.00
Trade	0.00
Shipping & Handling	0.00
<b>Sub Total</b>	<b>32,130.00</b>
Sales Tax	0.00

Payment Information

<b>Invoice Total</b>	<b>32,130.00</b>
Total Payments	0.00
<b>Final Balance</b>	<b>32,130.00</b>

Remits are accepted for GALLERY CREDIT ONLY, unless defective, and must be made within 10 days of delivery at Purchaser's destination. This sale is subject to, and Purchaser hereby agrees to terms conditions stated herein. **TERMS CONDITIONS:** Due and payable on delivery of goods. A finance charge (1.3% monthly, annual rate of 15%) will be charged on all past due balances. Purchaser agrees to pay all collection costs including attorney's fees in the event that the collection of the purchase price or any part thereof is referred to a collection agency or attorney. The Gallery is required to deliver the items hereof as Purchaser or Purchaser's destination shown herein. Title of the items described shall pass to Purchaser subject to Gallery's security interest upon tender at Purchaser's destination. The Gallery retains and Purchaser grants to the Gallery a security interest in the works of art described herein to secure the purchase price until full payment is received. Security interest can be secured in favor of the Gallery's retaining possession of the works of art until full payment for them has been received. If the Purchaser defaults in the payment, Gallery shall have the right and remedies granted by the Uniform Commercial Code. Consistent with copyright law, the Gallery retains the exclusive right to reproduce the art by any means and in any form and the Purchaser agrees not to reproduce the work of art in any form without the prior written consent of the Gallery. This sale is subject to Federal State legislation such as those related to fine art sales, consignments, insurance, artist-dealer relationships, etc., which might be promulgated from time to time.



Mayor Stephen R. Reed

APR 25 2003

**Memo from the desk of:**

ROBERT F. KROBOTH, CGFM  
Deputy Business Administrator for Finance

4/25/03

*TO: TOM MEALY, EXECUTIVE DIRECTOR  
THE HARRISBURG AUTHORITY*

*RE: ATTACHED ARTIFACTS INVOICE AND  
RELATED RELEASE*

*PLEASE PROCESS THIS INVOICE FOR PAYMENT  
FROM THE CITY'S SPECIAL PROJECTS ACCOUNT  
OR OTHER APPROPRIATE FUNDING SOURCE  
AT YOUR EARLIEST CONVENIENCE.*

*THANKS!*

*CC: LINDA LINGIE  
GLENDA KELLER  
FILE*



Mayor Stephen R. Reed

**Memo from the desk of:**

To: ROBERT F. KROBOTH, CGFM  
Deputy Business Administrator for Finance

4/12/03

To: MAYOR REED

VIA: LINDA LINGLE

RE: DAMAGED ARTIFACTS

CONSIDERING OUR TENUOUS GENERAL  
FUND CASH POSITION, WOULD YOU BE  
AMENABLE TO REQUESTING THE HARRISBURG  
AUTHORITY PURCHASING THESE ARTIFACTS?  
WE WOULD STILL PURSUE THE INSURANCE  
COVERAGE REIMBURSEMENT AND ACQUIRE A RELEASE  
AND HOLD HARMLESS AGREEMENT FROM SHERWOOD.

CC: FILE

I doubt THA has the funds to cover this expense  
at this time but you can ask them. If they do  
not have the money, then we simply hold the  
billing until one of us does.

S. Reed 4-15-03

✓  
T. Mealy / 10-19-06

- \$11 mil + being held while plant flounders  
+ construction shut down for  
6 weeks

(A) - \$60,000 for Flyash system  
40,000 Probe Air System  
Vendor  
Lump, Carbon, Calibration Cassettes

\_\_\_\_\_ T

- Does he have money hidden elsewhere?

- S&F

(B) - Project Man - D. Lippi

- Advise all he is in charge;  
S&F, TITA to take direction  
from him

(C) - TITA - all acts re S&F

---

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

May 19, 2003

The Honorable Stephen R. Reed, Mayor  
City of Harrisburg  
Martin L. King Jr. City Government Center  
10 North Second Street  
Harrisburg, PA 17101-1678

*To - Thomas J. Mealy*

***In re: City Special Projects Reserve Fund***

Dear Mayor Reed:

I am enclosing for your consideration, a requisition for disbursement of funds from the City Special Projects Reserve Fund.

Per your instructions to Bob Kroboth, the Harrisburg Parking Authority has agreed to pay this outstanding invoice and in turn the City has agreed to reimburse the Harrisburg Parking Authority upon the receipt of funds estimated to be received in September 2003. The requisition includes:

1. Payment to Sherwoods Spirit of America in the amount of \$32,130.00 (Requisition No. 767)

Please call the Authority office at 232-3777 once the requisition has been signed. We will promptly pick up the requisition and deliver the check to the City.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

*Thomas J. Mealy*

Thomas J. Mealy  
Executive Director

TJM:ts

Enclosures

cc: THA Board Members (w/encs)

Robert Kroboth (w/encs)

Richard Kotz, HPA (w/enc)

CITY SPECIAL PROJECTS RESERVE FUND

REQUISITION FOR PAYMENT

TO: THE HARRISBURG AUTHORITY  
One Keystone Plaza, Suite 104  
Front and Market Street  
Harrisburg, PA 17101

Requisition No. 767

1. The undersigned, Mayor of the City of Harrisburg, hereby requisitions the following amount of money constituting a request for payment to:

Payee: Sherwoods Spirit of America  
130 Lincoln Avenue  
Santa Fe, NM 87501

Purpose of Payment: Various items listed for the City of Harrisburg Archives

Amount: \$32,130.00

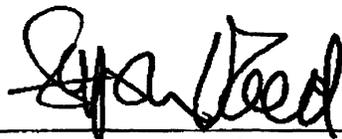
The foregoing amount is requisitioned from the City Special Projects Reserve Fund, which fund was set up in accordance with The Harrisburg Authority's Resolution No. 1991-001 dated January 17, 1991. Said "City Special Projects Reserve Fund" has been set up at the M & T Bank - Account No. 37408-89864.

2. The undersigned certifies that said amount is unpaid and has not been the basis of any previous requisition for payment from the City Special Projects Reserve Fund.

CITY OF HARRISBURG

Dated: May 19, 2003

By: \_\_\_\_\_



Stephen R. Reed, Mayor

Copies: The Harrisburg Authority, Original  
Stephen R. Reed, Mayor  
Robert F. Kroboth, City Finance Director  
Daniel R. Lispi  
George Hicks - National Civil War Museum

**PAID** \$32,130.00

CHECK NO. 1532

DATE 5/19/03

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

## MEMORANDUM

TO: Stephen R. Reed, Mayor

FROM: Thomas J. Mealy, Executive Director *TJM*

DATED: May 19, 2003

IN RE: City Special Projects Reserve Fund

On May 16, 2003 we received the sum of \$138,000.00 in unencumbered funds from the Harrisburg Parking Authority which has been deposited into the City Special Projects Reserve Fund yielding a total fund balance in that account of \$138,195.48.

TJM:kmm

**SHERWOODS SPIRIT OF AMERICA**  
**F A X**

**From:**

April 22, 2003

*Sherwoods Spirit of America*  
130 Lincoln Avenue  
Santa Fe NM, 87501  
Tel: (505) 988-1776  
Fax: (505) 992-1812

**TO: Joni Willingham**  
City of Harrisburg  
717/255-7278 - 4 pages

Dear Joni,

Thank you for your fax of April 22, regarding the damaged property. Attached you will find a copy of the release concerning this unfortunate occurrence. A hard copy has been sent to you via FedEx. Please advise how you want the damaged items returned to you.

I look forward to receiving your check in the amount of \$32,130.00. Thanking you in advance.

Yours truly,



Michael D. Kokin

P. S. We have also enclosed a copy of our invoice #7259.

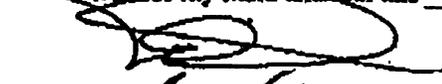
**RELEASE**

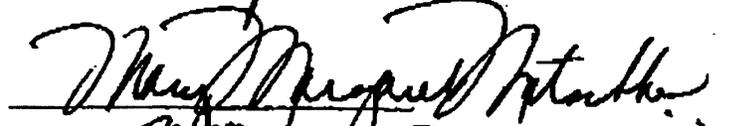
**FOR PROPERTY DAMAGE ONLY**

In consideration of the payment to me of the sum of Thirty Two Thousand One Hundred and Thirty Dollars (\$32,130), by or on behalf of CITY OF HARRISBURG (Payer), the receipt of which is hereby acknowledged, I Michael Kokin of Sherwoods Spirit of America do hereby release and forever discharge the said Payer from any and all liability for damages to any and all property resulting from an accident, casualty or event occurring on or about the 28<sup>th</sup> day of February, 2003, regarding damages to the following artifacts:

- Item 5342 – Sioux Pipe Stem with Stealite Bowl
- Item 5927 – Northern Plains Pipe bow & Catlinite Stem
- Item 6196 – Photograph of Spanish American War Officer. Frame damaged.
- Item SF1441 – Oglala Sioux Head Ornament
- Item 5336 – Hoop bound w/leather.

Witness my hand and seal this 22nd day of April, 2003.

  
 \_\_\_\_\_  
 Witness  
  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Notary & My commission  
 expires on 5/04/05.



**Sherwoods**  
Spirit of America

130 Lincoln Avenue  
Santa Fe, NM 87501-4713

**Sales Receipt**  
Page 1 of 2

INVOICE NO: 7259

(505) 988-1776

Fax (505) 992-1812

FFL#5-85-049-01-4D-35113

**SOLD TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

**Workorder No:**  
**SHIP TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

<b>INVOICE DATE:</b> 4/22/03	<b>SHIP DATE:</b> 4/22/03	<b>SALESPERSON</b> Mike	<b>SHIPPED VIA:</b>	<b>TERMS:</b> Net receipt of invoice
------------------------------	---------------------------	-------------------------	---------------------	--------------------------------------

Item	Description	Price
6396	Northern Plains Medicine Wheel Deer antler handle with Inlaid eyes painted red, strong attachment, tightly wrapped hide strips attach a hoop shaped piece of hide that is partly wrapped in tanned hide tied withing. 13" Long	3,500.00
5342	Bloux Pipe Stem W/Stealths Bowl Twisted wood stem wrapped circles, pipe bowl without catlinite hearts outlined in lead. 32" long	16,000.00
8927	Northern Plains Pipe Bowl & Catlinite Stem Exquisitely carved pipe bowl out of catlinite in the form of a ram's head or bighorn, and catlinite stem carved in a twisted form. Unusual to find this animal depicted in sculptural form, as it more dominantly appears in Native American graphic art. The particular bowl has the distinctive thick, curling horns, well-defined ears, holes for nostrils, raised protuberances for eyes and an Inlaid mouth. Fitted wood mouthpiece. Few pieces of this caliber are in museum collections and other examples can be seen in the book "Prairie Indian Sculpture - A Traditional Art from America's Heartland" by John C. Ewers. Pgs. 19, Plate 4; pg. 59, Figure 22 and 23; pg. 57, Figure 24. 18 1/4" Long overall	12,500.00
Repair	Repair of 6196 - Picture frame	100.00
Repair	Repair	100.00
Repair	Repair of SF1441	30.00
Repair	Repair	30.00

Repairs are completed per GALLERY CREDIT ONLY, unless specified, and must be made within 14 days of delivery in Purchaser's destination. This sale is subject to, and Purchaser hereby agrees to, terms and conditions stated herein. **TERMS AND CONDITIONS:** Due and payable at delivery of goods. A deposit charge (1.5% monthly, amount not to exceed 10% of net price) shall be charged on all past due balances. Purchaser agrees to pay all certificate costs including shipping's fees in the event that the certificate of the purchase price or any part thereof is referred to a collection agency or attorney. The Gallery is required to deliver the items long to Purchaser or Purchaser's destination absent breach. Title of the items described shall pass to Purchaser subject to Gallery's security interest upon tender of Purchaser's description. The Gallery retains and Purchaser agrees to the Gallery's security interest in the work of art described hereon. Repairs to any item purchased hereon shall be at the discretion of the Gallery. Purchaser shall have the right and responsibility to return the work of art to any gallery. The Gallery retains the exclusive right to reproduce the art by any means and in any form and the Purchaser agrees not to reproduce the work of art in any form without the prior written consent of the Gallery. This sale is subject to Federal, State legislation such as those related to gun or child pornography, internet, intellectual property, etc., which might be promulgated from time to time.

**Sherwoods**  
Spirit of America

130 Lincoln Avenue  
Santa Fe, NM 87501-4713

(505) 988-1776  
Fax (505) 992-1812

INVOICE NO: 7259

**Sales Receipt**

Page 2 of 2

FFL#5-85-049-01-4D-35113

**SOLD TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

**Workorder No:**

**SHIP TO:** The City of Harrisburg  
10 North Second Street  
Harrisburg PA 17101

<b>INVOICE DATE:</b>	<b>SHIP DATE:</b>	<b>SALESPERSON</b>	<b>SHIPPED VIA:</b>	<b>TERMS:</b>
4/22/03	4/22/03	Mike		Net receipt of Invoice

Item	Description	Price
------	-------------	-------

As per Release Agreement dated April 22, 2003.  
Items returned:  
5336, 5342, and 5827

Net Invoice	32,130.00
VOC	0.00
Trade	0.00
Shipping & Handling	0.00
Sub Total	32,130.00
Sales Tax	0.00

Payment Information

<b>Invoice Total</b>	<b>32,130.00</b>
Total Payments	0.00
<b>Final Balance</b>	<b>32,130.00</b>

Receipt not accepted for GALLERY CREDIT ONLY, unless defective, and must be made within 30 days of delivery at Purchaser's destination. This sale is subject to, and Purchaser hereby agrees to terms, conditions stated herein. **TERMS CONDITIONS:** Due and payable all delivery of goods. A finance charge (1.3% monthly, annual rate of 1.5%) will be charged on all past due balances. Purchaser agrees to pay all collection costs including attorney's fees in the event that the collection of the purchase price or any part thereof is referred to a collection agency or attorney. The Gallery is required to deliver the items listed on Purchaser or Purchaser's destination shown herein. Title of the items described shall pass to Purchaser subject to Gallery's security interest upon transfer at Purchaser's destination. The Gallery retains and Purchaser grants to the Gallery a superior interest in the works of art described herein to secure the purchase thereof in this invoice/receipt. Security interest can be secured in favor of the Gallery's remaining possession of the works of art until full payment for them has been received. If the Purchaser defaults in the payment, Gallery shall have the right and remedies granted by the Uniform Commercial Code. Consistent with copyright laws, the Gallery retains the exclusive right to reproduce the art by any means and in any form and the Purchaser agrees not to reproduce the work of art in any form without the prior written consent of the Gallery. This sale is subject to Federal, State legislation such as those related to fine art sales, consignments, insurance, artist-dealer relationships, etc., which might be promulgated from time to time.



Mayor Stephen R. Reed

APR 25 2003

**Memo from the desk of:**

ROBERT F. KROBOTH, CGFM  
Deputy Business Administrator for Finance

4/25/03

TO: TOM MEALY, EXECUTIVE DIRECTOR  
THE HARRISBURG AUTHORITY

RE: ATTACHED ARTIFACTS INVOICE AND  
RELATED RELEASE

PLEASE PROCESS THIS INVOICE FOR PAYMENT  
FROM THE CITY'S SPECIAL PROJECTS ACCOUNT  
OR OTHER APPROPRIATE FUNDING SOURCE  
AT YOUR EARLIEST CONVENIENCE.

THANKS!

CC: LINDA LANGE  
GLENDA KELLER  
FILE

Mayor Stephen R. Reed



**Memo from the desk of:**

To — ROBERT F. KROBOTH, CGFM *RFK* 4/12/03  
Deputy Business Administrator for Finance

To: Mayor Reed *SR*  
Via: Linda Lingle *LL*

RE: DAMAGED ARTIFACTS

CONSIDERING OUR TENUOUS GENERAL  
FUND CASH POSITION, WOULD YOU BE  
AMENABLE TO REQUESTING THE HARRISBURG  
AUTHORITY PURCHASING THESE ARTIFACTS?  
WE WOULD STILL PURSUE THE INSURANCE  
COVERAGE REIMBURSEMENT AND ACQUIRE A RELEASE  
AND HOLD HARMLESS AGREEMENT FROM SHERWOOD.

CC: FAE

I doubt THA has the funds to cover this expense  
at this time but you can ask them. If they do  
not have the money, then we simply hold the  
billing until one of us does.

*SR*  
S. Reed 4-15-03

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

July 20, 2000

Honorable Stephen R. Reed  
City of Harrisburg  
Martin L. King, Jr. Govt Ctr  
10 North Second Street  
Harrisburg, PA 17101

Dear Mayor Reed:

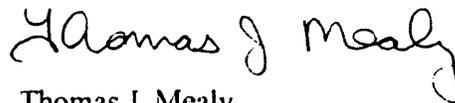
I apologize for the misunderstanding and hope that the enclosed envelope which was sealed by your office and which includes the original check in the amount of \$33,866.25 payable to Early American History Auctions, Inc. minimizes the problem.

Explanation: In the month of June, The Harrisburg Authority was closing one account and opening a new City Special Project account. An error in the balance was made during the process of reconciliation. Upon discovery, staff retrieved the check that was issued to Early American History Auctions, Inc. from your office due to insufficient funds. I assumed that your office was informed of the error when the check was retrieved but apparently I was mistaken.

To insure that adequate funds are in place to cover today's check, I transferred the entire amount from the administration fund. The amount, \$33,866.25, will have to be reimbursed at a latter time.

The only answer that can be given to the question of whether THA has charged expenses to the city account is no. I have enclosed a transaction report for calendar year 2000 to satisfy your interest to know what has been charged to the city account.

Sincerely yours,



Thomas J. Mealy  
Executive Director

cc: Trent Hargrove

## THA - Working Capital Account QuickReport

As of December 31, 2000

07/20/00

Type	Date	Num	Name	Memo	Split	Amount	Balance
							1,079.20
<b>1500 - Cash - restricted</b>							1,079.20
<b>1510 City Special Projects Fund</b>							1,079.20
Bill Pmt - Check	1/4/00	280	Greater Harrisburg NAACP Youth	Requisition No 174	2000 Accounts payable	-1,000.00	79.20
Payment	1/11/00	050688	PHEAA 1991 Admin		1700 Accounts Receiva	7,500.00	7,579.20
Deposit	1/14/00			Deposit	SPLIT	187,713.00	195,292.20
Bill Pmt - Check	1/21/00	292	America West Archives	Inv No 5014	2000 Accounts payable	-1,208.50	194,083.70
Bill Pmt - Check	1/21/00	294	Brian & Mana Green, Inc	Inv #02946	2000 Accounts payable	5,280.00	188,823.70
Bill Pmt - Check	1/21/00	287	Days of '49, Inc	Requisition No 181	2000 Accounts payable	-14,560.00	174,323.70
Bill Pmt - Check	1/21/00	284	Fields of Glory	Req #178	2000 Accounts payable	-3,300.00	171,023.70
Bill Pmt - Check	1/21/00	289	Fitch's Trading Post	Inv #13099	2000 Accounts payable	-4,306.00	166,717.70
Bill Pmt - Check	1/21/00	296	Gary Hein	Requisition No 190	2000 Accounts payable	-35,300.00	130,417.70
Bill Pmt - Check	1/21/00	281	Inner Voices	Requisition No 175	2000 Accounts payable	-1,000.00	129,417.70
Bill Pmt - Check	1/21/00	298	Jerry J. Mulholland	Inv # 04601,02,05,07	2000 Accounts payable	-25,500.00	104,417.70
Bill Pmt - Check	1/21/00	285	Libor, Woody	Requisition No 179	2000 Accounts payable	-3,025.00	101,392.70
Bill Pmt - Check	1/21/00	291	Mike Brackin	Inv #95153	2000 Accounts payable	-8,155.00	93,237.70
Bill Pmt - Check	1/21/00	295	Osage Trading	Requisition No 189	2000 Accounts payable	-9,500.00	83,737.70
Bill Pmt - Check	1/21/00	288	PA-HAS-KA Books	Inv # 15387 & 15778	2000 Accounts payable	-13,500.00	70,237.70
Bill Pmt - Check	1/21/00	282	Sharpsburg Arsenal	Requisition No 176	2000 Accounts payable	-34,905.00	35,332.70
Bill Pmt - Check	1/21/00	286	Silver Lady Antiques	Inv #122899 & 112589	2000 Accounts payable	-7,139.00	28,183.70
Bill Pmt - Check	1/21/00	293	The Horse Soldier	Inv #29, 32	2000 Accounts payable	-8,975.00	21,508.70
Bill Pmt - Check	1/21/00	283	Timothy Hughes Rare & Early Ne	Req #177	2000 Accounts payable	-3,024.00	17,984.70
Bill Pmt - Check	1/21/00	297	Walter O'Connor	Requisition No 191	2000 Accounts payable	-7,000.00	10,984.70
Bill Pmt - Check	1/24/00	290	Outpost	Inv #4312	2000 Accounts payable	-3,068.50	7,916.20
Bill Pmt - Check	1/27/00	299	Horse Feathers	Requisition No 193	2000 Accounts payable	-24.30	7,891.90
Bill Pmt - Check	2/9/00	301	Antebellum Covers	Requisition No 195	2000 Accounts payable	-3,445.00	4,446.90
Bill Pmt - Check	2/10/00	300	Mr Jack Snively	Requisition No 194	2000 Accounts payable	-337.08	4,109.82
Bill Pmt - Check	2/15/00	302	Libor, Woody	Requisition No 198	2000 Accounts payable	-520.00	3,589.82
Bill Pmt - Check	2/17/00	303	NAACP Youth Council	Requisition No 197	2000 Accounts payable	-800.00	2,789.82
Deposit	2/25/00			Deposit	4752 Miscellaneous	20,000.00	27,898.82
Bill Pmt - Check	2/29/00	305	Fields of Glory	Req #199	2000 Accounts payable	-14,843.00	7,346.82
Bill Pmt - Check	2/29/00	304	Sword & Saber	Requisition No 198	2000 Accounts payable	-650.00	7,296.82
Bill Pmt - Check	3/7/00	308	Mr. Robert Fayles	Requisition No 200	2000 Accounts payable	-337.00	6,959.82
Bill Pmt - Check	3/7/00	307	Sword & Saber	Requisition No 201	2000 Accounts payable	-1,750.00	5,209.82
Bill Pmt - Check	3/14/00	309	Mr Robert Fayles	Requisition No 203	2000 Accounts payable	-46.00	5,163.82
Bill Pmt - Check	3/14/00	310	Randy K. King	Requisition No 204	2000 Accounts payable	-127.65	5,036.17
Bill Pmt - Check	3/14/00	308	Timothy Hughes Rare & Early Ne	Req #202	2000 Accounts payable	2,100.00	2,936.17
Bill Pmt - Check	3/28/00	311	Michael D. Mellett	Req #205	2000 Accounts payable	-210.00	2,726.17
Payment	4/14/00	0072	PNC CAPS 1997	Admin Fee due 3/15/00	1700 Accounts Receiva	3,833.33	6,559.50
Payment	4/14/00	0072	PNC CAPS 1996	Admin Fee due 4/1/00	1700 Accounts Receiva	13,460.63	20,020.13
Payment	4/19/00	0072	PNC CAPS 1997		1700 Accounts Receiva	166.67	20,186.80
Deposit	5/4/00		Harrisburg Parking Authority	Deposit	4752 Miscellaneous	1,300,000.00	1,320,186.80
Bill Pmt - Check	5/8/00	312	Harrisburg High School SBI Progr	Req #206	2000 Accounts payable	-1,500.00	1,318,686.80
Bill Pmt - Check	5/8/00	314	Cooley Arts & Antiques	Req #208	2000 Accounts payable	-124,155.00	1,194,531.80
Bill Pmt - Check	5/8/00	315	Cornstock Mercantile Company	Req #209	2000 Accounts payable	-1,890.00	1,192,641.80
Bill Pmt - Check	5/8/00	316	Jerry J. Mulholland	Req #210	2000 Accounts payable	-19,895.00	1,172,746.80
Bill Pmt - Check	5/8/00	317	Theme Prints, Ltd	Req #211	2000 Accounts payable	-4,785.00	1,167,961.80
Bill Pmt - Check	5/8/00	318	Dumont Maps and Books of the	Req #212	2000 Accounts payable	-8,664.00	1,159,297.80
Bill Pmt - Check	5/8/00	319	America West Archives	Req #213	2000 Accounts payable	-248.00	1,159,049.80
Bill Pmt - Check	5/8/00	320	The Taos Company	Req #214	2000 Accounts payable	-4,995.00	1,154,054.80
Bill Pmt - Check	5/8/00	321	Calabaza	Req #215	2000 Accounts payable	-20,762.00	1,133,292.80
Bill Pmt - Check	5/8/00	322	W T Bailey	Req #216	2000 Accounts payable	-4,015.00	1,129,277.80
Bill Pmt - Check	5/8/00	323	Joseph H. Wyman	Req #217	2000 Accounts payable	-10,000.00	1,119,277.80
Bill Pmt - Check	5/8/00	324	Mark B. Pitley/Americana	Req #218	2000 Accounts payable	-2,500.00	1,116,777.80
Bill Pmt - Check	5/8/00	325	Smoky Hill Antque Mall, L L C	Req #219	2000 Accounts payable	-4,107.90	1,112,669.90
Bill Pmt - Check	5/8/00	328	Toh-Atin Gallery	Req #220	2000 Accounts payable	-5,226.00	1,107,443.90
Bill Pmt - Check	5/8/00	327	Annie's Antque Mall	Req #221	2000 Accounts payable	-413.65	1,107,020.25
Bill Pmt - Check	5/8/00	328	Temar Gallery, LLC	Req #222	2000 Accounts payable	-2,010.00	1,105,010.25
Bill Pmt - Check	5/8/00	329	Ellsworth Antque Mall	Req #223	2000 Accounts payable	-2,434.50	1,102,575.75
Bill Pmt - Check	5/8/00	330	Paul Weisberg/The Quest	Req #224	2000 Accounts payable	-13,655.00	1,088,920.75
Bill Pmt - Check	5/8/00	331	Richard L. Hill	Req #225	2000 Accounts payable	-2,167.50	1,086,753.25
Bill Pmt - Check	5/8/00	332	Max L. Goheen	Req #226	2000 Accounts payable	-1,500.00	1,085,253.25
Bill Pmt - Check	5/8/00	333	Hatfield Antques	Req #227	2000 Accounts payable	-15,770.00	1,069,483.25
Bill Pmt - Check	5/8/00	334	Legend Antiques, Inc	Req #228	2000 Accounts payable	-17,213.00	1,052,270.25
Bill Pmt - Check	5/8/00	350	The Antquary Ltd	Req #229	2000 Accounts payable	-1,725.00	1,050,545.25
Bill Pmt - Check	5/8/00	335	John Isaac Antiques	Req #230	2000 Accounts payable	-4,970.00	1,045,575.25
Bill Pmt - Check	5/8/00	354	Olin C Ervine	Req #231	2000 Accounts payable	-15,525.00	1,030,050.25
Bill Pmt - Check	5/8/00	336	G. Robinson Old Prints & Maps	Req #232	2000 Accounts payable	-1,800.00	1,028,450.25
Bill Pmt - Check	5/8/00	337	Ruxton's Trading Post	Req #233	2000 Accounts payable	8,474.51	1,021,975.74
Bill Pmt - Check	5/8/00	338	Libor, Woody	Req #234	2000 Accounts payable	-2,880.00	1,019,095.74
Bill Pmt - Check	5/8/00	339	PA-HAS-KA Books	Req #235	2000 Accounts payable	-24,500.00	994,595.74
Bill Pmt - Check	5/8/00	340	Sword & Saber	Req #236	2000 Accounts payable	8,250.00	986,345.74
Bill Pmt - Check	5/8/00	341	Bill & Brendan Synnamon	Req #237	2000 Accounts payable	-124,900.00	861,745.74
Bill Pmt - Check	5/8/00	342	Leasures Treasurers	Req #238	2000 Accounts payable	-13,750.00	847,995.74
Bill Pmt - Check	5/8/00	343	Silver Lady Antiques	Req #239	2000 Accounts payable	-58,208.00	789,789.74
Bill Pmt - Check	5/8/00	344	Hendershot Museum Consultants	Req #240	2000 Accounts payable	-97,500.00	692,289.74
Bill Pmt - Check	5/8/00	345	Days of '49, Inc	Req #241	2000 Accounts payable	-180,738.00	511,551.74
Bill Pmt - Check	5/8/00	346	O W A, Inc	Req #242	2000 Accounts payable	-36,100.00	475,451.74
Bill Pmt - Check	5/8/00	347	W H O. Manufacturing Co.	Req #243	2000 Accounts payable	-160,000.00	315,451.74
Bill Pmt - Check	5/8/00	348	Susquehanna Art Museum	Req #244	2000 Accounts payable	-35,000.00	280,451.74
Bill Pmt - Check	5/8/00	313	Third Street Antque Mall	Req #207	2000 Accounts payable	-12,955.00	267,456.74
Bill Pmt - Check	5/8/00	351	Third Street Antque Mall	Req #245	2000 Accounts payable	-46,280.00	221,176.74
Bill Pmt - Check	5/8/00	352	Las Cruces	Req #247	2000 Accounts payable	-667.50	220,509.24
Bill Pmt - Check	5/8/00	353	748 #4 American	Req #248	2000 Accounts payable	-1,462.25	219,046.99
Bill Pmt - Check	5/8/00	349	Larry D. Ready	VOID Req #245	2000 Accounts payable	0.00	219,046.99
Bill Pmt - Check	5/10/00	355	Sword & Saber	Requisition No 249	2000 Accounts payable	-4,500.00	214,546.99
Bill Pmt - Check	5/10/00	356	Timothy Hughes Rare & Early Ne	Req #250	2000 Accounts payable	-4,050.00	210,496.99
Bill Pmt - Check	5/17/00	358	Las Cruces		2000 Accounts payable	-24.00	210,472.99



### THA - Working Capital Account QuickReport

As of December 31, 2000

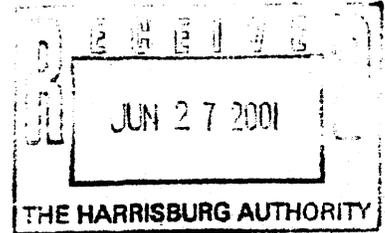
Type	Date	Num	Name	Memo	Split	Amount	Balance
Bill Pmt -Check	5/17/00	357	Silver Lady Antiques	Inv #051000	2000 Accounts payable	-32,750 00	177,722 99
Bill Pmt -Check	5/23/00	359	Randall Lee	Requisition No 253	2000 Accounts payable	-823 31	177,099 68
Bill Pmt -Check	5/30/00	362	Fields of Glory	Req #258	2000 Accounts payable	-23,388 00	153,713 68
Bill Pmt -Check	5/30/00	361	Sertz & Sertz Inc	Req # 255	2000 Accounts payable	-397 24	153,336 44
Bill Pmt -Check	5/30/00	360	Sharpsburg Arsenal	Requisition No 254	2000 Accounts payable	-4,000 00	149,336 44
Bill Pmt -Check	6/8/00	366	Christopher's Interiors	Requisition No 250	2000 Accounts payable	-3,405 00	145,931 44
Bill Pmt -Check	6/8/00	365	Larry D Ready	Req #259	2000 Accounts payable	-675 00	145,256 44
Bill Pmt -Check	6/8/00	364	Old Town Pet Shop	Requisition No 258	2000 Accounts payable	990 50	144,265 94
Bill Pmt -Check	6/8/00	363	Calabaza	Req #257	2000 Accounts payable	-20,471 00	123,794 94
Bill Pmt -Check	6/9/00	367	Donald E Nichols	Requisition No 261	2000 Accounts payable	-3,100 00	120,694 94
Check	6/14/00	368	The Harrisburg Authority	Close Out Account @ First Union	6951 City's Special Proj	-53,730 94	66,964 00
General Journal	6/14/00	6 2		Open Up New Acct @ Financial Trust	6951 City's Special Proj	53,730 94	120,694 94
Payment	6/20/00	059140	PHEAA 1991 Admin		1700 Accounts Receiva.	7,500 00	128,194 94
Check	6/25/00	369	The Harrisburg Authority	Void Check & Close Out Acct	SPLIT-	-87,435 00	40,759 94
General Journal	6/25/00	6 3		Void Ck #349 & T-fer Monies to New Account	6951 City's Special Proj	87,435 00	128,194 94
Bill Pmt -Check	6/27/00	1001	Larry D Ready	Req #245	2000 Accounts payable	-39,295 00	88,899 94
Bill Pmt -Check	6/27/00	1002	Larry D Ready	Req #245	2000 Accounts payable	-16,440 00	72,459 94
Bill Pmt -Check	6/27/00	1003	Larry D Ready	Req #245	2000 Accounts payable	-31,700 00	40,759 94
Bill Pmt -Check	6/27/00	1004	America West Archives	Req #263	2000 Accounts payable	-1,505 00	39,254 94
Bill Pmt -Check	6/27/00	1005	Comstock Mercantile Company	Req #269	2000 Accounts payable	-415 00	38,839 94
Bill Pmt -Check	6/27/00	1006	Early American History Auctions	Req #262	2000 Accounts payable	-33,866 25	4,973 69
Bill Pmt -Check	6/27/00	1007	Libor, Woody	Req #264	2000 Accounts payable	-3,105 00	1,868 69
Bill Pmt -Check	6/27/00	1008	Main St. Antique Mall	Req #267	2000 Accounts payable	-3,385 00	-1,516 31
Bill Pmt -Check	6/27/00	1009	PA-HAS-KA Books	Req #266	2000 Accounts payable	-2,700 00	-4,216 31
Bill Pmt -Check	6/27/00	1010	Sword & Saber	Req #268	2000 Accounts payable	-950 00	-5,166 31
Bill Pmt -Check	6/27/00	1011	Tombstone Territorial Trading Co	Req #265	2000 Accounts payable	-1,042 00	-6,208 31
Check	6/29/00	1012	The Harrisburg Authority	T-fer Balance to Acct @ First Union	-SPLIT-	-20,471 00	-26,679 31
General Journal	6/29/00	6,5		T-fer funds to Old Acct @ First Union	6951 City's Special Proj	20,471 00	-6,208 31
Bill Pmt -Check	7/7/00	1013	McBee Systems, Inc	23-33685700	2000 Accounts payable	-143 53	-6,351 84
Total 1510 City Special Projects Fund						-7,431 04	6,351 84
Total 1500 Cash - restricted						-7,431 04	-6,351 84
<b>TOTAL</b>						<b>-7,431 04</b>	<b>-6,351 84</b>



Inter Office Memo

City of Harrisburg

June 25, 2001



**TO:** Thomas J. Mealy, Executive Director  
The Harrisburg Authority

**FROM:** MAYOR STEPHEN R. REED *SR*

**SUBJECT:** Attached Invoices

From the special account maintained for draw and use by the City, the attached invoice should be paid.

If the balance in the account has been exhausted, you may transfer funds from a different account on a temporary basis in order to cover this and any other outstanding invoices that are pending. You may repay the source account with the added funds that will be coming into the City's account in connection with the June 29, 2001 closing on the Municipal Bond Pool.

SRR/psr-j

Office of the Mayor

April 11, 2002

to - Thomas J. Mealy  
Executive Director  
The Harrisburg Authority

APR 11 2002

On Friday, April 12, a minimum of \$1 million will become available for placement in the special account maintained for draw and use by the City.

The instruction provided by this office to the transaction participants was to assure that the full \$1.8 million to be received into the account would occur April 12. I am advised that a portion of the \$1.8 million will not be forthcoming until during May.

Attached are invoices totaling \$ 1,397,298.27, which must now be paid. Accordingly, this serves to request that checks be cut, with the standard requisition sheets to be signed by this office, for these invoices, such that checks can be issued Friday, April 12th.

To the extent that the transfer of funds from the April 12th Soc Gen transaction is not sufficient to cover all the attached, this serves to additionally request a temporary transfer of other THA funds to the special City account to assure coverage of the attached, with the temporary transfer sum to be reimbursed in May.



\_\_\_\_\_  
Mayor Stephen R. Reed

attachments

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

April 11, 2002

The Honorable Stephen R. Reed, Mayor  
City of Harrisburg  
Martin L. King Jr. City Government Center  
10 North Second Street  
Harrisburg, PA 17101-1678

## *In re: City Special Projects Reserve Fund*

Dear Mayor Reed:

I am enclosing for your consideration, requisitions for disbursement of funds from the City Special Projects Reserve Fund.

The purpose of the requisitions is to satisfy the request made of the Authority by the City of Harrisburg. The requisitions include:

1. Payment to Leo Stambaugh in the amount of \$117,453.00 (Requisition No.537)
2. Payment to Morning Star Antiques in the amount of \$92,100.00 (Requisition No. 538)
3. Payment to Cowboys & Indians Antiques in the amount of \$45,537.80 (Requisition No. 539)
4. Payment to Fields of Glory in the amount of \$61,083.00 (Requisition No. 540)
5. Payment to Fields of Glory in the amount of \$27,523.00 (Requisition No. 541)
6. Payment to Sword & Saber in the amount of \$5,758.75 (Requisition No. 542)
7. Payment to Ray Bowers in the amount of \$14,250.00 (Requisition No. 543)
8. Payment to Thunder Mountain Trading Company in the amount of \$8,485.00 (Requisition No. 544)

Honorable Stephen R. Reed

April 11, 2002

Page 3

28. Payment to Theme Prints, Ltd. in the amount of \$991.75 (Requisition No. 564)
29. Payment to Edward F. LaFond, Jr. in the amount of \$2,750.00 (Requisition No. 565)
30. Payment to Woody Libor in the amount of \$2,630.00 (Requisition No. 566)
31. Payment to Woody Libor in the amount of \$1,215.00 (Requisition No. 567)
32. Payment to The Christmas Attic in the amount of \$2,695.00 (Requisition No. 568)
33. Payment to The Old Print Gallery in the amount of \$7,678.00 (Requisition No. 569)
34. Payment to Tarbell Western Artifacts in the amount of \$10,400.00 (Requisition No. 570)
35. Payment to Peyton Wright in the amount of \$26,500.00 (Requisition No. 571)
36. Payment to Peyton Wright in the amount of \$7,900.00 (Requisition No. 572)
37. Payment to Peyton Wright in the amount of \$128,650.00 (Requisition No. 573)
38. Payment to Peyton Wright in the amount of \$65,000.00 (Requisition No. 574)
39. Payment to Peyton Wright in the amount of \$63,000.00 (Requisition No. 575)
40. Payment to Long John Silver Turquoise in the amount of \$558.63 (Requisition No. 576)
41. Payment to Sherwoods in the amount of \$108,112.50 (Requisition No. 577)
42. Payment to Sherwoods in the amount of \$75,000.00 (Requisition No. 578)
43. Payment to Hendershott Museum Consultants, Inc. in the amount of \$56,950.00 (Requisition No. 579)
44. Payment to Hendershott Museum Consultants, Inc. in the amount of \$47,500.00 (Requisition No. 580)
45. Payment to Hendershott Museum Consultants, Inc. in the amount of \$58,900.00 (Requisition No. 581)

Honorable Stephen R. Reed  
April 11, 2002  
Page 4

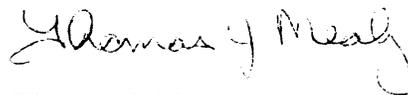
- 46. Payment to Hendershott Museum Consultants, Inc. in the amount of \$27,500.00 (Requisition No. 582)
- 47. Payment to Hendershott Museum Consultants, Inc. in the amount of \$30,000.00 (Requisition No. 583)
- 48. Payment to John Wibaru in the amount of \$19,450.00 (Requisition No. 584)

The following reflects the current balance of the City Special Projects Reserve Fund after the payment of the above-referenced requisitions:

Prior Balance	\$	22,866.27
Soc Gen Transfer 4/12/02	\$	1,000,000.00
Transfer from THA Funds	\$	298,000.00
Balance After Transfer	\$	1,320,866.27
Minus Req. 537-584	\$	<u>1,319,998.77</u>
<b>New City Special Projects Balance</b>	<b>\$</b>	<b>867.50</b>

Please call the Authority office at 232-3777 once the requisitions have been signed. We will promptly pick up the requisitions and deliver the checks to the City.

Sincerely yours,



Thomas J. Mealy  
Executive Director

TJM:ts  
Enclosures

cc: THA Board Members (w/encs)

2

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

August 6, 2001

The Honorable Stephen R. Reed, Mayor  
City of Harrisburg  
Martin L. King Jr. City Government Center  
10 North Second Street  
Harrisburg, PA 17101-1678

To: Thomas J. Brady

***In re: City Special Projects Reserve Fund***

Dear Mayor Reed:

I am enclosing for your consideration, requisitions for disbursement of funds from the City Special Projects Reserve Fund.

The purpose of the requisitions is to satisfy the requests made of the Authority by the City of Harrisburg. The requisitions include:

1. Payment to Hendershott Museum Consultants, Inc. in the amount of \$950.00 (Requisition No. 398)
2. Payment to Urban League of Metropolitan Harrisburg, Inc. in the amount of \$5,000.00 (Requisition No. 399)
3. Payment to Silver Lady Antiques in the amount of \$23,040.00 (Requisition No. 400)
3. Payment to Sword & Saber in the amount of \$19,350.00 (Requisition No. 401)
4. Payment to Gary Hendershott in the amount of \$49,185.00 (Requisition No. 402)
5. Payment to The Union Drummer Boy in the amount of \$30,000.00 (Requisition No. 403)
6. Payment to The Silver Lady Antiques in the amount of \$56,250.00 (Requisition No. 404)
7. Payment to Gary Hendershott in the amount of \$72,405.00 (Requisition No. 405)

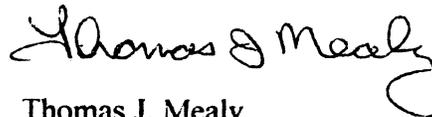
Honorable Stephen R. Reed  
August 6, 2001  
Page 2

8. Payment to The Union Drummer Boy in the amount of \$53,100.00 (Requisition No. 406)
9. Payment to The Harrisburg Authority in the amount of \$60,826.00 (Requisition No. 407)
10. Payment to The Harrisburg Authority in the amount of \$350,000.00 (Requisition No. 408)
11. Payment to Fields of Glory in the amount of \$30,285.00 (Requisition No. 409)
12. Payment to Pennsylvania National Fire Museum in the amount of \$7,800.00 (Requisition No. 410)

Please call the Authority office at 232-3777 once the requisitions have been signed. We will promptly pick up the requisitions and deliver the checks to the City.

After the deposit of \$750,000.00 by the Authority and payment of the above requisitions, the current balance of the City Special Projects Reserve Fund will be \$1,395.09.

Sincerely yours,



Thomas J. Mealy  
Executive Director

TJM:ts

Enclosures

cc: THA Board Members (w/encs)

WORKSHEET

Revenues:

Balance as of August 2, 2001	9,586.09	
Deposit August 3, 2001	<u>750,000.00</u>	
Total Revenues		759,586.09

Expenses:

Deposit made of July 3, 2001	60,826.00	
Deposit made on July 31, 2001	350,000.00	
Miscellaneous Invoices (398-410)	<u>347,365.00</u>	
Total Expenses		758,191.00

Ending Balance		<u><u>1,395.09</u></u>
----------------	--	------------------------

Office of the Mayor

November 13, 2002

to - Thomas J. Mealy  
Executive Director  
The Harrisburg Authority

With the replacement Commerce Bank line of credit for the National Civil War Museum, \$250,000 is now freed for reuse by the city's special account. Further, with the upcoming restructuring of the 7th Street Project escrow account, another \$180,000 becomes available.

Beyond this, there are expected funds coming from the HPA bond interest rate swap and possibly from the restructuring of the school-related bonds with another authority, with the proceeds from both to be sent to THA for deposit into the city's special account.

Enclosed are items for payment now from the special account. They are divided into Part I and Part II. The items in Part I should be done first, in the event THA cannot cover all Part I and II today. Within the invoices included in Part I, the ones marked P are of first priority.

Unless circumstances preclude such, this serves to request that all the encloses now be processed for payment.



Mayor Stephen R. Reed

P

(R)

Ok sports fans,  
put your game face on.

IN YOUR COMMUNITY: JOBS AUTOS REAL ESTATE RENTALS CLASSIFIEDS OBITUARIES FIND N SAVE LOCAL BUSINESSES Place An Ad  
5-day | Satellite

**pennlive** central PA  
com powered by **The Patriot-News**

Search

Sign in | Join

NEWS OPINION SPORTS H.S. SPORTS ENTERTAINMENT LIVING

Brought to you by:  
900-USA-4444 KEYSTONE  
facebook.com PAMSTAR

Top  
Stories



High school football  
power rankings are  
out!



Romney: 'Victory is in  
sight' after first debate



Troegs Brewing Co. in  
Hershey opens Snack  
Bar

Home > Breaking Midstate News with The Patriot-News > Breaking News

## Former Harrisburg Authority executive director Thomas Mealy voiced concerns over incinerator loan

Published: Friday, January 06, 2012, 7:50 PM Updated: Friday, January 06, 2012, 8:16 PM

By **ERIC VERONIKIS**, The Patriot-News  
Follow

Recommend 2 people recommend this.

Tweet 0

Share

Email

Print

Former Harrisburg Authority Executive Director Thomas Mealy said he had concerns about the \$25 million loan the authority took out with CIT Capital of New York in early 2006 in an attempt to finish the **incinerator** retrofit.



PAUL CHAPLIN, The Patriot-News/file

The Harrisburg Incinerator on South 19th Street.

And even after raising his concerns to professionals connected to the project and with former Mayor Stephen R. Reed, the deal got done.

Mealy was one of four witnesses to testify in federal court today **over a lawsuit the authority and Dauphin County filed** to nullify the borrowing the authority secured from CIT.

"If the authority was going to finance money, the authority would typically go out for a bond issue," Mealy said.

"This was not that type of bond issue. I had my concerns about this deal. I was uncomfortable, but there was a heavy reliance on the professionals."

The professionals Mealy raised concerns with included former authority solicitor Bruce Foreman; Andrew Giorgione, special counsel to the authority; and Daniel Lispi, a consultant to the authority on the incinerator project that has buried Harrisburg in \$317 million of debt.

Lispi testified during the hearing, and will be the first to testify when the hearing reconvenes at 9 a.m. Tuesday.

He discussed his background as a former city employee and said Reed asked him to be a consultant on the incinerator project even though he had provided no consulting services before on a waste-to-energy plant before.

Related topics: [harrisburg authority](#), [harrisburg debt](#), [harrisburg incinerator](#), [stephen r reed](#)

Inappropriate post? [Alert us.](#)

[All Facebook & Twitter accounts >](#)

Sponsored Links

AdChoices

**WELL**  
Chaz D

The End of Ordinary Shampoo

60

► TRITIT NOW!

**NORDSTROM**

**BABY LOVE**

From Peek, Bugaboo, Little Giraffe and more.  
GREAT GIFTS FOR BABY >

**FREE!**  
shipping & returns

Connect with PennLive.com  
[What's this?](#)

## **REQUEST FOR PROPOSALS**

### **Advertisement Requesting Proposals from Qualified Vendors for Operation, Purchase or Long-term Lease of the Resource Recovery Facility Owned by The Harrisburg Authority.**

The Harrisburg Authority requests qualified vendors to submit proposals for operation or purchase or long-term lease of the Resource Recovery waste to energy facility owned by The Harrisburg Authority. Factors that the Authority will consider in evaluating proposals include but may not be limited to the following:

- (1) ability of vendor to competently operate the Facility including maintenance and construction upgrades at Facility to maximize operating reliability and increased profits;
- (2) plan to expeditiously complete upgrades to Facility including projected schedule;
- (3) plans for compliance with all environmental requirements for protecting public health, safety and welfare of citizens in the area of Facility and beyond;
- (4) plan to include continued operation during upgrade to minimize losses;
- (5) experience with operation, construction and environmental compliance on similar Resource Recovery Facilities;
- (6) plan to identify sources of financing during construction upgrades, including provision for working capital; and
- (7) strategy to pay existing debt service and debt service on construction upgrades.

Proposals are to be submitted no later than 4:30 p.m., prevailing time, Friday, March 23, 2007, Five (5) copies of proposals must be delivered to:

The Harrisburg Authority  
One Keystone Plaza, Suite 104  
Front & Market Streets,  
Harrisburg, Pennsylvania, 17101

Submissions are to be limited to 25 pages. The Authority reserves the right to negotiate changes in any or all proposals or to waive any deficiencies in proposal compliance. Any proposal submitted must explicitly bind the proposer for at least one week.

Questions pertaining to the proposal may be made to Robert D. Ambrose, P.E., Executive Director of the Authority (phone: 717-232-3777).

**REQUISITION POLICY IMPLEMENTING  
RESOLUTION 1991-001, AS AMENDED**

**CITY SPECIAL PROJECT RESERVE FUND**

1. Revenues. Consistent with Authority Resolution 1991-001, as amended, the Authority, in its discretion, may deposit all non-city related issuer fees, service fees and other revenues derived from the financing of non-city related projects by non-city tax-exempt and taxable entities into the City Special Project Reserve Fund. Funds, which are not Authority funds, but are derived from some other source not generated by the Authority itself, may also, at the discretion of the Authority, be deposited into the City Special Project Reserve Fund. All deposits to the fund will be first subject to approval by the Board of the Authority.

2. Preapproval Process. The City will seek preapproval of a requisition pursuant to the providing of information in a format similar to that attached hereto as Exhibit "A". For all preapprovals, the Authority must receive an identification of the project, a scope of the project expenditures proposed, the vendor, if available, and such other description of the proposed expenditure, as is applicable, such as quantity, price and description.

Preapproval by the Authority will be granted subject to bidding or other mechanisms necessary to approve or fund the expenditure. Preapproval shall have the effect of encumbering the approved funds within the City Special Project Reserve Fund to the identified project until spent, pursuant to an approved requisition or released unencumbered by the City for return to the City Special Project Reserve Fund.

Preapproval shall not be deemed to be the final approval of the expenditures, but will establish a basis to seek purchases of goods or services to be expended out of the City Special Project Reserve Fund. Preapproval will require approval by the Board of the Authority who shall also confirm sufficient funds exist in the City Special Project Reserve Fund.

Pursuant to procedures anticipated by Resolution 1991-001, as amended, the Board may provide preapproval on the following basis:

- (a) Expenditure is reasonably appropriate to an identified Project.
- (b) Expenditure constitutes proper charge against the Fund, which may include a proper charitable donation which benefits the City.
- (c) Sufficient funds exist in the Fund.

3. Requisition Approval. Approval for actual expenditure of funds from City Special Project Reserve Fund by the Board shall be consistent with Resolution 1991-001, as amended, and shall be authorized by a Requisition Certificate in form substantially like Exhibit "B" hereto.

The requisition, at a minimum, must provide the following information:

Minutes - Exhibit "A"

(a) The requisition is for payment of expenditures for an identified Project and that the Project is appropriate for the Authority to participate in under the Municipality Authorities Act. A project may be a charitable donation which benefits the City.

(b) Certification that payment of the obligation constitutes a proper disbursement from the City Special Project Reserve Fund.

(c) The requisitioned expenditures are reasonably necessary or appropriate to that Project.

(d) The expenditures are of an appropriate value and quality for the Project identified:

A representation, in the event the expenditure exceeds \$10,000, either that the requisition is for something unique and, therefore, no bidding system is appropriate, or that requisite bids shall be or have been sought;

or

The value of the item for approval is consistent with the recognized value of items of that type and that value can be substantiated by reference to a known registry or book establishing value for similar items or has been appropriately established by other recognized means.

4. Obtaining of sufficient information to complete the Requisition Certificate and provision of the above information to the Board for approval is, however, necessary, together with a certificate by the Authority and that sufficient funds exist in the City Special Project Reserve Fund to fund the Requisition Certificate.

5. Approval of the Requisition Certificate shall be by vote of the Authority at a duly constituted and advertised meeting of the Authority. Approval of a Requisition Certificate may be conditioned upon or subject to appropriate bid or other requirements and upon sufficient funds being on deposit to the City Special Project Reserve Fund.

**THE HARRISBURG AUTHORITY  
HARRISBURG, PENNSYLVANIA  
CITY SPECIAL PROJECT RESERVE FUND**

**PRE-APPROVAL FOR  
REQUISITION NO. \_\_\_\_\_**

IMPORTANT: THE ABOVE NUMBER MUST APPEAR ON ALL  
CORRESPONDENCE, INVOICES, SHIPPING PAPERS, AND  
PACKAGES

**Vendor Name/Address:**

**Ship To:**

**City of Harrisburg  
10 N. Second Street, Suite 202  
Harrisburg, PA 17101-1678**

ORDER DATE:		PROJECT NAME:	
QUANTITY	DESCRIPTION OF ITEM(S)		PRICE
			SUBTOTAL:
			TOTAL:

**Please consider the following for Preliminary  
Approval:**

**APPROVED: Funds Are Available In The City  
Special Project Reserve Fund**

**THE CITY OF HARRISBURG**

**THE HARRISBURG AUTHORITY**

By: \_\_\_\_\_  
Stephen R. Reed, Mayor

By: \_\_\_\_\_  
Trent Hargrove, Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit "A"

**THE HARRISBURG AUTHORITY  
CITY SPECIAL PROJECT RESERVE FUND  
REQUISITION CERTIFICATE**



THE HARRISBURG AUTHORITY  
Harrisburg, Pennsylvania

Requisition No. \_\_\_\_

The undersigned hereby certifies as follows:

1. The obligation(s) to the payee(s) in the amount(s) set forth in the attached exhibit(s), which exhibit(s) is made a part hereof,
  - (a) has been incurred properly by the City for a project known as the \_\_\_\_\_ (the "Project") and in accordance with the attached preapproval certificate; and
  - (b) is a proper charge from the City Special Project Reserve Fund. The foregoing amount is requisitioned from the City Special Project Reserve Fund, which fund was set up in accordance with The Harrisburg Authority's Resolution No. 1991-001 adopted January 17, 1991, as amended. Said "City Special Project Reserve Fund" has been set up at the M & T Bank, - Account No. 37408-89864; and
  - (c) is unpaid, is of appropriate value and quality, and is reasonably necessary or appropriate for the Project; and
  - (d) has not been the basis of any previous disbursement from the City Special Project Reserve Fund.

2. The obligation described in the attached exhibit(s) was incurred properly by the City as follows:

Payee:

Purpose(s) for which obligation was incurred:

Amount to be Paid:  
(appraisals, indication of recognized value or similar evidence of value, if available, attached as exhibit(s))

3. Check one:

- (a) The requisition applies to item(s) solely offered for sale in a non-competitive market, or are solely available from the payee and are within recognized values for similar items as found in an appropriate market guide, as reflected in attached exhibit(s).
- (b) If (a) is not applicable and expenditure exceeds \$10,000, items subject to the requisition have been properly advertised for bid.
- (c) Is a proper charitable donation which benefits the City of Harrisburg.

4. The terms used herein, and not otherwise defined herein, are used in the same manner and with the same meaning as so defined in the Municipality Authorities Act.

THE CITY OF HARRISBURG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

cc: The Harrisburg Authority  
Stephen R. Reed  
Robert F. Kroboth  
Daniel R. Lispi

Exhibit "B"

THA

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

March 25, 2004

Mr. Daniel R. Lispi, President  
DRL Consulting and Development LLC  
1042 Rolleston Street  
Harrisburg, PA 17104

*In re: Consulting Agreement w/The Harrisburg Authority*

Dear Dan:

Enclosed with this letter please find three copies of the Consulting Agreement that have been executed by The Harrisburg Authority officers after the approval of the Agreement at its March 24, 2004 monthly meeting.

Please proceed to obtain the other necessary signatures and upon completion of all of the signatures, please provide one originally executed copy of the Agreement to the undersigned for our files and provide one originally executed copy to the City retaining one copy for your records.

In the event you have any questions, please feel free to call me.

Sincerely yours,



Thomas J. Mealy  
Executive Director

TJM:kmm

Enclosures

cc: THA Board Members (w/enc)

✓  
T. Mealy / 10-19-06

- \$11 MIL + being held while plant floundered  
+ construction shut down for  
6 weeks

(A) - \$60,000 for Flyash system  
40,000 Pulse Air System  
Vendor  
Lump, Carbon, Calibration Cases

————— T

- Does he have money hidden elsewhere?

— SOF

(B) - Project Man - D. Lissi

- Advise all he is in charge;  
SOF, TITA to take direction  
from him

(C) - TITA - all acts re SOF

---

This message has been scanned for known viruses.

**From:** Tjmealy  
**To:** jkeller@nextel.blackberry.net, Fclark734, fclark@nextel.blackberry.net, Lhouse@nextel.blackberry.net, Lhouse427, fclark@reynoldsconstruction.com  
**Cc:** bruce@foreman-foreman.com, agiorgione@klettrooney.com  
**Bcc:** Karen7488  
**Subject:** Resource Recovery  
**Date:** Tue, 21 Feb 2006 16:44:32 -0500  
**Files:** 2-16-06\_Draft\_of\_term\_sheet\_v2.DOC (69K) Amendment\_No\_\_11\_v1.DOC (35K)

Today, the Authority was informed that it should place two items on the agenda for approval. They are Amendment No. 11 and amendments to the Term Sheet. Both matters deal with Barlow. The motion that I have drawn up for the agenda (the key points are underlined below) is below:

*The Authority approves and authorizes all appropriate officers and representatives to enter into and execute Amendment No. 11 with Barlow Projects of Harrisburg, L.L.C. which amends previous Amendment No. 7 by extending the Closing Date from March 15, 2006 to December 31, 2006. In addition, the Authority approves and authorizes all appropriate officers and representatives to amend the Term Sheet with Barlow Projects of Harrisburg, L.L.C. by extending the date for Closing, removing the Transfer Station as an asset, modifies the terms of the purchase price and identifies Pre-Closing conditions.*

Trust me when I state that I would not bring these items to you at this late date if I did not think they were important. If not done at this meeting we would likely have to arrange for a special meeting. Obviously, the meeting time is your call.

Ron Barmore's response to this is:

My apologies for the late nature of our request and the continued tardiness on delivering information, we are doing the best we can under very trying circumstances. Terry will be at the meeting to discuss the nature of Amendment 10, Amendment 11 and the Term Sheet. We are working very hard to raise corporate equity as soon as possible. God knows we need it! Much of what we are asking for is in conjunction with that effort.

Once again, I'm sorry for the way we deal with you these days and the position we are putting you in with your Board.

Andy G. and one to two representative from Barlow will be present at the meeting to explain. Call me if you wish to discuss in greater detail.

Thomas J. Mealy  
Executive Director  
The Harrisburg Authority

Telephone: (717) 232-3777  
Fax: (717) 232-8590  
E-mail: tjmealy@aol.com

This message has been scanned for known viruses.

---

**From:** Tjmealy  
**To:** jkeller@nextel.blackberry.net, Faclark734, faclark@nextel.blackberry.net, Lhouse@nextel.blackberry.net, Lhouse427, fclark@reynoldsconstruction.com  
**Cc:** bruce@foreman-foreman.com  
**Subject:** Fwd: Barlow Projects  
**Date:** Tue, 04 Apr 2006 12:38:33 -0400  
**Files:** Memo\_to\_Tom\_Mealy\_04-04-06.doc (32K)

---

Individually, I have spoken to each of you regarding the continued problems with Barlow. Perhaps the most stunning incident was Barlow's admission last week to having misled me to believe that Barlow was going to reimburse the Authority for the GNP expenses while at the same time asking for and being granted a release of retainage in the amount of \$1.1M.

Today, we had a conference call and afterwards Bruce Foreman prepared the attached memo summarizing recent events which track the events nicely and is a good resource.

A meeting is scheduled for 8:30 Thursday morning to discuss the Authority financial status as it relates to the project. Attendees will include Bruce Foreman, Bruce Barnes, Andy Giorgione, Dan Lisi and myself.

As always, contact me at your convience with any questions and the door is open if you would like to attend the meeting.

Thomas J. Mealy  
Executive Director  
The Harrisburg Authority

Telephone: (717) 232-3777  
Fax: (717) 232-8590  
E-mail: tjmealy@aol.com

cc: Mayor Reed

-----Original Message-----

**From:** Michele Morrow <Michele@foreman-foreman.com>  
**To:** Thomas J. Mealy (E-mail) <tjmealy@aol.com>  
**Cc:** Bruce Foreman <Bruce@foreman-foreman.com>  
**Sent:** Tue, 4 Apr 2006 11:57:45 -0400  
**Subject:** Barlow Projects

Please find attached a memorandum regarding the above.

<<Memo to Tom Mealy 04-04-06.doc>>

LAW OFFICES

# FOREMAN & FOREMAN, P.C.

8TH FLOOR, VETERANS BUILDING  
112 MARKET STREET  
HARRISBURG, PA 17101 2013

EDWARD P. FOREMAN  
Foreman & Foreman  
JOSEPH D. CARACI

TELEPHONE (717) 236-9391  
FAX (717) 236-8692

foreman@foreman.com  
[www.foreman-foreman.com](http://www.foreman-foreman.com)  
[foreman@foreman.com](mailto:foreman@foreman.com)

## **PRIVILEGED AND CONFIDENTIAL MEMORANDUM**

April 4, 2006

**To: Thomas J. Mealy, Executive Director  
The Harrisburg Authority**

**From: Bruce D. Foreman, General Counsel  
The Harrisburg Authority**

.....  
**RE: Barlow Projects**  
.....

Based upon our April 4, 2006 conference call, I have the following specific concerns:

1. It appears that The Harrisburg Authority is now holding inadequate retainage. I know that when we met with the Mayor on March 13, 2006, you voiced a concern that if we released \$1.1 million of retainage in March that we would not have funds to cover the amounts due to pay direct obligations on contracts from The Authority and to cover our debt service to which Barlow is pledged. Nonetheless, we released the \$1.1 million and I believe we now are in a position where we do not have adequate sums to secure our obligations. This says nothing of amounts reasonably needed to guarantee warranties.

2. We have received calls from at least two (2) vendors (SMS owed approximately \$2.3 million and Versiteck owed approximately \$1.170 million). Barlow has stated to the vendors and to us that it has no immediate availability of funds to make payments. Barlow indicates that there are an additional \$1.165 million of accounts payable to various subcontractors or vendors for an approximate total of \$4.1635 million in accounts payable.

3. When The Harrisburg Authority released its \$1.1 million of retainage to Barlow, we were lead to believe that the same would be billed to CIT and that CIT

would reimburse us. Barlow has now disclosed that Barlow has consumed the entire \$25 million which it borrowed from CIT and there will be no reimbursement from CIT nor are any further funds available from CIT.

4. I am concerned that Barlow borrowed \$25 million from CIT which, in effect, we guaranteed, and Barlow, at that time, assured us that the \$25 million would pay all these outstanding accounts (which were paid at the time the loan closed) and would be adequate, with contingency money in reserve, to finish the project. Now that \$25 million has been consumed, the accounts receivable are now back up to \$4.635 million and, according to Barlow, during their call, they don't even know the amount which will be necessary to finish.

5. The delay damages, which originally required finished in January, were extended to allow completion at the beginning of this week. Obviously, Barlow has not met the revised completion deadline. Under the existing liquidated damage cause, Barlow would pay damages relating back to the original January date. Barlow indicated to us during the conference call that it would be substantially completed and have testing finished by next week. When I tried to specifically get a commitment from Jim Barlow as to the date, he indicated sometime next week but he was unwilling to guarantee a date earlier than the end of next week. Thus, Barlow, even if it retains its new projected completion date at that end of next week date, will be two (2) weeks late on the revised delay damage date.

6. I am not sure that we can have confidence in the amount of accounts payable (\$4.635 million) or, ultimately, the figure which we received from Barlow projecting what amounts and work needed to complete.

7. Vendors (specifically SMS and Versiteck) are asking that our retainage be committed to pay them. Of course, we may not have any retainage beyond what we owe and, even if we do, it is the only security we have.

8. Barlow has promised, by Wednesday, to get us a documented figure of what it will take both in terms of work to be performed and cost to completely finish this project. I cannot see our releasing any funds, if at all, prior to receiving this information and reviewing it so that we are satisfied with it.

9. Barlow has asked us for a waiver of the liquidated damages. Originally, the reason for this was a pending equity investment. Barlow indicates that there is no imminent equity investor at this point. I cannot recommend waiving the liquidated damages or limiting the same short of having a documented equity investor or debt investor who would fund the entire accounts receivable plus, in some way which we would control (perhaps repaying our \$1.1 million so that we would have control of it) a fund to finish the project based on a complete plan and figure in which we have confidence.

10. Barlow indicates that it has all sorts of irons in the fire in an attempt to get either a loan or equity investor. Until the same is documented, I do not think we can reasonably rely on this.

---

# THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104  
FRONT AND MARKET STREETS  
HARRISBURG, PA 17101  
(717) 232-3777

FAX: (717) 232-8590

January 5, 2004

Steven Dade, Esquire  
Deputy City Solicitor  
City of Harrisburg - Law Bureau  
Martin L. King Jr. Government Center  
10 North Second Street  
Harrisburg, PA 17101

***In re: City Special Projects Reserve Fund***

Dear Mr. Dade:

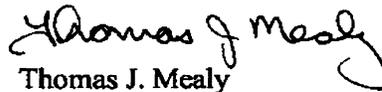
Enclosed with this letter please find the following items:

1. Resolution No. 1991-001 dated 1/17/91;
2. Motion by the Authority Board dated 11/18/02 amending Resolution No. 1991-001; and
3. Motion by the Authority Board dated 8/27/03 adopting a Requisition Policy implementing Resolution No. 1991-001, as amended, and implementing the procedures in the policy for all future requisitions from the City Special Projects Reserve Fund.

Please note that the following persons receive copies of all current requisitions processed for payment from the Authority's City Special Project Reserve Fund: Mayor Stephen R. Reed, Robert F. Kroboth and Daniel R. Lispi. Copies of all documents are also maintained here at the Authority office.

In the event you require further information, please advise.

Sincerely yours,



Thomas J. Mealy  
Executive Director

TJM:kmm  
Enclosures

**THE HARRISBURG AUTHORITY**

**RESOLUTION  
No. 1991-001**

WHEREAS, In January, 1990, The Harrisburg Authority proposed to Harrisburg City Council that its Articles of Incorporation be amended to expand its powers to operate as a general purpose authority, and

WHEREAS, Harrisburg City Council adopted and approved the amendment to the Articles of Incorporation of The Harrisburg Authority making it a general purpose authority; and

WHEREAS, The Harrisburg Authority has an extensive and experienced track record associated with issuing tax exempt and taxable bonds and notes; and

WHEREAS, The Harrisburg Authority is now capable of serving as a viable vehicle for financing non-city related projects by non-city tax exempt and taxable entities without risk or liability to the City of Harrisburg or to The Harrisburg Authority; and

WHEREAS, The undertaking of issuing tax exempt and taxable bond and notes for non-city related entities would create an additional revenue source from the issuer fees and annual service fees charged on such bonds and notes; and

WHEREAS, The City of Harrisburg has requested The Harrisburg Authority to create a "City Special Projects Reserve Fund" in which all non-city issuer fees and service fees and any other revenues derived from such transactions be deposited and placed; and

WHEREAS, all such funds in the "City Special Projects Reserve Fund" should be invested and reinvested at the maximum available yield and available for drawdown determined solely by the City of Harrisburg as represented and requisitioned by the Mayor and the Authority shall disburse funds from this account as directed.

NOW THEREFORE BE IT RESOLVED that all non-city related issuer fees, service fees and any other revenues derived from the financing of non-city related projects by non-city tax exempt and taxable entities be set aside, restricted for uses determined solely by the City of Harrisburg and be deposited into a "City Special Projects Reserve Fund" created by The Harrisburg Authority; and

BE IT FURTHER RESOLVED, that all funds in the "City Special Projects Reserve Fund" be invested and reinvested at the maximum available yield; and

BE IT FURTHER RESOLVED, that the funds in the "City Special Projects Reserve Fund" be available for drawdown by the City of Harrisburg as represented and requisitioned by the Mayor upon

presentation of a Requisition Certificate which provides the correct and complete payee for the issuance of an Authority check disbursing the requisitioned funds; and

BE IT FINALLY RESOLVED, that the Authority's Executive Director and Chairman be and are hereby authorized and directed on behalf of The Harrisburg Authority and under its seal, to take any action that is necessary or required to carry out the intent and purpose of this Resolution.

Duly adopted this 17th day of January, 1991, by the Board of The Harrisburg Authority in lawful session duly assembled.

ATTEST:

THE HARRISBURG AUTHORITY

Thomas J. Mealy  
Assistant Secretary-Treasurer

By: Went Hargrove  
Chairman

(SEAL)

CERTIFICATE

I, the undersigned Assistant Secretary-Treasurer of The Harrisburg Authority, certify that the foregoing Resolution was adopted by a majority vote of the entire Board of the Authority at a meeting duly convened according to law and held on January 17, 1991, at which meeting a quorum was present; said Resolution was adopted by an aye or nay vote; said Resolution and the vote thereon showing how each member voted have been recorded in the minutes of said Board; and said Resolution remains in effect, unaltered and unamended as of the date of this Certificate.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Authority, this 17th day of January, 1991.

  
Assistant Secretary-Treasurer

(SEAL)

Steam Plant

**Mayor's Office**

**From:** tjmealy@aol.com  
**Sent:** Friday, September 08, 2006 6:10 PM  
**To:** Mayor's Office  
**Cc:** Lingle, Linda; ddispi@driconsultingdev.com; Lukens, John  
**Subject:** Architectural Package

As follow up to our discussion this afternoon I feel that it is appropriate to outline events associated with the Architectural Package (AP) which includes the Administration Building. Since I am putting this e-mail together without my files I am providing general dates and cost which I could not recall at the time of your call.

The majority of the AP work and dollars are related to the Retrofit. Examples include roofs, walls, siding, etc. and are items that are necessary for the protection and operation of the incinerators and compliance with regulations. The Administration Building's portion is a small percentage of the total project. I believe the general construction cost on the Administration Building is less than \$400,000.

My comment stating that the AP will be completed in mid-September applies to the Administration Building. The remainder of the contract will continue into October.

Nov 2005

- Barlow informs THA/City that they are running out of cash
- Barlow was told by me to stop all work relative to the AP in order to protect money that could be used for the Retrofit in event Barlow could not secure the capital.

Jan/Feb 2006

- Barlow receives new money from CIT
- No apparent activity on the AP

Feb/Mar 2006

- Discovered that material and equipment continued to be purchased for the AP
- Evaluated AP to determine if it was prudent to stop/start AP
- Determined that approximately 200,000 dollars would be saved by stopping the portion of the project associated with the Administration Building
- Since Barlow had the new money to complete the facility the AP was restarted.

Jun/July 2006

- Barlow out of cash
- I instructed Dan Lispi, John Lukens and others to develop list of critical items necessary for safety and plant reliability. Cost and timelines were developed.
- The THA Retrofit budget was readjusted to accommodate critical items. Funds included the drawdown of Barlow's retainage and investment earnings.
- Recommended and received approval from THA to hire Reynold's (B. Leonard) to oversee

9/11/2006

THA's cash/critical items.

- The Administrative Building is better then 80 – 85% complete

July/Aug 2006

- Met weekly to reevaluate critical items, progress and budget
- Barlow tells THA/City that they are working to secure money from RNK,FNB or Greek company

Sept 2006

- Continue to evaluate critical items and balance work with budget.
- The Administration Building is better then 95% complete.

On Monday we will reevaluate the current status of the Architectural Package.

Thomas J. Mealy  
Executive Director  
The Harrisburg Authority

Telephone: (717) 232-3777  
Fax: (717) 232-8590  
E-mail: tjmealy@aol.com

---

**Check out AOL.com today.** Breaking news, video search, pictures, email and IM. All on demand.  
Always Free.

9/11/2006

**Giorgione, Andrew**

**From:** Fred Clark [fclark@reynoldsconstruction.com]  
**Sent:** Monday, January 09, 2006 9:20 AM  
**To:** Giorgione, Andrew; tjmealy@aol.com; LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com  
**Subject:** RE: Mayoral Meeting



Good Morning Everyone!

Before the suggested 2 30 pm meeting that may take place today, for I saw Bruce, Tom, Andy, and Dan over the last several days and they did not mention there was a meeting schedule to take place on Monday with the Mayor..... No big deal, other than the emails that have just been sent Friday till now.

I was surprise to learn nor did I realize that after our last Harrisburg Authority Meeting, that there was a need or that we were asking or wanting to meet with the Mayor to discuss anything, so I am wondering the following questions if someone would be so kind to reply as to them I would very much appreciate it ... for I honestly do not know the answers.

Who called and asked for today's meeting?

Why are we meeting?

What is it that we want to discuss?

What is the hopeful or successful outcome as to what it is that we wish to accomplish?

If it seems usual to ask these questioning advance, I humbly apolgize in advance for I do not mean to seem too inquisitive.

Thanks

Freddie

*Sunshine ?  
Meeting with  
Board members*

**From:** Giorgione, Andrew [mailto:AGiorgione@klettrooney.com]  
**Sent:** Monday, January 09, 2006 9:01 AM  
**To:** tjmealy@aol.com; LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; Fred Clark; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com  
**Subject:** RE: Mayorial Meeting

Dan and I would suggest a meeting at 2:30 in Linda's or Tom's conference rooms to prepare for the meeting with the Mayor.

**From:** tjmealy@aol.com [mailto:tjmealy@aol.com]  
**Sent:** Friday, January 06, 2006 1:01 PM  
**To:** LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; Giorgione, Andrew; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; fclark@reynoldsconstruction.com; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com  
**Subject:** Mayorial Meeting

I was just informed by the Mayor that the meeting scheduled for Wednesday, January 11th, to discuss the Barlow matter has been rescheduled for Monday, January 9th, at 3:15 pm. The

1/9/2006

BIRHBG003330

11:30

Bruce Barnes (Excel Financial Advisors/Milt Lopus Associates)



# THE HARRISBURG AUTHORITY

## RRF RECOVERY PLAN

MAY 29, 2007

**MILT LOPUS ASSOCIATES**

*FINANCIAL ADVISORS TO STATE AND LOCAL GOVERNMENTS, SCHOOLS  
AND MUNICIPAL AUTHORITIES*

# **MILT LOPUS ASSOCIATES**

301 MARKET STREET  
7<sup>TH</sup> FLOOR  
HARRISBURG, PENNSYLVANIA 17101  
(717) 234-1300  
(888) 525-6756  
FAX (717) 232 2338

May 29, 2007

**Members of the Board  
The Harrisburg Authority  
104 N. Front Street  
Harrisburg, PA 17101**

**RE: RRF Recovery Plan Report**

---

## **Introduction**

The purpose of this report is to provide a working model of the financing plans for the recovery plan of the Resource Recovery Facility owned by THA and to be operated by Covanta under the new management agreement. It is important to bear in mind that the numbers presented here are the compilation of one scenario that has been developed by MLA with assistance and input from THA, the City, the County, Covanta, and other professional consultants to those entities. This plan is subject to many changes as it is further developed to meet certain legal requirements required for the issuance of the various debts. The plan will also be revised to reflect changes in the market and other information made available during the process.

This numbers run consists of a three page Summary of the financings required to make the RRF self sufficient for the next five years and Appendices A-E, each demonstrating one or two financing options for each of the following financings:

- A- The Existing Debt of the Authority
- B- The Retrofit Completion Payments to Covanta OR the recommended take out of the same
- C- The payments due to CIT or the recommended take out of that Agreement
- D- The Restructuring of a portion of the Retrofit Bonds
- E- The off market swap or similar loan for working capital as required

The three page summary, broken down by page, shows the existing debt of the Authority on Page 1, the proposed debt additions or restructurings on Page 2, and the proforma cash flow projections on Page 3.

## Existing Debt

The existing debt on Page 1 is broken into two categories; the "Old Debt Service" is the amounts due on debt issued before the Retrofit Project was undertaken. In June of 2003, the previous facility was shut down due to the new environmental requirements that the old plant and technology could not meet. At that time, there was approximately \$105 million of outstanding debt with an annual debt service requirement of just over \$5 million per year, increasing to over \$7 million per year before terminating in 2034. The Series A of 1998, currently outstanding in the principal amount of \$11.3 million, are the "senior lien" tax-exempt bonds remaining. The Series A of 2002 are taxable bonds which were issued and are currently outstanding in the principal amount of \$17 million. The Series' A, B and C of 2003 Bonds, issued and currently outstanding in the aggregate principal amount of \$75.925 million, are a mixture of Taxable and Tax-exempt bonds that refunded other debt of the RRF. The Series D, E and F of 2003 Bonds, issued and currently outstanding in the aggregate principal amount of \$125 million, financed the Retrofit Program and certain costs of the facility during the construction period. For additional details on the existing debt service, please see Appendix A.

## The Retrofit Completion Payments

Page 2 shows the projected results of actions recommended in this report as part of the recovery plan. In conjunction with the proposed management agreement with Covanta, Exhibit K stipulates, in part that:

*Waste Management Facility Manager shall advance the cost incurred by Waste Management Facility Manager to perform the Retrofit Completion Work up to \$28,000,000 (the "Advance"). Such Advance constitutes subordinate debt of the Authority pursuant to the provisions of Section 3.05 of the Indenture. The Authority shall reimburse the Waste Management Facility Manager the Advance (the "Reimbursement Amount") as follows:*

*(1) No interest on the Reimbursement Amount shall accrue until July 1, 2010, at which time simple interest shall begin to accrue at the rate of 4% per annum until July 1, 2011 and at the rate of 8% per annum thereafter. Interest shall be applied to the remaining principal balance on the Reimbursement Amount.*

*(2) Interest shall be payable on the Reimbursement Amount beginning on August 1, 2010 and continuing thereafter in monthly installments due and payable on the first day of the month.*

*(3) Principal shall be repaid on the Reimbursement Amount beginning on July 1, 2008 in monthly installments due and payable on the first day of the month based on a 10-year, mortgage-style amortization schedule. All principal shall be due and payable on the last day of the initial term of this Agreement.*

# MILT LOPUS ASSOCIATES

Page 3

The payments under the Management Agreement (as stated above) are shown in Column 15 of the Summary on Page 2. According to this report, the annual payments would be approximately \$4 million per year once the 8% interest rate period is reached in July of 2011. It is recommended in this plan that the Authority refund the Covanta Loan with other debt for a longer period of time, in July of 2010. Column 16 shows that the payments for the take out financing for the Covanta Loan, if done for a term of 25 years, would result in annual payments of just under \$2 million per year. These payments are half of the Covanta Completion Payments under the agreement, but do go on for 25 years instead of the seven years from the start of the interest payments in 2010. The final term of this restructuring can be adjusted to satisfy the final plan's requirements and desired cash flow need of the Authority. For more details of the Covanta Completion Payments and the proposed restructuring of those payments, please see Appendix B.

## The CIT Agreement

On Page 2 of the Summary, Column 17 shows the payments that are due to CIT under the current agreement, assuming that the forbearance agreement is extended until the March of 2008, or for one complete year. Under the Agreement with CIT, the Authority is paying the equivalent of 7% per year on the current principal payments and 12% on payment that are not made when due, including the amounts for 2007, under the forbearance agreement. The additional payments would cost approximately \$225,000 per year additional until THA is caught up on the payments. To avoid this additional cost to the Authority, we assumed that the Authority would "catch up" all payments in 2008 by paying the late payments and the current payments, resulting in a cost of over \$6 million in 2008. We recommend that THA takes out the CIT Agreement with a conventional tax-exempt bond issue as soon as feasible to avoid additional late charges and replace imputed interest rate of 7% with a more reasonable tax-exempt rate... the current market rate would be approximately 4.50%. The projected payments for the proposed CIT take out bond issue are shown in Column 18 on page 2 of the Summary. We used a term to be equal to the final term of the other Retrofit Bonds. Assuming that this take-out is completed in 2007, the THA would avoid the large catch-up payment in 2008 and the payments would be approximately \$1.8 million per year instead of \$3 million dollars per year. Again, the payments would go out longer than the scheduled payments to achieve some of this reduction in payment amounts, but some of the savings is interest rate savings. The final term of this take out financing can be adjusted to satisfy the final plan's requirements and desired cash flow need of the Authority. For more details of the CIT Agreement payments and the proposed take out of those payments, please see Appendix C.

## Restructuring of a Portion of the Retrofit Bonds

Columns 20 and 21 of Page 2 of the Summary show a refunding of a portion of the Retrofit bonds to restructure the debt. Under the scenario used in this report, we assumed the restructuring of the Series D-1 Bonds only. This is currently the minimum amount of restructuring we can do under the plan as it is currently structured to provide some comfort

level of self sufficiency for the RRF over the next five years. In this scenario, shown in columns 20 and 21, we assumed that we would refund the Series D-1 Bond with Capital Appreciation Bonds (CABs or zero coupon bonds) with a forty year term. Payments would be deferred until 2012, and would be higher for the period 2012-2016 (the current interest-only period for the D-1 Bonds, but would be slightly less during 2017-2033, but remain in place for an additional 13 year (40 years total) until 2046.

This component of the plan is the most volatile and versatile. We have interest rate risk until the final plan and this restructuring is approved, and the restructuring of existing debt will change other components of the plan change. If we experience a significant increase in interest rates, which will affect the other proposed financings, the influence and desired results of the restructuring will be compounded on the overall effectiveness of this entire plan. It is our intention at this time to minimize the use of restructuring and to avoid the use of CABS as much as possible in the restructuring, as the possible future optional redemption provisions and subsequent defease requirements can be a burden to future restructuring opportunities. If all of the concerned parties are receptive to the risks involved with delaying the restructuring of debt and the future possibilities of remediation of tax exempt debt issues, we will have to review the restructuring of the existing debt throughout the implementation of this plan. The final term of this restructuring can be adjusted to satisfy the final plan's requirements and desired cash flow need of the Authority. For more details of the restructuring of the D-1 Bonds, please see Appendix D

## Off Market Swap or Working Capital Loan

An integral part to the success of this plan and the short term survival of the fiscal integrity of the RRF is to provide working capital for the ongoing operation of the facility. Columns 23 and 24 on Page 2 of the summary show two options for repaying the funding the short term need of the plant, either through the completing of an off market swap (column 23) or a loan financing (column 24) for the same term with level debt. The structure of the short term debt issue, which may be more flexible than the swap, carries some burden of its own with which we may need to deal with in the future. The structure proposed in this plan includes the possibility of the loan, but the total shown in column 25 for the new total projected debt service assumes the use of the off market swap. It is imperative that most of the other financing options in this plan be developed and refined before determining the final structure of either an off market swap or some other method of financing for the short term capital needs of the RRF.

## Summary and Conclusions

Page 3 of the Summary shows the proforma cash flows after the implementation of all the debt structuring options, as currently shown here. This is the bottom line of where the effects of the plan come together. Column 28 reflects the increase in rates and charges as proposed under this plan, subject to approval by the THA Board. The other revenue and expense projections were provided by Covanta and the Authority and are believed to be the

# **MILT LOPUS ASSOCIATES**

Page 5

latest and the most accurate projections available as of the date of this report. The deficits shown in column 33 and the cumulative deficit shown in Column 34 are inclusive of all the effects of this plan. As of right now, it appears that the \$14 million to be raised from the working capital financing or swap will be sufficient to cover the deficits shown on Page 3 of the Summary.

This report is a working model of financings which are integrated into a plan to provide a recommendation to accept the proposed contract with Covanta to manage the RRF and for the recovery plan of the Resource Recovery Facility owned by THA. It is important to bear in mind that the numbers presented here have been developed by MLA with assistance and input from THA, the City, the County, Covanta, and other professional consultants to those entities. The use of the information in this report shall not be used for any other purpose other than the monitoring of the implementation of this plan. All information is subject to many changes as it is further developed to meet certain requirements required for the issuance of the various debts.

This plan is the basis for future discussion and adaptation to fit the need of the Authority and to assist the City, County, and other authorized professionals who serve the Authority. It is meant to be a starting point for the Authority Board members to continue to deal with the difficulties of the RRF and the special financing needs of this facility.

We intend to discuss these matters with the City and County with the Authority and will continue to work with all the parties to ensure that the diverse needs of all the parties are met. The undersigned will be available at all times to discuss this matter with the participants of the financings for the good of all.

Milt Lopus Associates

Bruce A Barnes  
Managing Director

cc: Mayor Stephen R. Reed

\*\*\*\*\*  
\*\*\* MULTI TX/RX REPORT \*\*\*  
\*\*\*\*\*

TX/RX NO 3428  
INCOMPLETE TX/RX  
TRANSACTION OK ( 1 ) 2322338  
( 2 ) 2376019  
ERROR

LAW OFFICES



200 LOCUST STREET, SUITE 400  
HARRISBURG, PA 17101  
(717) 234-9730  
FAX (717) 234-9734  
FAX (717) 230-9834  
www.obermayer.com

**FAX COVER SHEET**

To: Bruce Barnes Fax No: (717) 232-2338  
Richard Michael (717) 237-6019  
From: Andrew J. Giorgione Tel No:  
Re: Resource Recovery Restructuring Date: April 29, 2003  
Client No: 57285-041 Pages: 4 (including cover sheet)  
Sender's Phone: (717) 234-9730 Ext. 1315 Time Transmitted: 3:45 p.m.

Originals: Sent via regular mail   Urgent X For Review X Please Comment  
Sent via e-mail   
Sent via overnight mail   Please Reply  For your information  
Not sent X

**NOTE:** Please see attached...

**IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS  
SOON AS POSSIBLE (717-234-9730).**

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

200 LOCUST STREET, SUITE 400  
HARRISBURG, PA 17101

(717) 234-9730  
FAX (717) 234-9734  
FAX (717) 230-9834  
[www.obermayer.com](http://www.obermayer.com)

FILE NO. 57285-041

ANDREW J. GIORGIONE  
EXTENSION: 1315  
E-MAIL: [Andrew.Giorgione@Obermayer.com](mailto:Andrew.Giorgione@Obermayer.com)

April 29, 2003

*VIA FACSIMILE*

Mr. Bruce Barnes  
Milt Lopus Associates, Inc.  
230W Market Street, Suite 600  
P.O. Box 888  
Harrisburg, PA 17108

Richard D. Michael, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, Eight Floor  
Harrisburg, PA 17101

Re: **Resource Recovery Restructuring**

Dear Messrs. Barnes and Michael:

Hugh and I received the attached and need your assistance preparing a response particularly to the debt statement issues on page 2. In addition, any thoughts you may have to issues on page 1 would be appreciated.

Sincerely,

*Andrew Giorgione /wvl*  
Andrew J. Giorgione

AJG:wvl  
Enclosure

PHILADELPHIA  
PENNSYLVANIA

HARRISBURG  
PENNSYLVANIA

PITTSBURGH  
PENNSYLVANIA

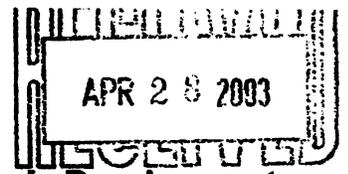
CHERRY HILL  
NEW JERSEY

VINELAND  
NEW JERSEY

WILMINGTON  
DELAWARE

454394

BIRHBG018135



**Pennsylvania Department of Community and Economic Development**  
**Office of Chief Counsel**

April 25, 2003

Andrew J. Giorgione, Esquire  
Oberymayer, Rebman, Maxwell and  
Hippel, LLP  
Suite 400  
200 Locust Street  
Harrisburg, PA 17101

In re: Harrisburg City - \$77,000,000  
Dauphin County

Dear Mr. Giorgione:

We have reviewed the proceedings filed relative to the proposed issuance of lease rental debt. All of the documents appear to be in order, with the exception of the following.

As we discussed this morning, the proceedings were not submitted two-hole punched at the top of the page, as required. Please note this requirement in the future to avoid delays in processing or the return of the proceedings.

The ordinance authorizes debt in a maximum amount of \$81 million, although only \$77 million is in fact being issued. Was the final figure arrived at by the time of enactment of the ordinance on April 8<sup>th</sup>, or was the ordinance enacted at the "not to exceed" amount? If the latter, we will need a debt service schedule set at the maximum parameters to compare with the actual debt service.

In that regard, I note that the total maturity schedule which is a part of the exclusion report does not total \$77 million, the amount sought to be excluded. We will need appropriate corrections or adjustments to the report to cover the entire amount to be excluded. Also, I could not locate in the exclusion report the project costs, as required, and the projection of revenues and expenses does not appear to cover the life of the issue. Paragraph 22 appears to indicate that the preparer of the report did not feel he could project throughout the life of the issue. This is a requirement of Section 8026 of the LGUDA.

It is unclear in the ordinance as to exactly what prior debt issues, or portions thereof, are being refunded, and there are no amounts identified on the debt statement as being refunded, as required. If a partial refunding, we need to know what maturities or portions of maturities are being refunded. It appears that the permitted purpose for the refunding is to reduce debt service.

Commonwealth Keystone Building • 400 North Street • 4<sup>th</sup> Floor • Harrisburg, PA 17120-0225  
(717) 720-7309  
bbarattini@state.pa.us

BIRHBG018136

I am returning the debt statement for correction in order for the principal amount being refunded to be added, and also to clarify the amounts shown as outstanding debt, in respect of the following issues. We show a balance of \$42,700,000 for LRA-3409. The debt statement identifies only \$1,500,000 and a footnote indicates that a portion of that debt has not yet been issued. If the City intends to issue it in the future, then it must still be listed as outstanding. If the City never intends to issue the remaining amount, then we can treat the footnote as a notice of partial noncompletion of sale and remove the remaining balance from our records. Please advise. In addition, we show a balance of \$25,190,000 for LRA-3497 rather than \$11,800,000 as shown. The amount shown for LRA-3690 does not reflect the 5/1/02 payment.

We were not able to locate the following outstanding debt issues on the debt statement: LRA-2074 (1991); LRA-3106 (1998), and LRA-3238 (1998). We do not know that the amount identified as "2001 Series J" - \$29,400,000 relates to, nor the amount identified as "1992 Harristown Development Corp" - \$9,947,683, 1998 "Harrisburg Authority" - \$2,827,585.36 and "Harrisburg Authority" - \$11,100,000. Perhaps these can be matched up with the debt issues we believe are not shown.

Finally, we have a "tickler note" in our computer system entered in August of 2002 that indicates that the amount of debt service in later years for LRA-3690 appears to exceed the debt service amounts at approval, and that this was being checked out by the City or bond counsel. Do you have any further information on this matter for us?

Please submit two copies, two-hole punched at the top of the page, of supplemental or corrected documents, as appropriate, to our office.

Very truly yours,



Bernadette Barattini, Deputy Chief Counsel  
Local Government Unit Debt Act

Enc.

BIRHBG018137

# MILT LOPUS ASSOCIATES

320W Market Street  
Suite 600  
Strawberry Square  
Harrisburg, PA 17101

Post Office Box 888  
Harrisburg, PA 17108-0888

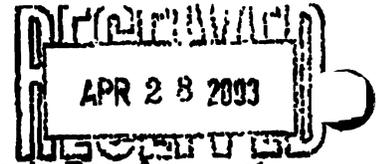
5/1/03

~~4~~ pages to follow.

To: Andrew Giorgione  
717-234-9734 facsimile

From: Bruce Barnes  
717-234-1300 telephone  
717-232-2338 facsimile

Thank you.



**Pennsylvania Department of Community and Economic Development  
Office of Chief Counsel**

April 25, 2003

Andrew J. Giorgione, Esquire  
Oberman, Rebman, Maxwell and  
Hippel, LLP  
Suits 400  
200 Locust Street  
Harrisburg, PA 17101

In re: Harrisburg City - \$77,000,000  
Dauphin County

Dear Mr. Giorgione:

We have reviewed the proceedings filed relative to the proposed issuance of lease rental debt. All of the documents appear to be in order, with the exception of the following.

As we discussed this morning, the proceedings were not submitted two-hole punched at the top of the page, as required. Please note this requirement in the future to avoid delays in processing or the return of the proceedings.

The ordinance authorizes debt in a maximum amount of \$81 million, although only \$77 million is in fact being issued. Was the final figure arrived at by the time of enactment of the ordinance on April 8<sup>th</sup>, or was the ordinance enacted at the "not to exceed" amount? If the latter, we will need a debt service schedule set at the maximum parameters to compare with the actual debt service.

877

In that regard, I note that the total maturity schedule which is a part of the exclusion report does not total \$77 million, the amount sought to be excluded. We will need appropriate corrections or adjustments to the report to cover the entire amount to be excluded. Also, I could not locate in the exclusion report the project costs, as required, and the projection of revenues and expenses does not appear to cover the life of the issue. Paragraph 22 appears to indicate that the preparer of the report did not feel he could project throughout the life of the issue. This is a requirement of Section 8026 of the LGUDA.

Amend report

It is unclear in the ordinance as to exactly what prior debt issues, or portions thereof, are being refunded, and there are no amounts identified on the debt statement as being refunded, as required. If a partial refunding, we need to know what maturities or portions of maturities are being refunded. It appears that the permitted purpose for the refunding is to reduce debt service.

FN in DS pr. 2

Commonwealth Keystone Building • 400 North Street • 4<sup>th</sup> Floor • Harrisburg, PA 17120-0225  
(717) 720-7309  
bbarattini@state.pa.us

May 01 2003 09:22AM P2

FAX NO.: 717 232 2338

FROM: WILT LOPIUS ASSOCIATES

BIRHBG018111

*29,400,000*  
*11,800,000*  
*1,500,000*

I am returning the debt statement for correction in order for the principal amount being refunded to be added, and also to clarify the amounts shown as outstanding debt, in respect of the following issues. We show a balance of \$42,700,000 for LRA-3409. The debt statement identifies only \$1,500,000 and a footnote indicates that a portion of that debt has not yet been issued. If the City intends to issue it in the future, then it must still be listed as outstanding. If the City never intends to issue the remaining amount, then we can treat the footnotes as a notice of partial noncompletion of sale and remove the remaining balance from our records. Please advise. In addition, we show a balance of \$25,190,000 for LRA-3497 rather than \$11,800,000 as shown. The amount shown for LRA-3690 does not reflect the 5/1/02 payment.

*com*

We were not able to locate the following outstanding debt issues on the debt statement: LRA-2074 (1991); LRA-3106 (1998), and LRA-3238 (1998). We do not know that the amount identified as "2001 Series J" - \$29,400,000 relates to, nor the amount identified as "1992 Harristown Development Corp" - \$9,947,683, 1998 "Harrisburg Authority" - \$2,827,585.36 and "Harrisburg Authority" - \$11,100,000. Perhaps these can be matched up with the debt issues we believe are not shown.

*Dick*  
*above*  
*Handled*  
*to be*  
*done*

*1998 ABC*

Finally, we have a "tickler note" in our computer system entered in August of 2002 that indicates that the amount of debt service in later years for LRA-3690 appears to exceed the debt service amounts at approval, and that this was being checked out by the City or bond counsel. Do you have any further information on this matter for us?

*r.o.*

Please submit two copies, two-hole punched at the top of the page, of supplemental or corrected documents, as appropriate, to our office.

Very truly yours,

Bernadette Barattini, Deputy Chief Counsel  
Local Government Unit Debt Act

Enc.

*cat - 1/1/03*

**SUPPLEMENTAL SELF-LIQUIDATING DEBT REPORT**



May 13, 2003

City of Harrisburg  
10 North Second Street  
Martin Luther King, Jr. Government Center  
Harrisburg, PA 17101

RE: The Harrisburg Authority Guaranteed Resource Recovery Facility  
Indebtedness – Report on Exclusion of Self-Liquidating Debt

Gentlemen:

The purpose of this letter is to supplement my report to you previously transmitted, dated March 24, 2003. The original report and this supplement are submitted pursuant to Section 8026 of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") in connection with the proposed incurrence by the City of Harrisburg, Dauphin County, Pennsylvania (the "City") of up to \$77,000,000 in lease rental debt, evidenced by the City's proposed guaranty of up to \$77,000,000 principal amount of 2003 Notes to be issued by The Harrisburg Authority (the "Authority").

As is evidenced by Exhibit 3 to my report the projected revenues and expenses of the Authority's fully integrated waste management system, as set forth in finding V of my report should be adequate to pay all operating and maintenance expenses of the System, to pay the annual debt service on the bonds necessary to finance the projected Retrofit of the System, which are expected to be issued later this year, to pay the annual debt service payment on the 2003 Notes and also to meet the annual debt service payments on the outstanding 1998A System debt not refunded. As shown on the Sources and Uses table in Exhibit 2, which is attached hereto, together with a revised schedule of debt service for Exhibit 2 showing application of \$77,000,000 of 2003 Notes, the application of the 2003 Notes and other available monies will defease and/or retire all of the Series A of 1998 System debt except \$10,695,000 thereof, all of the Series B of 1998 System debt, all of the Series C of 1998 System debt, all of the Series D of 1998 System debt, all of the Series A of 2000 System debt and all of the Series B of 2000 System debt (See LRA 3497). This will leave outstanding only the aforesaid \$10,695,000 Series A of 1998 System debt, the 2003 Notes and the \$17,000,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002. Accordingly the exclusion of lease rental debt covered by this report, in addition to the \$77,000,000 of 2003 Notes, is the \$10,695,000 of the Series A of 1998 Bonds expected to remain outstanding (which have already been recognized as self-liquidating on your records pursuant to a separate application filed by the City at the time that

---

2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
WWW.BARLOWPROJECTS.COM

lease rental indebtedness was incurred; LRA 3238). The \$17,000,000 of Series A of 2002 Notes have never been requested to be excluded as self-liquidating lease rental debt. (See LRA 3820.)

I also wish to clarify my statement in paragraph 22 of Exhibit 1 of the original report. The language in paragraph 22 is designed to reflect the fact that an estimate is not a guaranty. The projection period in Exhibit 3 is limited but this does not detract from my conclusion in Part V of my report letter which addresses the System debt over its life as required by Section 8026(a)(5) of the Act.

Respectfully Submitted,

Barlow Projects, Inc.



---

Ronald E. Barmore  
Senior Vice President

**Exhibit 2**

**DEBT SERVICE INFORMATION (Revised)**

**Provided by:**

**RBC Dain Rauscher**

**Schedules 3 & 4d**

**File: Hbrg Auth 2003 (05-09-03).xls**

---

**2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
WWW:BARLOWPROJECTS.COM**

**CERTIFICATE OF INDEBTEDNESS  
OF THE HARRISBURG AUTHORITY  
FOR THE  
HARRISBURG MATERIALS, ENERGY, RECOVERY AND RECYCLING FACILITY**

I, Bruce Barnes, Managing Director of Milt Lopus Associates, hereby certify that we are the Financial Advisor to The Harrisburg Authority, a municipal authority of the Commonwealth of Pennsylvania organized and existing under the Municipality Authorities Act of 1945, P.L. 382, as amended (the "Authority"), and in such capacity have authority to execute this certificate on behalf of the Authority. This certificate is being delivered to each of the parties to that certain First Amended and Restated Nonexclusive Technology Sub-Licensing Agreement and Technology Purchase Agreement dated January 11, 2006 (the "Sub-Licensing Agreement") among Aerial Technologies of Harrisburg, LLC and Barlow Projects Harrisburg, LLC and I acknowledge that each of such parties are entitled to rely upon this Certificate.

1. As of January 1, 2006, the outstanding indebtedness on the Harrisburg Materials, Energy, Recovery and Recycling Facility (the "Facility"), identified as Series A of 1998, Series A of 2002, and Series A, B and C, D-1, D-2, E and F of 2003 is \$229,895,000 as set forth on Schedule A attached hereto.

This the 11<sup>th</sup> day of January, 2006.



By: Bruce A. Barnes, Managing Director

**SCHEDULE A**  
**THE HARRISBURG AUTHORITY**  
**HARRISBURG MATERIALS, ENERGY, RECOVERY AND**  
**RECYCLING FACILITY**

**Outstanding Debt**  
**As of January 1, 2006**

<u>Issue</u>	<u>Insurance</u>	<u>DCED#</u>	<u>Balance</u>
Series A of 1998	FSA	3238	11,970,000
Series A of 2002	FSA	3820	17,000,000
Series A of 2003	FSA	3954	22,555,000
Series B of 2003	FSA	3954	29,085,000
Series C of 2003	FSA	3954	24,285,000
Series D-1 of 2003	FSA	3444	31,480,000
Series D-2 of 2003	FSA	3444	65,000,000
Series E of 2003	FSA	3444	14,500,000
Series F of 2003	FSA	3444	14,020,000
TOTAL			\$229,895,000

KRLSDOCS\_HARRIS#: 33578v1

**BIRHBG000671**

**Keiper, Michele**

---

**From:** Giorgione, Andrew J.  
**Sent:** Tuesday, June 05, 2007 12:46 PM  
**To:** Keiper, Michele  
**Subject:** FW: Budget & Finance Committee Meeting - June 18, 2007, 5:05 PM

**Attachments:** Proposed RRF Financings.xls



Proposed RRF  
Financings.xls (4...

pp

Andrew J. Giorgione, Esquire  
BUCHANAN INGERSOLL & ROONEY  
17 N. Second Street, 15th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-4863  
Fax: (717) 233-0852  
andrew.giorgione@bipc.com

-----Original Message-----

**From:** Bruce Barnes [mailto:BBarnes@miltlopus.com]  
**Sent:** Tuesday, June 05, 2007 12:32 PM  
**To:** Lingle, Linda; Kroboth, Robert; Bob Ambrose; JKeller641@gmail.com  
**Cc:** CCocheres@eckertseamans.com; Giorgione, Andrew J.; Bruce Foreman; Stauder, Paul; andy.murray@zhaintl.com  
**Subject:** Budget & Finance Committee Meeting - June 18, 2007, 5:05 PM

Good afternoon:

Councilwoman Williams has scheduled a Budget and Finance Committee meeting to discuss upcoming issues for the RRF. I think we should all go to get all of the items out in the open once. Meanwhile, please send to me any concerns or questions you may have about my report. Based on conversation with you all, I have revised my report slightly to meet some of the City's preferences and the Authority's concerns. I should be ready to recommend that we take out the CIT agreement (\$30 million including costs and reserves), refund the Covanta Loan (\$32 million including costs and reserves), and borrow \$11-14 million for working capital in the next 3 months. Any changes to the attached plan will result in the possible necessity to restructure some of the additional existing debt.

City Council may be closing down for vacation from July 3 to August 28, 2007...which will kill any hope of getting DCED approval, unless the Council meets sometime during that time to adopt a debt ordinance.

Bruce

Bruce Barnes  
Milt Lopus Associates  
301 Market Street  
7th Floor  
Harrisburg, PA 17101  
(717) 234-1300  
fax 232-2338

# THE HARRISBURG AUTHORITY

## RRF RECOVERY PLAN

MAY 29, 2007

(Never adopted)

MILT LOPUS ASSOCIATES

*FINANCIAL ADVISORS TO STATE AND LOCAL GOVERNMENTS, SCHOOLS  
AND MUNICIPAL AUTHORITIES*

# **MILT LOPUS ASSOCIATES**

301 MARKET STREET  
7<sup>TH</sup> FLOOR  
HARRISBURG, PENNSYLVANIA 17101  
(717) 234-1300  
(888) 525-6756  
FAX (717) 232 2338

May 29, 2007

**Members of the Board  
The Harrisburg Authority  
104 N. Front Street  
Harrisburg, PA 17101**

**RE: RRF Recovery Plan Report**

---

## **Introduction**

The purpose of this report is to provide a working model of the financing plans for the recovery plan of the Resource Recovery Facility owned by THA and to be operated by Covanta under the new management agreement. It is important to bear in mind that the numbers presented here are the compilation of one scenario that has been developed by MLA with assistance and input from THA, the City, the County, Covanta, and other professional consultants to those entities. This plan is subject to many changes as it is further developed to meet certain legal requirements required for the issuance of the various debts. The plan will also be revised to reflect changes in the market and other information made available during the process.

This numbers run consists of a three page Summary of the financings required to make the RRF self sufficient for the next five years and Appendices A-E, each demonstrating one or two financing options for each of the following financings:

- A- The Existing Debt of the Authority
- B- The Retrofit Completion Payments to Covanta OR the recommended take out of the same
- C- The payments due to CIT or the recommended take out of that Agreement
- D- The Restructuring of a portion of the Retrofit Bonds
- E- The off market swap or similar loan for working capital as required

The three page summary, broken down by page, shows the existing debt of the Authority on Page 1, the proposed debt additions or restructurings on Page 2, and the proforma cash flow projections on Page 3.

**Existing Debt**

The existing debt on Page 1 is broken into two categories; the "Old Debt Service" is the amounts due on debt issued before the Retrofit Project was undertaken. In June of 2003, the previous facility was shut down due to the new environmental requirements that the old plant and technology could not meet. At that time, there was approximately \$105 million of outstanding debt with an annual debt service requirement of just over \$5 million per year, increasing to over \$7 million per year before terminating in 2034. The Series A of 1998, currently outstanding in the principal amount of \$11.3 million, are the "senior lien" tax-exempt bonds remaining. The Series A of 2002 are taxable bonds which were issued and are currently outstanding in the principal amount of \$17 million. The Series' A, B and C of 2003 Bonds, issued and currently outstanding in the aggregate principal amount of \$75.925 million, are a mixture of Taxable and Tax-exempt bonds that refunded other debt of the RRF. The Series D, E and F of 2003 Bonds, issued and currently outstanding in the aggregate principal amount of \$125 million, financed the Retrofit Program and certain costs of the facility during the construction period. For additional details on the existing debt service, please see Appendix A.

**The Retrofit Completion Payments**

Page 2 shows the projected results of actions recommended in this report as part of the recovery plan. In conjunction with the proposed management agreement with Covanta, Exhibit K stipulates, in part that:

*Waste Management Facility Manager shall advance the cost incurred by Waste Management Facility Manager to perform the Retrofit Completion Work up to \$28,000,000 (the "Advance"). Such Advance constitutes subordinate debt of the Authority pursuant to the provisions of Section 3.05 of the Indenture. The Authority shall reimburse the Waste Management Facility Manager the Advance (the "Reimbursement Amount") as follows:*

*(1) No interest on the Reimbursement Amount shall accrue until July 1, 2010, at which time simple interest shall begin to accrue at the at the rate of 4% per annum until July 1, 2011 and at the rate of 8% per annum thereafter. Interest shall be applied to the remaining principal balance on the Reimbursement Amount.*

*(2) Interest shall be payable on the Reimbursement Amount beginning on August 1, 2010 and continuing thereafter in monthly installments due and payable on the first day of the month.*

*(3) Principal shall be repaid on the Reimbursement Amount beginning on July 1, 2008 in monthly installments due and payable on the first day of the month based on a 10-year, mortgage-style amortization schedule. All principal shall be due and payable on the last day of the initial term of this Agreement.*

# MILT LOPUS ASSOCIATES

Page 3

The payments under the Management Agreement (as stated above) are shown in Column 15 of the Summary on Page 2. According to this report, the annual payments would be approximately \$4 million per year once the 8% interest rate period is reached in July of 2011. It is recommended in this plan that the Authority refund the Covanta Loan with other debt for a longer period of time, in July of 2010. Column 16 shows that the payments for the take out financing for the Covanta Loan, if done for a term of 25 years, would result in annual payments of just under \$2 million per year. These payments are half of the Covanta Completion Payments under the agreement, but do go on for 25 years instead of the seven years from the start of the interest payments in 2010. The final term of this restructuring can be adjusted to satisfy the final plan's requirements and desired cash flow need of the Authority. For more details of the Covanta Completion Payments and the proposed restructuring of those payments, please see Appendix B.

## The CIT Agreement

On Page 2 of the Summary, Column 17 shows the payments that are due to CIT under the current agreement, assuming that the forbearance agreement is extended until the March of 2008, or for one complete year. Under the Agreement with CIT, the Authority is paying the equivalent of 7% per year on the current principal payments and 12% on payment that are not made when due, including the amounts for 2007, under the forbearance agreement. The additional payments would cost approximately \$225,000 per year additional until THA is caught up on the payments. To avoid this additional cost to the Authority, we assumed that the Authority would "catch up" all payments in 2008 by paying the late payments and the current payments, resulting in a cost of over \$6 million in 2008. We recommend that THA takes out the CIT Agreement with a conventional tax-exempt bond issue as soon as feasible to avoid additional late charges and replace imputed interest rate of 7% with a more reasonable tax-exempt rate... the current market rate would be approximately 4.50%. The projected payments for the proposed CIT take out bond issue are shown in Column 18 on page 2 of the Summary. We used a term to be equal to the final term of the other Retrofit Bonds. Assuming that this take-out is completed in 2007, the THA would avoid the large catch-up payment in 2008 and the payments would be approximately \$1.8 million per year instead of \$3 million dollars per year. Again, the payments would go out longer than the scheduled payments to achieve some of this reduction in payment amounts, but some of the savings is interest rate savings. The final term of this take out financing can be adjusted to satisfy the final plan's requirements and desired cash flow need of the Authority. For more details of the CIT Agreement payments and the proposed take out of those payments, please see Appendix C.

## Restructuring of a Portion of the Retrofit Bonds

Columns 20 and 21 of Page 2 of the Summary show a refunding of a portion of the Retrofit bonds to restructure the debt. Under the scenario used in this report, we assumed the restructuring of the Series D-1 Bonds only. This is currently the minimum amount of restructuring we can do under the plan as it is currently structured to provide some comfort

# MILT LOPUS ASSOCIATES

Page 4

level of self sufficiency for the RRF over the next five years. In this scenario, shown in columns 20 and 21, we assumed that we would refund the Series D-1 Bond with Capital Appreciation Bonds (CABs or zero coupon bonds) with a forty year term. Payments would be deferred until 2012, and would be higher for the period 2012-2016 (the current interest-only period for the D-1 Bonds, but would be slightly less during 2017-2033, but remain in place for an additional 13 year (40 years total) until 2046.

This component of the plan is the most volatile and versatile. We have interest rate risk until the final plan and this restructuring is approved, and the restructuring of existing debt will change other components of the plan change. If we experience a significant increase in interest rates, which will affect the other proposed financings, the influence and desired results of the restructuring will be compounded on the overall effectiveness of this entire plan. It is our intention at this time to minimize the use of restructuring and to avoid the use of CABS as much as possible in the restructuring, as the possible future optional redemption provisions and subsequent defease requirements can be a burden to future restructuring opportunities. If all of the concerned parties are receptive to the risks involved with delaying the restructuring of debt and the future possibilities of remediation of tax exempt debt issues, we will have to review the restructuring of the existing debt throughout the implementation of this plan. The final term of this restructuring can be adjusted to satisfy the final plan's requirements and desired cash flow need of the Authority. For more details of the restructuring of the D-1 Bonds, please see Appendix D

## Off Market Swap or Working Capital Loan

An integral part to the success of this plan and the short term survival of the fiscal integrity of the RRF is to provide working capital for the ongoing operation of the facility. Columns 23 and 24 on Page 2 of the summary show two options for repaying the funding the short term need of the plant, either through the completing of an off market swap (column 23) or a loan financing (column 24) for the same term with level debt. The structure of the short term debt issue, which may be more flexible than the swap, carries some burden of its own with which we may need to deal with in the future. The structure proposed in this plan includes the possibility of the loan, but the total shown in column 25 for the new total projected debt service assumes the use of the off market swap. It is imperative that most of the other financing options in this plan be developed and refined before determining the final structure of either an off market swap or some other method of financing for the short term capital needs of the RRF.

## Summary and Conclusions

Page 3 of the Summary shows the proforma cash flows after the implementation of all the debt structuring options, as currently shown here. This is the bottom line of where the effects of the plan come together. Column 28 reflects the increase in rates and charges as proposed under this plan, subject to approval by the THA Board. The other revenue and expense projections were provided by Covanta and the Authority and are believed to be the

# **MILT LOPUS ASSOCIATES**

Page 5

latest and the most accurate projections available as of the date of this report. The deficits shown in column 33 and the cumulative deficit shown in Column 34 are inclusive of all the effects of this plan. As of right now, it appears that the \$14 million to be raised from the working capital financing or swap will be sufficient to cover the deficits shown on Page 3 of the Summary.

This report is a working model of financings which are integrated into a plan to provide a recommendation to accept the proposed contract with Covanta to manage the RRF and for the recovery plan of the Resource Recovery Facility owned by THA. It is important to bear in mind that the numbers presented here have been developed by MLA with assistance and input from THA, the City, the County, Covanta, and other professional consultants to those entities. The use of the information in this report shall not be used for any other purpose other than the monitoring of the implementation of this plan. All information is subject to many changes as it is further developed to meet certain requirements required for the issuance of the various debts.

This plan is the basis for future discussion and adaptation to fit the need of the Authority and to assist the City, County, and other authorized professionals who serve the Authority. It is meant to be a starting point for the Authority Board members to continue to deal with the difficulties of the RRF and the special financing needs of this facility.

We intend to discuss these matters with the City and County with the Authority and will continue to work with all the parties to ensure that the diverse needs of all the parties are met. The undersigned will be available at all times to discuss this matter with the participants of the financings for the good of all.

Milt Lopus Associates

Bruce A Barnes  
Managing Director

cc: Mayor Stephen R. Reed

1:00

James Losty (RBC Capital)



## **Introductory Comments to Pennsylvania Senate Local Government Committee**

Mr. Chairman, Senator Blake, and members of the committee, I want to thank you for the invitation to testify at today's hearing on behalf of RBC Capital Markets. We appreciate the opportunity to put into proper context the role that our firm played in connection with The Harrisburg Authority's financing of the retrofit project and to address some of the egregious errors in the Forensic Investigation Report by Klehr Harrison.

Let me be clear at the outset that The Harrisburg Authority's problems with the retrofit are not related to the 2003 financings. The financings that we were involved with all performed well, actually exceeding expectations projected at the time of financing, and have saved The Harrisburg Authority money.

RBC Capital Markets' involvement in the financing of the retrofit of the resource recovery facility began in early 2003. RBC Capital Markets served as book-running underwriter for two bond issues for the facility that occurred during 2003; the first in May and the second in December. The role of the underwriter in public finance transactions is to sell the Issuer's bonds in the market and deliver bond proceeds at settlement. RBC Capital Markets did not serve The Harrisburg Authority, City of Harrisburg or Dauphin County as a financial advisor for any of the financings. RBC Capital Markets' parent company, Royal Bank of Canada, also served as counterparty on interest rate swaps and cap associated with one of the bond offerings, the Series D of 2003. RBC Capital Markets' involvement was limited to the 2003 financings and we played no role in either the CIT financing or the 2007 financing.

As others have previously testified, the forensic audit report contains many inaccuracies. We note that RBC Capital Markets was never contacted during the preparation of this report, which easily could have remedied some of its more obvious errors. In February 2012, RBC Capital Markets sent a lengthy letter to the Receiver and to the Harrisburg Authority members highlighting many of the report's inaccuracies and offered to meet to discuss the report. No response was ever received. This Committee has received a copy of that letter.

RBC Capital Markets' involvement with the retrofit project started in early 2003, long after the City and Authority had already engaged Barlow Projects as project engineer in 1999. RBC Capital Markets had no role in the selection of Barlow, nor would any underwriter in a typical public financing be involved in the selection of engineers and contractors. The team of finance professionals assembled to work on the retrofit financing was drawn from among the most seasoned, experienced and highly regarded firms in the Commonwealth of Pennsylvania. The team included four major law firms: Rhoads and Sinon (authority counsel); Obermayer Rebmann Maxwell & Hippel LLP (bond counsel); Eckert Seamans Cherin & Mellott, LLC (underwriter's counsel); Mette, Evans & Woodside (County Counsel); three financial and swap advisory firms: Milt Lopus Associates (Authority and City); Investment Management Advisory Group (Authority, City and County); Public Financial Management (County) and seven underwriting firms as co-managers for the bond sales. Additionally, both City Council and the County of Dauphin retained separate, independent, major engineering firms expressly for the purpose of reviewing every aspect of the retrofit plan put forth by

Barlow and opining on its feasibility precisely because they knew other professionals were not in position to offer such advice.

The conclusion drawn in the forensic audit that this team of many of Pennsylvania's finest bond professionals somehow misled or forced this financing upon an uninformed Authority, City and County is absurd. In my 30 years in the public finance industry, I have never been involved in a project with more scrutiny from governing bodies than the 2003 retrofit project received. And, this wasn't cursory scrutiny, it was scrutiny that honed in on exactly the critical issues: to retrofit or not retrofit, and was Barlow capable or incapable of completing the project on time and on budget. During the summer and fall of 2003, City Council held numerous public meetings where literally hundreds of citizens appeared to hear presentations on the project from the working group. Leading off every meeting were representatives from Barlow who spent the first 30-60 minutes reviewing the feasibility of the project, the Barlow technology, Barlow's past experience with other incinerators and importantly, their projections of revenues and expenses of the retrofitted project. Following Barlow, the other members of the finance team made shorter presentations on the actual financing itself including legal requirements, the need for financial guarantees from the City and County, the use of bond insurance and the actual structure of the debt. At the conclusion of the presentations, the floor was opened to anyone in the audience with an interest in speaking about the project. These meetings were widely publicized in the press and many were televised. Right to the evening of the final city council vote in November, there was great uncertainty as to whether the project would be approved. On the night of the final vote, each of the council members made lengthy speeches prior to voting explaining the

deliberative process they had followed in reaching a decision. It is impossible for any objective person to conclude upon review of the meetings, correspondence and bond documentation from that period that any decision maker in the approval process was not fully aware that the primary risk to the success of the retrofit project was the timely performance of Barlow.

The report makes the incorrect accusation that the financing team was somehow derelict in not thoroughly reviewing and critiquing the Barlow technology, engineering plans and revenue and expense projections. This criticism fundamentally misconstrues each party's role in a public finance transaction. It is the role of the engineering firms to address project technology, project feasibility, projections of revenues and expenses. The financial professionals criticized in the report do not have that role. Bond attorneys speak to the complexities of federal, state and local laws and requirements for municipal bond offerings; financial advisors and swap advisors speak to the structure of the financing and offer views and opinions on use of financial products and the fairness of pricing; trustees safeguard bond proceeds; and finally, underwriters like RBC Capital Markets give market information and views on optimal bond structures and then sell those bonds to investors.

Another fallacy of the report are the statements that the 2003 financing in some way has not performed well, was too complex and has subjected the Authority and City to undue risks and inflated costs. The truth is that the swaps utilized in the 2003 financing have performed even better than expected and were not excessive, overpriced or speculative. Most importantly, the swaps with Royal Bank of Canada have saved the Authority money.

With the benefit of nearly ten years of history it is easy to review the performance of the 2003 financings. As the audit correctly points out, the most traditional and conservative financing plan would have involved issuing 30-year fixed rate bonds. Given market conditions at the time (short-term rates were extremely low and the yield curve was very steep), the September 2003 change in the Pennsylvania Local Government Unit Debt Act that authorized the use of interest rate products by governmental entities, and the recognition by the financing team that the projections indicated operations at the retrofitted facility would be tight, the decision was made to include a significant amount of variable rate debt in the 2003 financing with the goal of lowering interest expense. The decision to include a swap was based simply on the expectation that it would be a better source of variable rate financing.

The report's 18 page discussion of the swap transactions is fundamentally wrong in many respects. The financing plan used an interest rate swap to exchange the Series D Bonds from a fixed rate of interest to a variable rate of interest for the reasons mentioned earlier, namely to access the low interest rates available in the short-term market in 2003. Pennsylvania bond law requires that any variable rate debt have a maximum stated interest rate and consequently, the fixed to floating rate swap had a maximum rate of 12% imbedded in the swap (this was not a separate swap or cap as the audit claims). However, while the Mayor of Harrisburg was willing to recommend taking variable interest rate risk on a significant portion of the debt, he directed that a more realistic 6.00% cap be included in the plan of finance to protect the project from a significant increase in short-term interest rates. Said another way, while the short-term rates of approximately 1.00% that prevailed in 2003 were clearly much more attractive than the

alternative of 5.00% fixed rate bonds, the Mayor felt that allocating some of the benefit expected from the low short-term rates by purchasing a more protective 6.00% cap would be prudent. So what the report described as six different swaps was, in substance, one swap and one cap pursuant to which the Authority received a fixed rate and paid a market based floating rate capped at 6.00% (noting that there were two subseries with different maturity dates within Series D and swap was allocated to both and documented separately).

In full compliance with Pennsylvania Act 23, the Authority, City and County were all advised by independent financial advisors with specific swap advisory expertise. A detailed interest rate management plan required under the Act was adopted by all three entities. The purpose of the plan is to identify and list various risks associated with interest rate swaps, provide termination analyses, project debt service at maximum interest rates and detail fees paid to professionals. Act 23 also requires that governmental entities receive updates on the plan at least on an annual basis. Royal Bank of Canada fully disclosed its compensation on the swap transactions to the independent advisors and those advisors gave their clients "fairness opinions" at closing on the financing, all as required by Act 23. The breakdown of "swap spreads" contained in the report is grossly overstated and inaccurate.

The use of interest rate swaps in the financing structure enabled the Authority to benefit from the extraordinarily low short term interest rates that prevailed in 2004 and much of 2005 and provided lower debt service than projected at the time the financing closed in 2003. As the economy improved in 2004 and the Federal Reserve began a tightening program, short-term interest rates began to rise. Conversely, long term interest

rates dropped sharply, leading to what would eventually become an “inverted yield curve” where short-term rates are actually higher than long-term rates. This environment proved to be an opportune time for the Authority, City and County to consider reducing the risk to variable rate debt as short-term rates were rising. In August 2005, a second interest rate swap was entered into that locked-in a fixed rate beginning in June 2006, which was the expected end of the construction period, and extending through 2033, which was the remaining term of the financing. The fixed rate available in the swap market at the time was 3.35% through 2033, which was a historically low rate and approximately equal to what the Authority hoped to pay over the life of the financing in the variable rate market. Stated differently, the Authority had benefited from short-term rates since December 2003, could continue in the variable rate mode through the expected end of construction in June 2006, and could then convert to a fixed rate that approximated the assumed rate for the entire life of the financing. It represented prudent interest rate management planning, precisely as called for in Act 23.

By the spring of 2006, the interest rate cycle had changed again and long-term interest rates had climbed creating significant market value in favor of the Authority tied to the fixed rate swap executed in August 2005. Additionally, the project by this time was delayed and struggling. The Authority chose to realize the gain available in its 2005 swap by terminating the swap for the years from 2011-2033. The termination resulted in a payment of over \$4 million from Royal Bank of Canada to the Authority. This enabled the Authority to retain a fixed rate during the ramp-up period from 2006-2011 when the Authority would be least able to weather swings in variable rates while at the same time obtaining the value created from its actions in 2005. Not only was this a carefully

considered and otherwise reasonable strategy in 2006, with the benefit of perfect hindsight, it has proven to be the right course of action. The Authority had an immediate gain of \$4 million, had fixed rate debt at 3.35% for the important early years of the project and is now enjoying net interest rates of approximately one half of one percent (50 basis points) on the remaining \$65 million Series D swap through December 2013 when the swap will terminate.

Perhaps even more importantly than the interest rate performance of the financing plan, the use of an interest rate swap to create “synthetic variable rate debt” as opposed to utilizing traditional variable rate debt with bonds backed by letters of credit and municipal bond insurance allowed the Authority to steer clear of the upheaval that plagued much of the variable rate bond market when the credit crisis erupted in 2008. Had the Authority used traditional variable rate debt backed by FSA and a bank providing a liquidity agreement, its variable rate debt would have spiked to rates of 10% or more; a situation many Pennsylvania issuers experienced in the 2008 and 2009 crisis. The Authority’s decision to access the variable rate market through an interest rate swap rather than the traditional manner has worked to immunize it from all these factors and has delivered low-cost funding.

RBC Capital Markets has completed a financial analysis that takes into account all cash flows on the Series D of 2003 Bonds and the two associated swaps. The Authority’s cost of funds to date is 3.35%. Going forward, through the termination of the final interest rate swap in 2013, and using conservative projections through that time, the estimate is that the final cost of funds is likely to be 3.25%. Had the Authority chosen a traditional fixed rate structure, its cost of funds would have resulted in an interest rate of

approximately 5.03% based on the fixed rates available in December 2003 when the bonds were sold. Consequently, the structure that was utilized has saved the Authority over \$11 million compared to a traditional fixed rate issue. Even more significant, if a comparison is made of the actual debt service experienced on the Series D Bonds to what was projected in the offering circular for the 2003 bonds (which was a projection based on the long-term average of the variable rate index) a savings in excess of \$5.2 million has been generated. Clearly, the original financing of the 2003 retrofit project was not a contributing factor to the problems that exist today.

By 2006, it became apparent that the retrofit project was struggling and completion would be delayed and over budget. Anticipating the difficulties that would accompany that scenario, RBC Capital Markets informed the administration of the City of the privatization movement that was gaining traction in many public jurisdictions around the US. After several meetings, RBC Capital Markets was engaged by the City and the Harrisburg Parking Authority to evaluate a long-term lease for the parking assets. RBC Capital Markets devoted over two years work including many hundreds of man hours and huge expense and delivered at the end of the process a high bid of \$215 million from a fully qualified bidder. The mayor's plan was to close the lease transaction, pay off the parking debt and use the net remaining proceeds of approximately \$100 million to pay down the resource recovery facility's excess debt. After many public meetings over four months, City Council rejected the parking proposal in October 2008, a decision which has contributed to the current dire situation. Ironically, one of the key recommendations that came out of the Act 47 Plan and the Receiver's plan is just such a transaction. Unfortunately, the value of a parking transaction under current market

conditions is less than the value rejected by City Council in 2008 and of course, the delay in implementation has allowed the problem to grow far larger.

While we are extremely sympathetic with the situation that the Authority, City and County currently find themselves in, it is important that we address some of the more egregious errors in the Klehr Harrison Report with respect to RBC Capital Markets and Royal Bank of Canada. We stand by our work product and believe adamantly the current problems have nothing to do with the financing plan for the 2003 Bonds.

## Sutherland, Hugh

---

**From:** Losty, James [James.Losty@Rbcdain.com]  
**Sent:** Thursday, December 18, 2003 9:39 AM  
**To:** Sutherland, Hugh  
**Subject:** FW: Electronic Copy of Final Report, Harrisburg Incinerator Study



IncIn101803.zip

here is the engineer's report for your records.

-----Original Message-----

**From:** Losty, James  
**Sent:** Thursday, December 18, 2003 9:10 AM  
**To:** 'srichter@troweprice.com'  
**Subject:** FW: Electronic Copy of Final Report, Harrisburg Incinerator Study

Here is the engineer's report in the event you are still looking at this credit. My only word of advice is that if you are trying to evaluate this on a revenue generating basis, you are the only one including the bond insurer. Bottom line is that there is a AA County with a full faith and credit general obligation pledge.

Call me if you have any questions.

Jim

-----Original Message-----

**From:** Fabian, Andrew [mailto:afabian@BH-BA.com]  
**Sent:** Thursday, December 18, 2003 7:40 AM  
**To:** Lcolon@cityofhbg.com; Losty, James  
**Cc:** Yerger, Bruce; Boyer, Dave  
**Subject:** Electronic Copy of Final Report, Harrisburg Incinerator Study

The Zip file below contains all the files for the final copy of the Harrisburg Incinerator report. I am forwarding it to you per the request of Bruce Yerger of Buchart-Horn, Inc.

If you have any questions about this document, or have any difficulty in opening it, please contact me.

<<IncIn101803.zip>>

Very truly yours,  
BUCHART-HORN, INC.

Andrew R. Fabian, Technical Writer  
445 West Philadelphia Street, P.O. Box 15040  
York, PA 17405-7040  
(717) 852-1475  
Fax (717) 852-1614  
e-mail <afabian@bh-ba.com>

RBC Dain Rauscher does not accept buy, sell or cancel orders by e-mail, or any instructions by e-mail that would require your signature. Information contained in this communication is not considered an official record of your account and does not supersede normal trade confirmations or statements. Any information provided has been prepared from sources believed to be reliable but is not guaranteed, does not represent all available data necessary for making investment decisions

**MBA**.INC

MUNICIPAL BROKERAGE ASSISTANCE, INC.  
204 STATE STREET  
HARRISBURG, PA 17101-1132  
717-233-1347

November 7, 2003

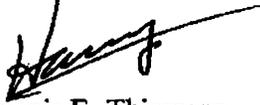
Honorable Stephen R. Reed, Mayor  
Office of the Mayor  
City Government Center  
10 North 2<sup>nd</sup> Street  
Suite 202  
Harrisburg, PA 17101

Dear Mayor:

May I at this time return to a matter first raised at our recent meeting. For it's services in the last bond issue for the Harrisburg School District, Arthurs, Lestrangle and Company, Inc. was paid \$19,000. I believe Commerce Bank's fee was \$180,000. I would hope that in the upcoming Incinerator Issue, Arthurs would be given additional opportunities as regards participation in the bond sales/allocation.

I appreciate your consideration of this request. If there is anything I or Arthurs should do... such shall be done upon your direction. I believe you were going to direct this matter to the attention of Mr. Losty. Please advise.

Thank you.

  
Dennis E. Thiemann

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

ONE PENN CENTER - 19<sup>TH</sup> FLOOR  
1617 JOHN F. KENNEDY BOULEVARD  
PHILADELPHIA, PA 19103-1895  
(215) 665-3000  
FAX (215) 665-3165  
[www.obermayer.com](http://www.obermayer.com)

Hugh C. Sutherland, Esq.  
215-665-3096  
hcs@Obermayer.com

July 31, 2003

TO: Andrew J. Giorgione Richard D. Michael  
Daniel R. Lispi Carol P. Cocheres  
James F. Losty

FROM: Hugh C. Sutherland

RE: Resource Recovery Facility Retrofit Bonds - Draft County  
Letter of Intent Resolution Regarding County Guaranty

I have reviewed the draft Mette Letter of Intent Resolution. Generally they have just cleaned up a little bit the draft that we provided. I have the following several comments.

1. I noticed that in the next to last Whereas regarding Act 101 they have said that the County has determined that the retrofit project "may be" in the best interest of the County. I can understand the rationale at this time for using such provisional language. The questions is whether it suggests the County may change its mind and not provide the guaranty.

2. I think in the last Whereas in subpart (ii) right before the defined term "County Guaranty" we should add the words "pledging the full faith, credit and taxing power of the County" so that these words are part of the definition of the County Guaranty. This will make the County Guaranty parallel to the language describing in the City Guaranty and will answer at least the one question of the insurance company about what it is they are getting.

3. I think it is really important to hear from Jim Losty what he thinks he needs to get the Bond Insurers excited. Obviously this document raises the prospect of a County guaranty but does not spell out any of the details and is non-binding.

HCS/csb  
cc: Warren W. Ayres

474627

BIRHBG014143

**ECKERT SEAMANS CHERIN & MELLOTT, LLC**

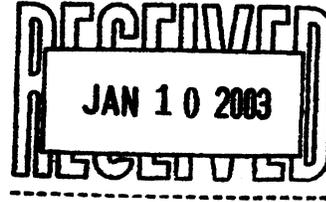
**MEMORANDUM**

**TO:** James F. Losty  
Andrew J. Giorgione, Esq.  
Hugh C. Sutherland, Esq.  
Daniel R. Lispi

**FROM:** Richard D. Michael, Esq. *RDM*

**DATE:** January 9, 2003

**RE:** The Harrisburg Authority – Resource Recovery Facility Financing



---

Enclosed please find a copy of the Self-Liquidating Debt Report prepared in July, 1998 by HDR Engineering, Inc. in connection with The Harrisburg Authority's issuance of its Guaranteed Resource Recovery Facility Revenue Refunding Bonds, Series A, B, C and D of 1998. The Self-Liquidating Debt Report made provision for two alternatives: (i) the operation of the Resource Recovery Facility, and the performance of certain retrofits; and (ii) the closing of the Resource Recovery Facility and utilization of the transfer station to process solid waste for delivery to a remote landfill.

I thought it would be helpful if the financing team has an opportunity to review the Report prior to the January 13, 2003 meeting with representatives of Barlow.

*RDM:dbb*  
*Enclosure*

BIRHBG025315

NOTICE

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

ONE PENN CENTER - 19<sup>TH</sup> FLOOR  
1617 JOHN F. KENNEDY BOULEVARD  
PHILADELPHIA, PA 19103-1895  
(215) 665-3000  
FAX (215) 665-3165  
[www.obermayer.com](http://www.obermayer.com)

Hugh C. Sutherland, Esq.  
215-665-3096  
hcs@Obermayer.com

April 7, 2003

TO: Distribution  
FROM: Hugh C. Sutherland  
RE: Resource Recovery Facility Refunding Revenue Bonds - DCED Documents

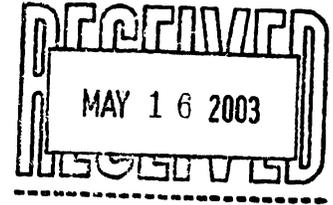
Assuming we have final enactment of the Ordinance on Tuesday evening, April 8, we will need shortly thereafter to make the DCED submission. I am attaching hereto current drafts of three items: the City Clerk transmittal letter to DCED, the Debt Statement and the Borrowing Base packages. You will note the Debt Statement still has some holes which I request Bruce Barnes and anyone else who can help me complete and as necessary correct. Andy Giorgione will be getting all of these documents appropriately signed and executed, and he may want to, if appropriate, collect the execution and notary pages and hold them in escrow until we have all the pieces, including the proof of the second advertisement and the entire package can then be promptly submitted to the DCED.

HCS/csb  
encl.

Distribution:

Judith B. Schimmel, Esq.  
Robert F. Kroboth  
Daniel R. Lispi  
Thomas J. Mealy  
J. Bruce Walter, Esq.  
Bruce A. Barnes  
Hugh C. Sutherland, Esq.  
Warren W. Ayres, Esq.  
Andrew J. Giorgione, Esq.  
Stanley Mitchell, Esq.  
James F. Losty  
James B. Konieczny  
Dwight L. White  
Richard D. Michael, Esq.  
Carol P. Cocheres, Esq.  
Mary Beth Phillips  
Kenneth R. Nilson  
Glen Grell, Esquire

ECKERT SEAMANS CHERIN & MELLOTT, LLC



213 Market Street  
Eighth Floor  
Harrisburg, PA 17101

*Via Hand Delivery*

Address correspondence to:  
Post Office Box 1248  
Harrisburg, PA 17108-1248

May 15, 2003

Telephone: 717.237.6000  
Facsimile: 717.237.6019  
www.escm.com

**Bernadette Barattini, Esquire**  
Commonwealth of Pennsylvania  
Department of Community and Economic Development  
Office of Chief Counsel  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Boston

Haddonfield, NJ

Harrisburg

Morgantown, WV

Philadelphia

Pittsburgh

Washington, D.C.

Re: City of Harrisburg, Dauphin County, Pennsylvania - Proceedings for Approval of Incurrence of \$77,000,000 of Lease Rental Debt, and Exclusion of Same as Self-Liquidating

Dear Bernadette:

Thank you for speaking with Jim Losty, Carol Cocheres and me yesterday afternoon regarding the above-referenced debt proceedings filed by the City of Harrisburg. In accordance with your request, I am enclosing a Debt Statement of the City of Harrisburg, which references the Department of Community and Economic Development's approval numbers for the incurrence of the debt, and where applicable, the Department's approval numbers for exclusion of the debt as self-liquidating.

As a preliminary matter, in your April 25, 2003 letter to Andrew Giorgione, you raised a question concerning lease rental debt of the City approved at LRA-3690, in connection with the City's guarantee of a bond issue by the Harrisburg Parking Authority. Although our firm was not involved in that bond issue, I was able to secure a final debt service schedule for the bond issue. The schedule indicates that the first principal payment on the bond issue was payable on May 1, 2003, not May 1, 2002. I am enclosing that debt service schedule, as Attachment 1.

In addition, at the bottom of page 2 of the enclosed Debt Statement, I have listed the outstanding principal amounts of certain bonds issued in 1998 by The Harrisburg Authority (the "1998 Bonds"), and certain notes issued by The Harrisburg Authority in 2000 (the "2000 Notes"). As you can see, all of the 2000 Notes, which are guaranteed by the City of Harrisburg (LRA-3497), will no longer be outstanding after The Harrisburg Authority's Series of 2003 Notes are issued. With respect to the 1998 Bonds, a portion of the Series A of 1998 Bonds will not be refunded with proceeds of the Series of 2003 Notes, and will remain



Richard D. Michael  
717.237.6036  
rdm@escm.com

BIRHBG018090

outstanding. I have attached a debt service schedule (Attachment 2) showing the principal amounts and maturities of the Series A of 1998 Bonds to be refunded, and a debt service schedule (Attachment 3) showing the principal amounts and maturities of the Series A of 1998 Bonds which are not being refunded and which will remain outstanding.

In addition, I am attaching debt service schedules (Attachment 4) listing the maturities and principal amounts of the Series B of 1998 Bonds, Series C of 1998 Bonds, Series D of 1998 Bonds, Series A of 2000 Notes and Series B of 2000 Notes to be refunded; none of this debt will be outstanding after issuance of the Series 2003 Notes.

I hope this information addresses the questions and issues you raised during our conversation yesterday. If you have any further questions or require further information, please contact me.

Very truly yours,



Richard D. Michael

*RDM:dbb*

cc: *Bruce A. Barnes (w/encs.)*  
*Andrew J. Giorgione, Esq. (w/encs.)*  
*Carol P. Cocheres, Esq. (w/encs.)*  
*Hugh C. Sutherland, Esq. (w/encs.)*

## Giorgione, Andrew

---

**From:** Ertel, Kevin [Kevin.Ertel@Rbcdain.com]  
**Sent:** Monday, December 29, 2003 3:04 PM  
**To:** Giorgione, Andrew  
**Cc:** dlispi@cityofhbg.com  
**Subject:** Harrisburg - Sensitivity



Sensitivity.pdf

Andy-

Jim asked me to email you this sensitivity run for the Series 2003 D,E,F Bonds in case Ron Barmore needed this for his reports. Let me know if there are other schedules that you need to see with this. The changes that have been made are:

1. I have changed the assumed variable rate on the 2003D bonds after 6-1-06 (assume BMA 2.50% during construction) from 3.25% (BMA avg since 1990) to 3.00% (BMA 10 year avg)
2. Increased the earnings on the \$8MM DSRF associated with the Series D bonds from 4.75% to 5.25%. The net effect of these two changes is to reduce the debt service on the 2003 D,E,F bonds roughly 140k in 2006 and 280k from 2007 through 2017, and then the 280k goes down annually as principal matures.

<<Sensitivity.pdf>>

Kevin Ertel  
RBC Dain Rauscher  
One Logan Square, 17th Floor  
Philadelphia, PA 19103  
(215) 832-1511 Phone  
(215) 832-1515 Fax  
kevin.ertel@rbcdain.com

RBC Dain Rauscher does not accept buy, sell or cancel orders by e-mail, or any instructions by e-mail that would require your signature. Information contained in this communication is not considered an official record of your account and does not supersede normal trade confirmations or statements. Any information provided has been prepared from sources believed to be reliable but is not guaranteed, does not represent all available data necessary for making investment decisions and is for informational purposes only.

This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you receive this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Information received by or sent from this system is subject to review by supervisory personnel, is retained and may be produced to regulatory authorities or others with a legal right to the information.

**City of Harrisburg**  
**Resource Recovery Revenue Bonds, Series of 2003**  
**Combined, \$125,000,000**

**Aggregate Net Debt Service - Sensitivity**

DATE	Series 2003 F Bonds	Series 2003 E Bonds	Series 2003 D Bonds	TOTAL	Fiscal Total
06/01/2004	-	-	-	-	-
12/01/2004	-	-	-	-	-
06/01/2005	-	-	-	-	-
12/01/2005	-	-	-	-	-
06/01/2006	-	-	-	-	-
12/01/2006	321,145.00	329,280.00	2,262,482.00	2,912,907.00	2,912,907.00
06/01/2007	321,145.00	329,280.00	2,262,482.00	2,912,907.00	-
12/01/2007	321,145.00	329,280.00	2,262,482.00	2,912,907.00	5,825,814.00
06/01/2008	321,145.00	329,280.00	2,262,482.00	2,912,907.00	-
12/01/2008	321,145.00	329,280.00	2,262,482.00	2,912,907.00	5,825,814.00
06/01/2009	321,145.00	329,280.00	2,099,231.97	2,749,656.97	-
12/01/2009	1,661,145.00	1,719,280.00	2,099,231.97	5,479,656.97	8,229,313.93
06/01/2010	290,995.00	298,352.50	2,099,231.97	2,688,579.47	-
12/01/2010	1,690,995.00	1,753,352.50	2,099,231.97	5,543,579.47	8,232,158.93
06/01/2011	259,495.00	265,978.75	2,099,231.97	2,624,705.72	-
12/01/2011	1,724,495.00	1,785,978.75	2,099,231.97	5,609,705.72	8,234,411.43
06/01/2012	226,532.50	232,158.75	2,099,231.97	2,557,923.22	-
12/01/2012	1,756,532.50	1,817,158.75	2,099,231.97	5,672,923.22	8,230,846.43
06/01/2013	187,517.50	192,137.50	2,099,231.97	2,478,886.97	-
12/01/2013	1,792,517.50	1,857,137.50	2,099,231.97	5,748,886.97	8,227,773.93
06/01/2014	146,590.00	150,096.25	1,667,902.80	1,964,589.05	-
12/01/2014	1,836,590.00	1,900,096.25	1,667,902.80	5,404,589.05	7,369,178.10
06/01/2015	103,495.00	105,908.75	1,667,902.80	1,877,306.55	-
12/01/2015	1,878,495.00	1,940,908.75	1,667,902.80	5,487,306.55	7,364,613.10
06/01/2016	58,232.50	59,575.00	1,667,902.80	1,785,710.30	-
12/01/2016	1,923,232.50	1,984,575.00	1,667,902.80	5,575,710.30	7,361,420.60
06/01/2017	10,675.00	10,968.75	1,667,902.80	1,689,546.55	-
12/01/2017	360,675.00	385,968.75	4,937,902.80	5,684,546.55	7,374,093.10
06/01/2018	-	-	1,604,254.98	1,604,254.98	-
12/01/2018	-	-	5,779,254.98	5,779,254.98	7,383,509.95
06/01/2019	-	-	1,522,992.08	1,522,992.08	-
12/01/2019	-	-	5,877,992.08	5,877,992.08	7,400,984.16
06/01/2020	-	-	1,438,225.63	1,438,225.63	-
12/01/2020	-	-	5,978,225.63	5,978,225.63	7,416,451.27
06/01/2021	-	-	1,349,858.32	1,349,858.32	-
12/01/2021	-	-	6,084,858.32	6,084,858.32	7,434,716.63
06/01/2022	-	-	1,257,695.49	1,257,695.49	-
12/01/2022	-	-	6,197,695.49	6,197,695.49	7,455,390.98
06/01/2023	-	-	1,161,542.50	1,161,542.50	-
12/01/2023	-	-	6,311,542.50	6,311,542.50	7,473,085.01
06/01/2024	-	-	1,061,302.05	1,061,302.05	-
12/01/2024	-	-	6,431,302.05	6,431,302.05	7,492,604.09
06/01/2025	-	-	956,779.47	956,779.47	-
12/01/2025	-	-	6,556,779.47	6,556,779.47	7,513,558.94
06/01/2026	-	-	847,780.14	847,780.14	-
12/01/2026	-	-	6,687,780.14	6,687,780.14	7,535,560.28
06/01/2027	-	-	734,109.40	734,109.40	-
12/01/2027	-	-	6,819,109.40	6,819,109.40	7,553,218.81
06/01/2028	-	-	615,669.95	615,669.95	-
12/01/2028	-	-	6,960,669.95	6,960,669.95	7,576,339.90
06/01/2029	-	-	492,169.81	492,169.81	-
12/01/2029	-	-	7,112,169.81	7,112,169.81	7,604,339.63
06/01/2030	-	-	363,317.03	363,317.03	-
12/01/2030	-	-	7,263,317.03	7,263,317.03	7,626,634.06
06/01/2031	-	-	229,014.28	229,014.28	-
12/01/2031	-	-	7,424,014.28	7,424,014.28	7,653,028.56
06/01/2032	-	-	88,969.60	88,969.60	-
12/01/2032	-	-	7,593,969.60	7,593,969.60	7,682,939.20
06/01/2033	-	-	(57,108.97)	(57,108.97)	-
12/01/2033	-	-	(202,108.97)	(202,108.97)	(259,217.94)
<b>Total</b>	<b>\$17,835,000.00</b>	<b>\$18,435,312.50</b>	<b>\$161,461,895.58</b>	<b>\$197,731,488.08</b>	<b>\$197,731,488.08</b>

**Giorgione, Andrew**

---

**From:** Losty, James [James.Losty@Rbcdain.com]**Sent:** Monday, September 08, 2003 2:26 PM**To:** Giorgione, Andrew**Subject:** RE: County Issues

do you have everything on this front that you need? I assume you got ertel's fancy work last week? what about issuance costs? give me a call if you're not playing golf today and we can discuss. i also have another possible deal to talk to you about.

jim

-----Original Message-----

**From:** Giorgione, Andrew [mailto:andrew.giorgione@obermayer.com]**Sent:** Thursday, September 04, 2003 8:30 AM**To:** Daniel R. Lispi (E-mail); Thomas Mealy (E-mail); Losty, James; Richard D. Michael Esquire (E-mail); Sutherland, Hugh; cpc@escm.com; Bruce Barnes (E-mail)**Subject:** County Issues

The County has requested that we address the following issues (I reference who I think should provide the answers):

- ✓ 1. Will DCED accept unlevel debt? (Carol already addressed this issue - okay since lease rental debt - but if anyone has other thoughts....)
- ✓ 2. Bond Insurance quotes? (Losty/Giorgione)
3. Breakdown of Issuance Costs and Transition Costs (Lispi/Giorgione).
4. 98A priority? (Hugh, Carol, Dick)
- ✓ 5. Amortization Schedules for new and old debt (Losty).

*Proforma*

Please provide this information asap.

Andrew

RBC Dain Rauscher does not accept buy, sell or cancel orders by e-mail, or any instructions by e-mail that would require your signature. Information contained in this communication is not considered an official record of your account and does not supersede normal trade confirmations or statements. Any information provided has been prepared from sources believed to be reliable but is not guaranteed, does not represent all available data necessary for making investment decisions and is for informational purposes only.

This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you receive this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Information received by or sent from this system is subject to review by supervisory personnel, is retained and may be produced to regulatory authorities or others with a legal right to the information.

9/8/03

BIRHBG013897

**Giorgione, Andrew**

---

**From:** Losty, James [James.Losty@Rbcdain.com]  
**Sent:** Monday, September 08, 2003 11:20 AM  
**To:** Giorgione, Andrew; Sutherland, Hugh; Daniel R. Lispi (E-mail); Richard D. Michael Esquire (E-mail); cpc@escm.com  
**Subject:** RE: 1998A Indenture

Andy,

As you know I have spent some time with Glen Williard recently. I told him I thought it would be very difficult to subordinate any of these bonds. I also directed him to the County Resolution (prepared or at least signed off on by Chuck Z.) where the language of the resolution specifically mentions old debt service, transition costs and capitalized interest as part of the project. (Also the guarantee fee was specifically mentioned) I suggest you direct Chuck to this language since his firm provided it to the County! Its late in the game to try this change now and I think it would be very difficult to get it sold. As you know, FSA has already turned down this proposed "senior/subordinate" structure and they have the most to loose/gain by enhancing this deal.

Glen seems optimistic.....

Jim

-----Original Message-----

**From:** Giorgione, Andrew [mailto:andrew.giorgione@obermayer.com]  
**Sent:** Friday, September 05, 2003 11:52 AM  
**To:** Sutherland, Hugh; Daniel R. Lispi (E-mail); Losty, James; Richard D. Michael Esquire (E-mail); cpc@escm.com  
**Subject:** 1998A Indenture

Anyone - I need a copy of the 98A Trust Indenture for the County asap. Can you email it?

I spoke with Chuck Z. He indicated that the County was concerned with the size of the City Guaranty Fee. I explained its a matter of risk and not negotiable.

He also indicated that the County would have a list of things they want by next week. This will include an operating reserve, which Dan and I discussed and believe is necessary and doable.

Finally, he asked that we consider a subordinate series of bonds for Transition and Existing Debt Service Costs, such that there is no County guaranty for those costs and separate DSRF are created. I assume this may be an insurer issue, but wanted your thoughts.

Andrew

RBC Dain Rauscher does not accept buy, sell or cancel orders by e-mail, or any instructions by e-mail that would require your signature. Information contained in this communication is not considered an official record of your account and does not supersede normal trade confirmations or statements. Any information provided has been prepared from sources believed to be reliable but is not guaranteed, does not represent all available data necessary for making investment decisions and is for informational purposes only.

This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you receive this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Information received by or sent from this system is subject to review by supervisory personnel, is retained and may be produced to regulatory authorities or others with a legal right to the information.

9/8/03

BIRHBG013898



*Steam Plant*

**Office of the Mayor  
The City of Harrisburg  
City Government Center  
10 North Market Square  
Harrisburg, PA 17101-1678**

**Stephen R. Reed**

**(717) 255-3040**

**Mayor**

**December 4, 2003**

**MEMO TO: Daniel R. Lispi, Assistant to the Mayor  
Mayor's Office of Special Projects**

**FROM: MAYOR STEPHEN R. REED** *SReed*

**RE: Resource Recovery Bonds**

**Noting the attached correspondence, this serves to instruct that you advise James Losty that Arthurs, Lestrangle and Company, Inc. is to have a greater proportion of management fees and bond sales with the upcoming sale and closing on the retrofit bonds.**

**Further, this office wishes to see the proposed management fees and bond distribution percentages for all of the involved investment banking entities so that this office can review and consider approval for such.**

**Attachment  
SRR:lmh**

**INTER-OFFICE MEMORANDUM**

**CITY OF HARRISBURG**  
October 27, 2006

**CONFIDENTIAL**

**TO:** Mayor Stephen R. Reed  
**VIA:** Linda Lingle  
Business Administrator  
**FROM:** Robert F. Kroboth, CGFM  
Deputy Business Administrator

**SUBJECT: Resource Recovery Bonds – Series of 2002 Remarketing Circular**

This is in response to your instruction that no reference be made in the Remarketing Circular that the City's guarantee will be drawn upon in 2007 for the payment of a portion of the debt service due on the 2002 Notes, unless absolutely necessary for proper disclosure purposes.

After significant discussion on this matter, I requested Jim Losty and/or Carol Cocheres to put in writing a thorough explanation leading to the ultimate outcome. The e-mail to me dated October 25, 2006, providing the explanation that modified language stating the potential for a City guarantee draw must be included, as well as the page from the most recent draft Circular indicating the modified language, are attached. I draw your attention to the areas marked/highlighted. The best we could do was change the language from "...will be drawn..." to "...may be drawn..."

cc: Linda Lingle  
DS-2002 RR Remarketing File

The above and the materials that were attached have been noted. The best available language, under the circumstances, is the change to "may." Proceed.

S. Reed 10-27-06



**BOND PURCHASE AGREEMENT**

**THE HARRISBURG AUTHORITY  
Dauphin County, Pennsylvania**

**\$96,480,000 Guaranteed Resource Recovery Facility Revenue Bonds,  
Series D of 2003  
consisting of  
\$31,480,000 Subseries D-1  
\$65,000,000 Subseries D-2**

**\$14,500,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds,  
Series E of 2003**

**\$14,020,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds,  
Series F of 2003**

December 19, 2003

The Harrisburg Authority  
One Keystone Plaza, Suite 104  
Front and Market Streets  
Harrisburg, PA 17101

SEP 18  
regarding  
security

Ladies and Gentlemen:

The undersigned, RBC Dain Rauscher Inc. (the "*Underwriter*"), acting on behalf of ourselves and on behalf of Mesirow Financial, Inc., The Williams Capital Group, L.P., Commerce Capital Markets, Inc., Allison-Williams Company, Merrill Lynch & Co., Inc. and Arthurs, Lestrage & Company, Inc. jointly and severally (collectively referred to herein as the "*Underwriters*"), and not acting as fiduciary or agent for you, offers to enter into the following agreement with The Harrisburg Authority (the "*Issuer*") which, upon the Issuer's written acceptance of this offer and the written approval of this offer by the City of Harrisburg, Dauphin County, Pennsylvania (the "*City*") and the County of Dauphin, Pennsylvania (the "*County*"), will be binding upon the Issuer, the City and the County, and upon the Underwriters. The Underwriters have designated the Underwriter to act as their representative, and the Underwriter hereby represents that it has been duly authorized to execute this Agreement for and on behalf of the Underwriters.

This offer is made subject to the written acceptance hereof by the Issuer, the City and the County on or before 10:00 p.m., Harrisburg time, on December 19, 2003, and, if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the Issuer at any time prior to the acceptance hereof by the Issuer. Terms not otherwise defined in this Agreement shall have the same meanings set forth in the Issuer Resolution (as defined herein) or the Indenture (as defined herein) or in the Official Statement (as defined herein).

1. *Purchase and Sale of the 2003 Bonds.* Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters hereby agree to purchase from the Issuer, and the Issuer hereby agrees to sell and deliver to the Underwriters, all, but not less than all, of the Issuer's \$96,480,000 Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "*2003D Bonds*"), consisting of \$31,480,000 Subseries D-1 (the "*2003D-1 Bonds*") and \$65,000,000 Subseries D-2 (the "*2003D-2 Bonds*"), \$14,500,000 Guaranteed Federally Taxable Resource

Recovery Facility Revenue Bonds, Series E of 2003 (the "*2003E Bonds*"), and \$14,020,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the "*2003F Bonds*," and with the 2003D Bonds and the 2003E Bonds, the "*2003 Bonds*"). Inasmuch as this purchase and sale represents a negotiated transaction, the Issuer understands, and hereby confirms, that the Underwriters are not acting as a fiduciary of the Issuer, but rather are acting solely in their capacity as underwriters for their own respective accounts.

The principal amount of the 2003 Bonds to be issued, the dated dates therefor, the maturity, mandatory sinking fund and optional redemption provisions and interest rates per annum are set forth in Schedule I hereto. The 2003 Bonds shall be as described in, and shall be issued under and pursuant to, the provisions of those certain Resolutions adopted by the Board of the Issuer (the "*Board*") on September 25, 2003 and December 15, 2003 (collectively, the "*Issuer Resolution*") and the Trust Indenture, dated as of December 1, 2003 (the "*Indenture*"), between the Issuer and Commerce Bank/Pennsylvania, National Association, Philadelphia, Pennsylvania, as trustee (the "*Trustee*"). The 2003 Bonds will be issued only as fully-registered bonds in denominations of \$5,000 or any integral multiple thereof. Interest on the 2003 Bonds is payable on June 1 and December 1 of each year, beginning June 1, 2004.

The 2003 Bonds shall be payable from and secured by a pledge of the receipts and revenues (the "*Receipts and Revenues*") of the Waste Management Facility (as defined in the Official Statement) after payment of the operating expenses (the "*Operating Expenses*") of the Waste Management Facility, subordinate to the pledge of the Receipts and Revenues securing the Issuer's Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A of 1998 (the "*1998A Bonds*"), presently outstanding in the principal amount of \$11,970,000. The 1998A Bonds were issued under a Trust Indenture, dated as of August 1, 1998 (the "*1998 Indenture*"), between the Issuer and J.P. Morgan Trust Company, National Association, successor by merger to Chase Manhattan Trust Company, National Association, as trustee (the "*1998 Trustee*"). In addition, the 2003 Bonds shall be secured by certain cash and investments from time to time held in any fund (except the Retrofit Rebate Fund and the Purchase and Remarketing Fund) by the Trustee under the Indenture.

Payment of principal of and interest on the 2003 Bonds when due shall be unconditionally guaranteed by the City pursuant to a City Bond Guaranty Agreement, dated as of December 1, 2003 (the "*City Bond Guaranty*"), among the City, the Issuer and the Trustee. Payment of the principal of and interest on the 2003D Bonds and the 2003E Bonds only when due shall be unconditionally guaranteed by the County pursuant to a County Bond Guaranty Agreement, dated as of December 1, 2003 (the "*County Bond Guaranty*"), among the County, the Issuer and the Trustee. The City Bond Guaranty and the County Bond Guaranty are sometimes collectively referred to herein as the "*Bond Guaranty Agreements*."

The scheduled payment of principal of and interest on the 2003D Bonds and the 2003E Bonds when due shall be guaranteed under a municipal bond insurance policy (the "*Series D and E Bond Insurance Policy*") to be issued at Closing (as defined herein) by Financial Security Assurance Inc. (the "*Bond Insurer*"). The scheduled payment of principal of and interest on the 2003F Bonds when due shall be guaranteed under a municipal bond insurance policy (the "*Series F Bond Insurance Policy*") to be issued at Closing by the Bond Insurer. The Series D and E Bond Insurance Policy and the Series F Bond Insurance Policy are collectively referred to herein as the "*Bond Insurance Policies*."

The 2003D Bonds are subject to mandatory tender for purchase as described in the Indenture.

With respect to the 2003D-1 Bonds and 2003D-2 Bonds, the Issuer expects to enter into separate interest rate swap agreements with embedded interest rate caps, consisting of an ISDA Master Agreement, dated as of December 30, 2003 (the "*Master Agreement*"), a Schedule to the Master Agreement, dated as of December 30, 2003 (the "*Schedule*") and related confirmations thereunder (the "*Swap Confirmations*,"

and with the Master Agreement and the Schedule, collectively, the "*Swap Agreement*") with Royal Bank of Canada (the "*Swap Provider*"), under which the Swap Provider agrees to pay to the Issuer amounts calculated at agreed upon fixed rates as set forth in the Swap Confirmations, and the Issuer will be obligated to pay the Swap Provider floating amounts calculated at a floating rate per annum determined under The Bond Market Association Municipal Swap Index (the "*BMA Index*"). In addition, the Issuer expects to enter into a forward interest rate cap agreement, consisting of the Master Agreement, the Schedule and a related confirmation (the "*Forward Cap Confirmation*," and with the Master Agreement and the Schedule, collectively, the "*Cap Agreement*") with Royal Bank of Canada (the "*Cap Provider*"), under which the Issuer, upon the effective dates set forth in the Cap Agreement, will make fixed payments to the Cap Provider based on a notional amount equal to the outstanding principal amount of the 2003D Bonds, and the Cap Provider will pay to the Issuer floating amounts calculated by applying the excess, if any, of the BMA Index over 6.00%, on such notional amount. The Swap Agreement and the Cap Agreement are sometimes collectively referred to herein as the "*Interest Rate Management Agreement*." All scheduled periodic payments required to be paid by the Issuer to the Swap Provider (the "*Swap Periodic Payments*") and the Cap Provider (the "*Cap Periodic Payments*") under the Interest Rate Management Agreement will be secured under the Indenture by a pledge of the Receipts and Revenues after payment of Operating Expenses, on a parity with the 2003 Bonds. The Swap Periodic Payments and the Cap Periodic Payments are sometimes collectively referred to herein as the "*Scheduled Periodic Payments*."

As additional security for the Issuer's obligation to make Scheduled Periodic Payments, the Issuer, the City and the Trustee are entering into a City Swap Guaranty Agreement, dated as of December 1, 2003 (the "*City Swap Guaranty*"), under which the City shall unconditionally guarantee payment by the Issuer of Scheduled Periodic Payments to the Swap Provider and Cap Provider, when due. In addition, the Issuer shall pledge money to be made available by the County pursuant to a County Swap Guaranty Agreement, dated as of December 1, 2003 (the "*County Swap Guaranty*"), among the Issuer, the County and the Trustee, under which the County shall unconditionally guarantee payment of the Issuer's Scheduled Periodic Payments to the Swap Provider and Cap Provider, when due. The City Swap Guaranty and the County Swap Guaranty are sometimes collectively referred to herein as the "*Swap Guaranty Agreements*."

The scheduled payment of Swap Periodic Payments when due shall be guaranteed under a financial guaranty insurance policy (the "*Swap Insurance Policy*") issued by Financial Security Assurance Inc. (the "*Swap Insurer*").

A Reimbursement Agreement, dated as of December 1, 2003 (the "*Reimbursement Agreement*"), among the Issuer, the City and the County sets forth the Issuer's obligation to reimburse the City and the County for payments made under the City Bond Guaranty and City Swap Guaranty, and the County Bond Guaranty and County Swap Guaranty, respectively, and the sequence for payments by the City and the County under their respective Bond Guaranty Agreements and respective Swap Guaranty Agreements when there are insufficient Receipts and Revenues and other available moneys of the Issuer to pay principal of and interest on the 2003D Bonds and 2003E Bonds, when due and Scheduled Periodic Payments, when due.

The purchase price for the 2003D Bonds shall be \$103,654,099.60 (par plus \$8,138,899.60 original issue premium, less underwriters' discount of \$964,800.00). The purchase price for the 2003E Bonds shall be \$14,338,523.20 (par less original issue discount of \$16,476.80, less underwriters' discount of \$145,000.00) and for the 2003F Bonds shall be \$13,863,873.60 (par less original issue discount of \$15,926.40, less underwriters' discount of \$140,200.00). See SCHEDULE I.

Proceeds of the 2003 Bonds will be applied to finance a project (the "*Retrofit Project*"), consisting of: (i) financing the costs of the comprehensive repair, retrofit and modernization (the "*Retrofit*") of the Issuer's mass burn solid waste disposal, resource recovery, steam generation and related facilities, and ash disposal facilities (the "*Resource Recovery Facility*"); (ii) funding in part a Debt Service Reserve Fund for the 2003 Bonds; (iii) providing working capital to the Issuer to pay estimated interest on the 1998A Bonds, the Issuer's \$17,000,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002 (the "*2002 Notes*"), and the Issuer's \$22,555,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003, \$29,085,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003 and \$24,285,000 Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 (collectively, the "*2003 Notes*") during the construction period for the Retrofit; (iv) paying estimated capitalized interest on the 2003 Bonds; (v) paying transition costs of operating the Transfer Station and maintaining the Waste Management Facility during the shutdown of the Resource Recovery Facility and the construction period for the Retrofit; and (vi) paying the costs of issuance of the 2003 Bonds, including bond insurance premiums and guaranty fees to the City and the County.

To meet the amount required under the Indenture to be on deposit in the 2003F Bonds Subaccount within the Debt Service Reserve Fund, the Issuer will deposit in the 2003F Bonds Subaccount a debt service reserve insurance policy (the "*Reserve Fund Policy*") issued by Financial Security Assurance Inc., allowing the Trustee to draw an amount thereunder of up to \$1,000,000, in addition to a deposit of a portion of the 2003F Bond proceeds.

2. *Public Offering.* The Underwriters agree to make a bona fide public offering of all of the 2003 Bonds at a price not to exceed the public offering price set forth on the inside cover of the Official Statement and may subsequently change such offering price without any requirement of prior notice. The Underwriters may offer and sell 2003 Bonds to certain dealers (including dealers depositing 2003 Bonds into investment trusts) and others at prices lower than the public offering price stated on the inside cover of the Official Statement.

3. *The Official Statement.*

(a) Incorporated herein by reference is a copy of the Preliminary Official Statement, dated December 12, 2003 (the "*Preliminary Official Statement*"), including the cover page and Appendices thereto, of the Issuer relating to the 2003 Bonds. Such Preliminary Official Statement as amended to reflect the changes required or permitted by the Rule (as hereinafter defined) is hereinafter called the "*Official Statement*."

(b) The Preliminary Official Statement has been prepared for use by the Underwriters in connection with the public offering, sale and distribution of the 2003 Bonds. The Issuer, the City and the County each hereby represents and warrants that the Preliminary Official Statement was deemed final by the Issuer, the City and the County, respectively, as of its date, except for the omission of such information which is dependent upon the final pricing of the 2003 Bonds for completion, all as permitted to be excluded by Section (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934 (the "*Rule*").

(c) Each of the Issuer, the City and the County hereby authorizes the Official Statement and the information therein contained to be used by the Underwriters in connection with the public offering and the sale of the 2003 Bonds. Each of the Issuer, the City and the County consents to the use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the 2003 Bonds. The Issuer shall provide, or cause to be provided, to the

Underwriters as soon as practicable after the date of the Issuer's acceptance of this Agreement (but, in any event, not later than within seven business days after the Issuer's acceptance of this Agreement and in sufficient time to accompany any confirmation that requests payment from any customer) copies of the Official Statement which is complete as of the date of its delivery to the Underwriters in such quantity as the Underwriters shall request in order for the Underwriters to comply with Section (b)(4) of the Rule and the rules of the Municipal Securities Rulemaking Board.

(d) If, after the date of this Agreement to and including the date the Underwriters are no longer required to provide an Official Statement to potential customers who request the same pursuant to the Rule (the earlier of (i) 90 days from the "end of the underwriting period" (as defined in the Rule) and (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than 25 days after the "end of the underwriting period" for the 2003 Bonds), the Issuer, the City or the County (solely with respect to any County-related transaction set forth in the Official Statement) becomes aware of any fact or event which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or if it is necessary to amend or supplement the Official Statement to comply with law, the Issuer, the City or the County (solely with respect to any County-related transaction set forth in the Official Statement) will notify the Underwriters (and for the purposes of this clause provide the Underwriters with such information as they may from time to time request), and if, in the opinion of the Underwriters, such fact or event requires preparation and publication of a supplement or amendment to the Official Statement, the Issuer will forthwith prepare and furnish, at the Issuer's own expense (in a form and manner approved by the Underwriter), a reasonable number of copies of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so that the Official Statement will comply with law. If such notification shall be subsequent to the Closing, the Issuer, the City or the County (solely with respect to any County-related transaction set forth in the Official Statement) shall furnish such legal opinions, certificates, instruments and other documents as the Underwriters may deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement.

(e) The Underwriter hereby agrees to file the Official Statement with a nationally recognized municipal securities information repository. Unless otherwise notified in writing by the Underwriter, the Issuer, the City and the County can assume that the "end of the underwriting period" for purposes of the Rule is the date of the Closing.

4. *Representations, Warranties and Covenants of the Issuer, the City and the County.*

A. The Issuer hereby represents and warrants to and covenants with the Underwriter that:

(a) The Issuer is a body corporate and politic of the Commonwealth of Pennsylvania (the "State") duly created, organized and existing under the laws of the State, specifically, under the Municipality Authorities Act, as amended, 53 Pa. C.S. Ch. 56 (the "Act") and has full legal right, power and authority under the Act, and at the date of the Closing will have full legal right, power and authority under the Act and the Issuer Resolution (i) to adopt, enter into, execute and deliver, as applicable, this Agreement, the Issuer Resolution, the Indenture, the Interest Rate Management Plan, dated December 15, 2003 (the "Interest Rate Management Plan"), the Swap Agreement, the Cap Agreement, the City Bond Guaranty, the County Bond Guaranty, the City Swap Guaranty, the County Swap Guaranty, the Reimbursement Agreement, the Remarketing Agreement, dated as of December 1, 2003 (the "Remarketing Agreement"), between the Issuer and RBC Dain Rauscher Inc. (the "Remarketing Agent"),

providing for the remarketing of the 2003D-1 Bonds and 2003D-2 Bonds, the commitments for the Bond Insurance Policies, the commitment for the Reserve Fund Policy, the commitment for the Swap Insurance Policy, the Municipal Waste Disposal Agreement, dated as of December 1, 1993, as amended by a First Amendment to Municipal Waste Disposal Agreement, dated as of December 1, 2000 and a Second Amendment to Municipal Waste Disposal Agreement, dated as of June 4, 2003 (collectively, the "*City Waste Disposal Agreement*"), for the disposal of municipal waste generated within the City, the Municipal Waste Combustion Processing/Disposal Agreement, dated as of September 23, 2003 (the "*County Waste Disposal Agreement*"), between the Issuer and the County, for the disposal of municipal waste generated within the County, the First Amendment to Solid Waste Management Agreement, dated as of December 1, 2003 (the "*First Amendment to Management Agreement*"), amending the Solid Waste Management Agreement, dated as of December 1, 1993 (collectively, the "*Management Agreement*"), between the Issuer and the City, for the management of the Waste Management Facility, the Sales and Installation of Equipment Agreement (the "*Barlow Equipment Contract*"), between the Issuer and Barlow Projects Harrisburg, LLC ("*Barlow LLC*") providing for the delivery of proprietary and patented combustion technology and air pollution control system, the Professional Services Agreement (the "*Barlow Engineering Contract*"), between the Issuer and Barlow Projects, Inc. ("*Barlow Inc.*"), the Technology Licensing Agreement (the "*Barlow Licensing Agreement*"), between the Issuer and Barlow Inc. and the Guaranty Agreement (the "*Barlow Guaranty*," and with the Barlow Equipment Contract, the Barlow Engineering Contract and the Barlow Licensing Agreement, collectively, the "*Barlow Contract*"), between the Issuer and Barlow Inc., investment agreements for the investment of proceeds of the 2003 Bonds on deposit in the Construction Fund and Debt Service Reserve Fund established under the Indenture, and the Continuing Disclosure Undertaking (the "*Undertaking*") as defined in Section 6(i)(3) hereof, and all documents required hereunder and thereunder to be executed and delivered by the Issuer (this Agreement, the Issuer Resolution, the Undertaking and all the other documents referred to in this clause are hereinafter referred to as the "*Issuer Documents*"), (ii) to sell, issue and deliver the 2003 Bonds to the Underwriters as provided herein, (iii) to carry out and consummate the transactions contemplated by the Issuer Documents and the Official Statement and (iv) to own and operate the Waste Management Facility, and the Issuer has complied, and will at the Closing be in compliance in all respects, with the terms of the Act and the Issuer Documents as they pertain to such transactions;

(b) By all necessary official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized all necessary action to be taken by it for (i) the adoption of the Issuer Resolution and the issuance and sale of the 2003 Bonds, (ii) the approval, execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the 2003 Bonds and the Issuer Documents and (iii) the consummation by it of all other transactions contemplated by the Official Statement and the Issuer Documents, and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the Issuer in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The Issuer Documents constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; the 2003 Bonds, when issued, delivered and paid for, in accordance with the Issuer Resolution, the Indenture and this Agreement, will constitute legal, valid and binding obligations of the Issuer entitled to the benefits of the Issuer Resolution and the Indenture and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; upon the issuance, authentication and delivery of the 2003 Bonds as aforesaid, the Indenture will provide, for the benefit of the holders, from time to time, of the 2003 Bonds, the legally valid and binding pledge of and lien on the Receipts and Revenues after payment of Operating Expenses and on moneys and investments held by the Trustee under the Indenture it purports to create as set forth in the Indenture;

(d) The Issuer is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or any of its property or assets constituting the Waste Management Facility are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Issuer under any of the foregoing; and the execution and delivery of the 2003 Bonds, the Issuer Documents and the adoption of the Issuer Resolution and compliance with the provisions on the Issuer's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or to which any of its property or assets constituting the Waste Management Facility are otherwise subject nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer to be pledged to secure the 2003 Bonds or under the terms of any such law, regulation or instrument, except as provided by the 2003 Bonds, the Indenture and other Issuer Documents;

(e) Subject to the air quality plan approval (the "*Air Quality Plan Approval*") and associated operating permit issuance requirements of the Pennsylvania Department of Environmental Protection ("*DEP*") and the United States Environmental Protection Agency ("*EPA*"), as disclosed in the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Issuer of its obligations under the Issuer Documents and the 2003 Bonds or with respect to the Waste Management Facility have been duly obtained or are expected to be obtained in a timely manner, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the 2003 Bonds;

(f) The 2003 Bonds conform to the descriptions thereof contained in the Official Statement under the caption "THE 2003 BONDS"; the Indenture conforms to the description thereof contained in the Official Statement; the proceeds of the sale of the 2003 Bonds will be applied generally as described in the Official Statement, and the Waste Management Facility conforms to the description thereof contained in the Official Statement;

(g) Other than as disclosed in the Official Statement, there is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the Issuer after due inquiry, threatened against the Issuer, affecting the existence of the Issuer or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the 2003 Bonds or the collection of the Receipts and Revenues or in any way contesting or affecting the validity or enforceability of the 2003 Bonds, the Issuer Documents, or contesting the exclusion from gross income of interest on the 2003D Bonds for federal income tax purposes or on the 2003 Bonds for State income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Issuer or any authority for the issuance of the 2003 Bonds, the adoption of the Issuer Resolution or the execution and delivery of the Issuer Documents, nor, to the best knowledge of the Issuer, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the 2003 Bonds or the Issuer Documents;

(h) As of the date thereof, the Preliminary Official Statement did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) At the time of the Issuer's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (d) of Section 3 of this Agreement) at all times subsequent thereto during the period up to and including the date of Closing, the Official Statement does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(j) If the Official Statement is supplemented or amended pursuant to paragraph (d) of Section 3 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date of Closing the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(k) The Issuer will apply, or cause to be applied, the proceeds from the sale of the 2003 Bonds as provided in and subject to all of the terms and provisions of the Issuer Resolution and the Indenture and not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the 2003D Bonds or for State income tax purposes of the interest on the 2003 Bonds;

(l) The Issuer will furnish such information and execute such instruments and take such action in cooperation with the Underwriters as the Underwriters may reasonably request (A) to (y) qualify the 2003 Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriters may designate and (z) determine the eligibility of the 2003 Bonds for investment under the laws of such states and other jurisdictions and (B) to continue such qualifications in effect so long as required for the distribution of the 2003 Bonds (provided, however, that the Issuer will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Underwriter immediately of receipt by the Issuer of any notification with respect to the suspension of the qualification of the 2003 Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(m) The financial statements of the Issuer and other financial information regarding the Waste Management Facility in the Official Statement fairly present the financial position and results of the Waste Management Facility as of the dates and for the periods therein set forth. Prior to the Closing, there will be no adverse changes of a material nature from those described in the Official Statement in such financial position, results of operations or condition, financial or otherwise, of the Issuer or of the Waste Management Facility. Except as disclosed in the Official Statement, the Issuer is not a party to any litigation or other proceeding pending or, to its knowledge, threatened which, if decided adversely to the Issuer, would have a materially adverse effect on the financial condition of the Waste Management Facility;

(n) Prior to the Closing the Issuer will not offer or issue any notes, bonds or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or

secured by any of the revenues or assets which will pay the 2003 Bonds without the prior approval of the Underwriter;

(o) Any certificate, signed by any officer or employee of the Issuer authorized to do so in connection with the transactions contemplated by this Agreement, shall be deemed a representation and warranty by the Issuer to the Underwriters as to the statements made therein;

(p) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon; and

(q) To date the Issuer has complied, and through the date of Closing and thereafter the Issuer shall comply, with all continuing disclosure requirements and obligations under the Rule.

B. The City hereby represents and warrants to and covenants with the Underwriter that:

(a) The City is a duly organized municipal corporation validly existing under the Constitution and laws of the State, and has full legal right, power and authority under the laws of the State, and at the date of the Closing will have full legal right, power and authority under the laws of the State, the ordinance enacted on November 5, 2003 (the "*City Bond Guaranty Ordinance*") and the resolution adopted on December 16, 2003 (the "*City Swap Guaranty Resolution*") (i) to enter into, execute and deliver this Agreement, the City Bond Guaranty, the City Swap Guaranty, the Reimbursement Agreement, the First Amendment to Management Agreement and the Undertaking as defined in Section 6(i)(3) hereof and all documents required hereunder and thereunder to be executed and delivered by the City (this Agreement, the City Bond Guaranty Ordinance, the City Swap Guaranty Resolution, the City Bond Guaranty, the City Swap Guaranty, the Reimbursement Agreement, the Management Agreement, the City Waste Disposal Agreement, the Undertaking and all the other documents referred to in this clause are hereinafter referred to as the "*City Documents*"), (ii) to enact the City Bond Guaranty Ordinance, (iii) to adopt the City Swap Guaranty Resolution, (iv) to carry out and consummate the transactions contemplated by the City Documents and the Official Statement and (v) to operate the Transfer Station and the Resource Recovery Facility at the Waste Management Facility, subject to receipt of applicable DEP and EPA approvals and permits, and the City has complied, and will at the Closing be in compliance in all respects, with the terms of the City Documents as they pertain to such transactions;

(b) By all necessary official action of the City prior to or concurrently with the acceptance hereof, the City has duly authorized all necessary action to be taken by it for (i) the enactment of the City Bond Guaranty Ordinance, (ii) the adoption of the City Swap Guaranty Resolution, (iii) the approval, execution and delivery of, and the performance by the City of the obligations on its part contained in, the City Documents and (iv) the consummation by it of all other transactions contemplated by the Official Statement, the City Documents and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the City in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The City Documents constitute legal, valid and binding obligations of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights;

(d) The City is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or

other instrument to which the City is a party or to which the City is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the City under any of the foregoing; and the execution and delivery of the City Documents and the enactment of the City Bond Guaranty Ordinance, the adoption of the City Swap Guaranty Resolution and compliance with the provisions on the City's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or to which the City is or to which any of its property or assets are otherwise subject;

(e) Subject to the Air Quality Plan Approval and associated operating permit issuance requirements of DEP and EPA as disclosed in the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of or which would constitute a condition precedent to the City's obligations under the City Documents or the due performance by the City of its obligations thereunder or with respect to the Waste Management Facility, or the absence of which would materially adversely affect such due performance, have been duly obtained;

(f) Each of the City Bond Guaranty and the City Swap Guaranty conforms to the description thereof contained in the Official Statement; the proceeds of the sale of the 2003 Bonds will be applied generally as described in the Official Statement; and the Waste Management Facility conforms to the description thereof contained in the Official Statement;

(g) Other than as disclosed in the Official Statement, there is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the City after due inquiry, threatened against the City, affecting the titles of its officers to their respective offices, or in any way contesting or affecting the validity or enforceability of the City Documents, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the City or any authority, the enactment of the City Bond Guaranty Ordinance, the adoption of the City Swap Guaranty Resolution or the execution and delivery of the City Bond Guaranty, the City Swap Guaranty, the Reimbursement Agreement, the First Amendment to Management Agreement or the other City Documents, nor, to the best knowledge of the City, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the City Documents or the financial condition or operations of the City;

(h) As of the date thereof, the Preliminary Official Statement as to data provided by or pertaining to the City did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) At the time of the City's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (d) of Section 3 of this Agreement) at all times subsequent thereto during the period up to and including the date of Closing, the Official Statement as to data provided by or pertaining to the City does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(j) If the Official Statement is supplemented or amended pursuant to paragraph (d) of Section 3 of this Agreement, at the time of each supplement or amendment thereto and (unless

subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date of Closing the Official Statement as so supplemented or amended as to data provided by or pertaining to the City will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(k) The financial information regarding the City in the Official Statement fairly presents the financial position and results of the City as of the dates and for the periods therein set forth. Prior to the Closing, there will be no adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the City. Other than as disclosed in the Official Statement, the City is not a party to any litigation or other proceeding pending or, to its knowledge, threatened which, if decided adversely to the City, would have a materially adverse effect on the financial condition of the City;

(l) Any certificate signed by any officer, official or employee of the City authorized to do so in connection with the transactions contemplated by this Agreement, shall be deemed a representation and warranty by the City to the Underwriters as to the statements made therein; and

(m) To date the City has complied, and through the Closing Date and thereafter the City shall comply, with all continuing disclosure requirements and obligations under the Rule.

C. The County hereby represents and warrants to and covenants with the Underwriter that:

(a) The County is a duly organized municipal corporation validly existing under the Constitution and laws of the State, and has full legal right, power and authority under the laws of the State, and at the date of the Closing will have full legal right, power and authority under the laws of the State and the ordinance enacted on November 13, 2003 (the "*County Bond Guaranty Ordinance*") and the resolution adopted on December 16, 2003 (the "*County Swap Guaranty Resolution*") (i) to enter into, execute and deliver this Agreement, the County Bond Guaranty, the County Swap Guaranty, the Reimbursement Agreement, the County Waste Disposal Agreement and the Undertaking as defined in Section 6(i)(3) hereof and all documents required hereunder and thereunder to be executed and delivered by the County (this Agreement, the County Bond Guaranty Ordinance, the County Swap Guaranty Resolution, the County Bond Guaranty, the County Swap Guaranty, the Reimbursement Agreement, the County Waste Disposal Agreement, the Undertaking and all the other documents referred to in this clause are hereinafter referred to as the "*County Documents*"), (ii) to enact the County Bond Guaranty Ordinance, (iii) to adopt the County Swap Guaranty Resolution and (iv) to carry out and consummate the transactions contemplated by the County Documents and the Official Statement, and the County has complied, and will at the Closing be in compliance in all respects, with the terms of the County Documents as they pertain to such transactions;

(b) By all necessary official action of the County prior to or concurrently with the acceptance hereof, the County has duly authorized all necessary action to be taken by it for (i) the enactment of the County Bond Guaranty Ordinance, (ii) the adoption of the County Swap Guaranty Resolution, (iii) the approval, execution and delivery of, and the performance by the County of the obligations on its part contained in, the County Documents and (iv) the consummation by it of all other transactions contemplated by the Official Statement, the County Documents and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the County in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The County Documents constitute legal, valid and binding obligations of the County, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights;

(d) The County is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the County is a party or to which the County is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the County under any of the foregoing; and the execution and delivery of the County Documents, the enactment of the County Bond Guaranty Ordinance and the adoption of the County Swap Guaranty Resolution and compliance with the provisions on the County's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the County is a party or to which the County is or to which any of its property or assets are otherwise subject;

(e) Subject to the County Municipal Waste Management Plan approval requirements of DEP as disclosed in the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the County of its obligations under the County Documents have been duly obtained;

(f) The County Bond Guaranty and the County Swap Guaranty each conforms to the description thereof contained in the Official Statement; and the proceeds of the sale of the 2003 Bonds will be applied generally as described in the Official Statement;

(g) Other than as disclosed in the Official Statement, there is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the County after due inquiry, threatened against the County, affecting the titles of its officers to their respective offices, or in any way contesting or affecting the validity or enforceability of the County Documents, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the County or any authority, the enactment of the County Bond Guaranty Ordinance, the adoption of the County Swap Guaranty Resolution or the execution and delivery of the County Bond Guaranty, the County Swap Guaranty, the Reimbursement Agreement, the County Waste Disposal Agreement or the other County Documents, nor, to the best knowledge of the County, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the County Documents or the financial condition or operations of the County;

(h) As of the date thereof, the Preliminary Official Statement as to data provided by or pertaining to the County and other matters concerning the County did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) At the time of the County's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (d) of Section 3 of this Agreement) at all times subsequent thereto during the period up to and including the date of Closing, the Official Statement as to

data provided by or pertaining to the County and other matters concerning the County does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(j) If the Official Statement is supplemented or amended pursuant to paragraph (d) of Section 3 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date of Closing the Official Statement as so supplemented or amended as to data provided by or pertaining to the County and other matters concerning the County will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(k) The financial information regarding the County in the Official Statement fairly presents the financial position and results of the County as of the dates and for the periods therein set forth. Prior to the Closing, there will be no adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the County. Other than as disclosed in the Official Statement, the County is not a party to any litigation or other proceeding pending or, to its knowledge, threatened which, if decided adversely to the County, would have a materially adverse effect on the financial condition of the County;

(l) Any certificate signed by any officer, official or employee of the County authorized to do so in connection with the transactions contemplated by this Agreement, shall be deemed a representation and warranty by the County to the Underwriters as to the statements made therein; and

(m) To date the County has complied, and through the Closing Date and thereafter the County shall comply, with all continuing disclosure requirements and obligations under the Rule.

#### 5. *Closing.*

(a) At 10:00 a.m. Harrisburg time, on December 30, 2003, or at such other time and date as shall have been mutually agreed upon by the Issuer and the Underwriter (the "*Closing*"), the Issuer will, subject to the terms and conditions hereof, deliver the 2003 Bonds to the Underwriter duly executed and authenticated, together with the other documents hereinafter mentioned, and the Underwriter will, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the 2003 Bonds as set forth in Section 1 of this Agreement by wire transfer payable in immediately available funds to the order of the Issuer. Payment for the 2003 Bonds as aforesaid shall be made at the offices of Obermayer Rebmann Maxwell & Hippel LLP (the "*Bond Counsel*," and with Stanley H. Mitchell, Esquire, collectively, "*Co-Bond Counsel*"), or such other place as shall have been mutually agreed upon by the Issuer and the Underwriter.

(b) Delivery of the 2003 Bonds shall be made to the Trustee for placement in the FAST program of The Depository Trust Company, New York, New York (the "*Depository*"). The 2003 Bonds shall be delivered in definitive fully registered form, bearing CUSIP numbers without coupons, with one Bond for each maturity of each series of the 2003 Bonds, registered in the name of Cede & Co., all as provided in the Issuer Resolution and the Indenture, and shall be made available to the Underwriter at least one business day before the Closing for purposes of inspection.

6. *Closing Conditions.* The Underwriters have entered into this Agreement in reliance upon the representations, warranties and agreements of the Issuer, the City and the County contained herein,

and in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer, the City and the County of their respective obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the Underwriters' obligations under this Agreement to purchase, to accept delivery of and to pay for the 2003 Bonds shall be conditioned upon the performance by the Issuer, the City and the County of their respective obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and shall also be subject to the following additional conditions, including the delivery by the Issuer, the City and the County of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Underwriter:

(a) The representations and warranties of the Issuer, the City and the County contained herein shall be true, complete and correct on the date hereof and on and as of the date of the Closing, as if made on the date of the Closing;

(b) The Issuer, the City and the County shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing;

(c) At the time of the Closing, (i) the Issuer Documents, the City Documents, the County Documents and the 2003 Bonds shall be in full force and effect in the form heretofore approved by the Underwriter and shall not have been amended, modified or supplemented, and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriter; and (ii) all actions of the Issuer, the City and the County required to be taken by the Issuer, the City and the County shall be performed in order for Co-Bond Counsel and other counsel to deliver their respective opinions referred to hereinafter;

(d) At or prior to the Closing, the Indenture shall have been duly executed and delivered by the Issuer and the Issuer shall have duly executed and delivered and the Trustee shall have duly authenticated the 2003 Bonds;

(e) At or prior to the Closing, the Bond Insurance Policies, the Reserve Fund Policy and the Swap Insurance Policy shall have been duly executed, issued and delivered;

(f) At the time of the Closing, there shall not have occurred any change or any development involving a prospective change in the Waste Management Facility, in the condition, financial or otherwise, or in the revenues or operations, of the Waste Management Facility, or a prospective change in the condition, financial or otherwise, of the City or a prospective change in the condition, financial or otherwise, of the County, in each case from that set forth in the Official Statement, that in the reasonable judgment of the Underwriter, is material and adverse and that makes it, in the judgment of the Underwriter, impracticable to market the 2003 Bonds on the terms and in the manner contemplated in the Official Statement;

(g) The Issuer shall not have failed to pay principal or interest when due on any of its outstanding obligations for borrowed money with respect to the Waste Management Facility;

(h) All steps to be taken and all instruments and other documents to be executed, and all other legal matters in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in legal form and effect to the Underwriter;

(i) At or prior to the Closing, the Underwriter shall have received copies of each of the following documents:

(1) The Official Statement, and each supplement or amendment thereto, if any, executed on behalf of the Issuer by its Chairman, or such other official as may have been agreed to by the Underwriter, and the audits referred to or appearing in the Official Statement;

(2) The Issuer Resolution, the Indenture, the Swap Agreement, the Cap Agreement, the City Bond Guaranty Ordinance, the City Bond Guaranty, the City Swap Guaranty Resolution, the City Swap Guaranty, the County Bond Guaranty Ordinance, the County Bond Guaranty, the County Swap Guaranty Resolution, the County Swap Guaranty, the Reimbursement Agreement, the Remarketing Agreement, the Management Agreement, the City Waste Disposal Agreement and the County Waste Disposal Agreement with such supplements or amendments as may have been agreed to by the Underwriter;

(3) The Undertaking of each of the Issuer, the City and the County which satisfies the requirements of section (b)(5)(i) of the Rule;

(4) The approving opinions of Co-Bond Counsel with respect to the 2003 Bonds, in substantially the forms attached to the Official Statement;

(5) The approving opinion of Mette, Evans & Woodside, Special Counsel to the County ("*County Special Counsel*") with respect to the County Bond Guaranty, in substantially the form attached to the Official Statement;

(6) A supplemental opinion, dated the date of Closing, of Co-Bond Counsel addressed to the Underwriters, substantially to the effect that:

(i) the Issuer Resolution has been duly adopted and is in full force and effect;

(ii) the 2003 Bonds are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended (the "*1933 Act*"), and Section 304(a)(4)(A) of the Trust Indenture Act of 1939, as amended (the "*Trust Indenture Act*") and it is not necessary, in connection with the offering and sale of the 2003 Bonds, to register the 2003 Bonds under the 1933 Act or to qualify the Indenture under the Trust Indenture Act;

(iii) the information in the Official Statement under the captions or subcaptions (as the case may be) "THE 2003 BONDS" (excluding the information under the subsections "Book-Entry-Only System" and "Discontinuation of Book-Entry-Only System"), "SECURITY FOR THE 2003 BONDS" (excluding the subsection "County Bond Guaranty for the 2003D Bonds and the 2003E Bonds"), "PURPOSE AND PLAN OF FINANCING – The Retrofit Project," "THE WASTE MANAGEMENT FACILITY" (only the subsection "Management Agreement"), "INTEREST RATE SWAPS AND INTEREST RATE CAP - 2003D BONDS" (only the subsections "Security for Authority Obligations under the Swap Agreement and the Cap Agreement" and "City Swap Guaranty") and "APPENDIX F – Summary of Certain Provisions of the Trust Indenture," insofar as such statements summarize certain provisions of the 2003 Bonds, the Indenture, the City Bond Guaranty, the City Swap Guaranty and the Management Agreement, were as of the date of the Official Statement, and are, as of the date of Closing, a reasonable and accurate summary in all material respects of the information summarized therein. The statements under sections in the Official Statement captioned "TAX MATTERS - 2003D BONDS" and "TAX MATTERS - 2003E BONDS, 2003F BONDS," insofar as such statements purport to summarize certain provisions of tax law, regulations and rulings, are reasonable summaries of the provisions so summarized; and

(iv) based on the examinations which they have made as Co-Bond Counsel and their participation at conferences at which the Official Statement was discussed, but without having undertaken to determine independently the accuracy, completeness or fairness of the statements in the Official Statement (including the Appendices thereto) other than the statements covered in subparagraph (iii) of this subsection above, such counsel has no reason to believe that the Official Statement as of its date and as of the date of Closing contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for any financial, demographic, forecast, economic and statistical data and projections included in the Official Statement, the information regarding the Depository and its book-entry system, information regarding the Bond Insurer and the Bond Insurance Policy, the information under the caption "UNDERWRITING," and Appendices B through E, Appendix H and Appendix I to the Official Statement, in each case as to which no view need be expressed);

(7) An opinion, dated the date of Closing and addressed to the Underwriters, of Eckert Seamans Cherin & Mellott, LLC (the "*Underwriters' Counsel*"), to the effect that:

(i) the 2003 Bonds are exempt securities under the 1933 Act and the Trust Indenture Act and it is not necessary, in connection with the offering and sale of the 2003 Bonds, to register the 2003 Bonds under the 1933 Act and the Indenture need not be qualified under the Trust Indenture Act; and

(ii) based upon their participation in the preparation of the Official Statement as Underwriters' Counsel and their participation at conferences at which the Official Statement was discussed, but without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement, such counsel has no reason to believe that the Official Statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for any financial, demographic, forecast, economic and statistical data and projections included in the Official Statement, the information regarding the Depository and its book-entry system and information regarding the Bond Insurer and the Bond Insurance Policy, in each case as to which no view need be expressed);

(8) An opinion of Rhoads & Sinon LLP (the "*Issuer's Counsel*"), addressed to the Underwriters, to the effect that:

(i) The Issuer is a body corporate and politic of the State duly created, organized and existing under the laws of the State, specifically, under the Act, and has full legal right, power and authority under the Act and the Issuer Resolution (A) to enter into, execute and deliver the Issuer Documents and all documents required hereunder and thereunder to be executed and delivered by the Issuer, (B) to sell, issue and deliver the 2003 Bonds to the Underwriters as provided herein, (C) to apply the 2003 Bonds proceeds as described in the Official Statement, (D) to carry out and consummate the transactions contemplated by the Issuer Documents and the Official Statement and (E) to own and operate the Waste Management Facility and to construct, acquire and install the improvements constituting the Retrofit, and the Issuer has complied, and will as of the date of Closing be in compliance in all respects, with the terms of the Act and the Issuer Documents as they pertain to such transactions;

(ii) By all necessary official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized all necessary action to be taken by it for (A) the adoption of the Issuer Resolution and the issuance and sale of the 2003 Bonds, (B) the approval, execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the 2003 Bonds and the Issuer Documents, and (C) the consummation by it of all other

transactions contemplated by the Official Statement, the Issuer Documents and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the Issuer in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(iii) The Issuer Resolution was duly and validly adopted by the Issuer and is in full force and effect; the Issuer Resolution, the Indenture and all other proceedings pertinent to the validity and enforceability of the 2003 Bonds have been duly and validly adopted or undertaken in compliance with all applicable procedural requirements of the Issuer and in compliance with the Constitution and laws of the State, including the Act;

(iv) The Issuer Documents have been duly authorized, executed and delivered by the Issuer, and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except to the extent limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws and equitable principles of general application relating to or affecting the enforcement of creditors' rights; and the 2003 Bonds, when issued, delivered and paid for, in accordance with the Issuer Resolution, the Indenture and this Agreement, will constitute legal, valid and binding obligations of the Issuer entitled to the benefits of the Indenture and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; upon the issuance, authentication and delivery of the 2003 Bonds as aforesaid, the Indenture will provide, for the benefit of the holders, from time to time, of the 2003 Bonds, the legally valid and binding pledge and lien it purports to create as set forth in the Indenture;

(v) The distribution of the Preliminary Official Statement and the Official Statement has been duly authorized by the Issuer;

(vi) Subject to requirements of DEP with respect to Air Quality Plan Approval and issuance of an operating permit thereunder, as disclosed in the Official Statement, all authorizations, approvals, licenses, permits, consents, reviews and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required or necessary for the due authorization of or which would constitute a condition precedent to the Issuer's obligations under the Issuer Documents and the 2003 Bonds, or the due performance by the Issuer of its obligations thereunder or with respect to the Waste Management Facility, including the construction, acquisition and installation of the Retrofit, or the absence of which would materially adversely affect such due performance by the Issuer, have been obtained;

(vii) Except as disclosed in the Official Statement, there is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of Issuer's Counsel, after due inquiry, threatened against the Issuer, affecting the corporate existence of the Issuer or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the 2003 Bonds or the collection of the Receipts and Revenues or the construction, acquisition and installation of the Retrofit or the operation of the Waste Management Facility or in any way contesting or affecting the validity or enforceability of the 2003 Bonds or the Issuer Documents, or contesting the exclusion from gross income of interest on the 2003D Bonds for federal income tax purposes or on the 2003 Bonds for State income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Issuer or any authority for the issuance of the 2003 Bonds, the adoption of the Issuer Resolution or the execution and delivery of the Issuer Documents, nor,

to the best knowledge of the Issuer, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the 2003 Bonds or the Issuer Documents;

(vii) The execution and delivery of the Issuer Documents and compliance by the Issuer with the provisions hereof and thereof, under the circumstances contemplated herein and therein, will not conflict with or constitute on the part of the Issuer a material breach of or a default under any agreement or instrument to which the Issuer is a party, or violate any existing law, administrative regulation, court order or consent decree to which the Issuer is subject;

(ix) The execution and delivery of the Barlow Contract, the provision of performance and payment bonds and other security provided in connection with Barlow's performance thereunder, and compliance by the Issuer with the provisions thereof, including provisions concerning the provision by Barlow of security for the performance of its obligations thereunder, will not conflict with or constitute on the part of the Issuer a material breach of or a default under any agreement or instrument to which the Issuer is a party, or violate any existing laws, administrative regulation, court order or consent decree to which the Issuer is subject;

(x) Based on the examination which such counsel has caused to be made and its participation at conferences at which the Preliminary Official Statement and the Official Statement were discussed, such counsel has no reason to believe that the Official Statement as of its date and as of the date hereof contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect (except for any financial, demographic, forecast, economic and statistical data and projections included in the Official Statement and except for information regarding the Depository and its book-entry system and information regarding the Bond Insurer and the Bond Insurance Policy, in each case as to which no view need be expressed);

(xi) The Issuer Resolution and all actions of the Issuer taken in connection with the issuance of the 2003 Bonds comply with the requirements of Act No. 1998-93 of the State, approved October 15, 1998, commonly known as the Sunshine Act;

(xii) The Issuer has duly adopted the Interest Rate Management Plan, which complies with the requirements of the Pennsylvania Local Government Unit Debt Act, as amended, 53 Pa.C.S. Chs. 80-82 (the "*Debt Act*");

(xiii) The Issuer has not been and is not in default in payment of principal or premium, or interest with respect to any note, bond or obligation issued, assumed or guaranteed by the Issuer and the Issuer has not entered into any contract or arrangement other than the 1998 Indenture, the Indenture and the Interest Rate Management Agreement which may give rise to a lien or encumbrance on the security for the 2003 Bonds; and

(xiv) As to other matters as Co-Bond Counsel, the Underwriters or Underwriters' Counsel may reasonably request.

(9) A certificate, dated the date of Closing, of the Issuer to the effect that (i) the representations and warranties of the Issuer contained herein are true and correct in all material respects on and as of the date of Closing as if made on the date of Closing, (ii) except as disclosed in the Official Statement, no litigation or proceeding against it is pending or, to its knowledge, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the members or officers of the Issuer to hold and exercise their respective positions, (b) contest the due

organization and valid existence of the Issuer, (c) contest the validity, due authorization and execution of the 2003 Bonds or the Issuer Documents or (d) attempt to limit, enjoin or otherwise restrict or prevent the Issuer from functioning and collecting Receipts and Revenues pursuant to the Indenture, and other income, or the anticipated receipt of such Receipts and Revenues, (iii) the Issuer Resolution, authorizing the execution, delivery and/or performance of the Official Statement, the 2003 Bonds and Issuer Documents, has been duly adopted by the Issuer, is in full force and effect and has not been modified, amended or repealed, and (iv) to the best of its knowledge, no event affecting the Issuer has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein, in light of the circumstances under which made, not misleading in any respect as of the date of Closing, and the information contained in the Official Statement is correct in all material respects and, as of the date of the Official Statement did not, and as of the date of Closing does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(10) A certificate of the Issuer in form and substance satisfactory to Co-Bond Counsel and Underwriters' Counsel (a) setting forth the facts, estimates and circumstances in existence on the date of Closing, which establish that it is not expected that the proceeds of the 2003D Bonds will be used in a manner that would cause the 2003D Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable regulations (whether final, temporary or proposed), issued pursuant to the Code, and (b) certifying that to the best of the knowledge and belief of the Issuer there are no other facts, estimates or circumstances that would materially change the conclusions, representations and expectations contained in such certificate;

(11) Any other certificates and opinions required by the Issuer Resolution or Indenture for the issuance thereunder of the 2003 Bonds;

(12) Consent letters from the Issuer's Auditor, the City's Auditor and the County's Auditor;

(13) Evidence satisfactory to the Underwriters that the 2003 Bonds have been assigned a rating of "AAA" by Standard & Poor's Ratings Group and that such rating is in effect as of the date of Closing;

(14) Copies of the Bond Insurance Policies together with an opinion of counsel to the Bond Insurer in form and substance satisfactory to the Underwriter;

(15) A copy of the Reserve Fund Policy together with an opinion of counsel to the Bond Insurer in form and substance satisfactory to the Underwriter;

(16) A certificate of the Bond Insurer with respect to the accuracy of statements contained in the Official Statement regarding the Bond Insurance Policies, the Reserve Fund Policy and the Bond Insurer and the due authorization, execution, issuance and delivery of the Bond Insurance Policies and the Reserve Fund Policy;

(17) Copies of the executed Barlow Equipment Contract, the Barlow Engineering Contract, the Barlow Licensing Agreement and the Barlow Guaranty;

(18) A copy of the Interest Rate Management Plan and (i) the certificates by the independent financial advisors to the Issuer, the City and the County with respect to the Interest Rate

Management Plan adopted by the Issuer, as required by the Debt Act, and (ii) certificates, dated the date of execution and delivery of the Interest Rate Management Agreement, by the independent financial advisors to the Issuer, the City and the County, reaffirming the certificates required by the Debt Act referred to in the preceding subclause (i), in connection with the execution and delivery of the Interest Rate Management Agreement;

(19) A certificate dated the Closing Date signed by an authorized official of the City to the effect that:

A. except as disclosed in the Official Statement, no litigation or other proceedings are pending or, to his knowledge, threatened in any court or other tribunal of competent jurisdiction, State or Federal, in any way (a) questioning or affecting the validity or enforceability of the City Documents or any other City-related transaction referred to in the Official Statement, or (b) questioning or affecting the power and authority of the City to execute and deliver the City Documents;

B. the ordinances of the City authorizing the execution, attestation and delivery of the Management Agreement, the City Waste Disposal Agreement, the City Bond Guaranty and the Reimbursement Agreement have been duly enacted by the City and remain in full force and effect;

C. the City Swap Guaranty Resolution authorizing the execution, attestation and delivery of the City Swap Guaranty has been duly adopted by the City and remains in full force and effect;

D. the Official Statement with respect to matters concerning the City, including Appendix A to the Official Statement and data provided by the City including with respect to the Waste Management Facility, does not contain any untrue statement of a material fact or omit to state any material fact which should be included therein for the purpose for which the Official Statement is to be used or which is necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

E. the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing; and

F. as to other matters as Co-Bond Counsel, the Underwriters or Underwriters' Counsel may reasonably request;

(20) At Closing, an opinion of Steven R. Dade, Esquire, the Solicitor of the City, dated the date of Closing, to the effect that:

A. the ordinances referred to in subparagraph 6(i)(19)(B) hereof have been duly enacted by the City Council, have not been amended, modified or repealed and are currently in full force and effect;

B. the City Swap Guaranty Resolution has been duly adopted by the City Council, has not been amended, modified or repealed and is currently in full force and effect;

C. the City has duly authorized, executed and delivered the City Documents, and, assuming due authorization, execution and delivery by the other parties thereto, each constitutes a legal, valid and binding obligation of the City;

D. to the best of his knowledge and belief after due inquiry and except as disclosed in the Official Statement, no litigation, investigation or other proceedings are pending or, to his knowledge, threatened in any court or other tribunal of competent jurisdiction, State or Federal, (a) questioning or affecting the validity of the ordinances referred to in subparagraph 6(i)(19)(B) hereof, the City Swap Guaranty Resolution or any other City-related transaction referred to in the Official Statement, (b) questioning or affecting the power and authority of the City to deliver the City Documents, or (c) which, if adversely determined, could materially adversely affect the ability of the City to perform its obligations under the City Documents;

E. to the best of his knowledge and belief after due inquiry, the Official Statement with respect to matters concerning the City and the Waste Management Facility, including data provided by the City and Appendix A thereto, does not contain any untrue statement of a material fact or omit to state any material fact which should be included therein for the purpose for which the Official Statement is to be used or which is necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

F. the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing; and

G. as to other matters as Co-Bond Counsel, the Underwriters or Underwriters' Counsel may reasonably request;

(21) Copies of the ordinances referred to in subparagraph 6(i)(19)(B) hereof and the City Swap Guaranty Resolution, certified by the City Clerk as having been duly enacted or adopted, as applicable, by City Council and as being in full force and effect, without modification;

(22) At Closing, an opinion or opinions of County Special Counsel, dated the date of Closing, to the effect that:

A. the County Bond Guaranty Ordinance has been duly enacted by the Board of Commissioners of the County, has not been amended, modified or repealed and is currently in full force and effect;

B. the County Swap Guaranty Resolution has been duly adopted by the Board of Commissioners of the County, has not been amended, modified or repealed and is currently in full force and effect;

C. the County has duly authorized, executed and delivered the County Documents, and, assuming due authorization, execution and delivery by the other parties thereto, each constitutes a legal, valid and binding obligation of the County;

D. to the best of their knowledge and belief after due inquiry and except as disclosed in the Official Statement, no litigation, investigation or other proceedings are pending or, to their knowledge, threatened in any court or other tribunal of competent jurisdiction, State or Federal, (a) questioning or affecting the validity of the County Bond Guaranty Ordinance, the County Swap Guaranty Resolution or any other County-related transaction referred to in the Official Statement, (b) questioning or affecting the power and authority of the County to deliver the County Documents, or (c) which, if adversely determined, could materially adversely affect the ability of the County to perform its obligations under the County Documents;

E. to the best of their knowledge and belief after due inquiry, the Official Statement with respect to matters concerning the County and the Waste Management Facility, including data provided by the County and Appendix B, does not contain any untrue statement of a material fact or omit to state any material fact which should be included therein for the purpose for which the Official Statement is to be used or which is necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

F. the information in the Official Statement under the captions or subcaptions (as the case may be) "SECURITY FOR THE 2003 BONDS" (only the subsection "County Bond Guaranty for the 2003D Bonds and the 2003E Bonds") and "INTEREST RATE SWAPS AND INTEREST RATE CAP - 2003D BONDS" (only the subsection "County Swap Guaranty"), insofar as such statements summarize certain provisions of the County Bond Guaranty and the County Swap Guaranty, were as of the date of the Official Statement, and are, as of the date of Closing, a reasonable and accurate summary in all material respects of the information summarized therein;

G. the County has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing; and

H. as to other matters as Co-Bond Counsel, the Underwriters or Underwriters' Counsel may reasonably request;

(23) Copies of the County Bond Guaranty Ordinance and the County Swap Guaranty Resolution certified by the Chief Clerk of the County as having been duly enacted or adopted, as appropriate, by the Board of Commissioners of the County and as being in full force and effect, without modification;

(24) An opinion of Obermayer Rebmann Maxwell & Hoppel LLP, special counsel to the Issuer, regarding the merits of an appeal filed on October 10, 2003 with the State's Environmental Hearing Board ("EHB"), as amended by an amended notice of appeal filed on October 22, 2003, challenging DEP's Air Quality Plan Approval regarding the undertaking of the Retrofit of the Resource Recovery Facility;

(25) An opinion of Evergreen Environmental Inc., environmental consultant to the Issuer, to the effect that the Issuer's October 27, 2003 filing with DEP of an application to amend (the "*Application to Amend*") the application for air quality plan approval filed by the Issuer on May 17, 2002 (the "*2002 Air Quality Application*") will be considered by DEP to be a minor modification to the 2002 Air Quality Application and will be evaluated by DEP on such basis;

(26) A certified copy of the approval, dated on or prior to the date of the Closing, by the Department of Community and Economic Development ("DCED") regarding the proceedings filed by the City relating to the City Bond Guaranty;

(27) A certified copy of the approval, dated on or prior to the date of the Closing, by DCED regarding the proceedings filed by the County relating to the County Bond Guaranty;

(28) Acknowledgments by DCED of its receipt of the filings of the City Swap Guaranty Resolution and the County Swap Guaranty Resolution;

(29) Evidence that Internal Revenue Form 8038-G with respect to the 2003D Bonds has been executed by the Issuer and is prepared for filing with the Internal Revenue Service;

(30) A certificate, dated the date of Closing and signed by an authorized representative of Barlow and Reynolds Construction Management, the Issuer's construction manager with respect to the Retrofit, stating that (a) the plans and specifications to undertake and complete the Retrofit are being prepared in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality; (b) in the signers' opinion, such plans and specifications show that the Retrofit is practicable and that, based upon the Authority's expected contracting and construction schedule, the Retrofit can be completed according to the schedule set forth in the Official Statement; and (c) based upon current bids and estimates as of the date of Closing, the signers have no reason to believe that the estimated costs to complete the Retrofit exceed the amounts set forth in the Official Statement;

(31) An opinion of Klett Rooney Lieber & Schorling, addressed to the Issuer and the County, to the effect that the appeal filed by Pennsylvania Waste Industries Association, Republic Services of Pennsylvania, LLC and Penn Waste, Inc. before the EHB, challenging the County's Municipal Waste Management Plan adopted on December 17, 2002 (the "2002 Plan Revision") and approved by DEP is without merit, and upon the County's intended filing of a Nonsubstantial Revision to its Municipal Waste Management Plan (the "New Plan Revision") and enactment of a flow control ordinance (the "New Plan Ordinance"), such New Plan Revision and New Plan Ordinance would survive a challenge under the Commerce Clause of the United States Constitution;

(32) A copy of the Swap Insurance Policy together with an opinion of counsel to the Swap Insurer in form and substance satisfactory to the Underwriter;

(33) A certificate of the Swap Insurer with respect to the accuracy of the statements contained in the Official Statement regarding the Swap Insurance Policy and the Swap Insurer and the due authorization, execution, issuance and delivery of the Swap Insurance Policy;

(34) A fairness opinion of Investment Management Advisory Group, Inc. ("*IMAGE*") with respect to the Interest Rate Management Agreement;

(35) Any other certificates and opinions required by the Interest Rate Management Agreement; and

(36) Such additional legal opinions, certificates, instruments and other documents as the Underwriters or Underwriters' Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the date of the Closing, of the representations and warranties of the Issuer, the City and the County contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Issuer, the City and the County on or prior to the date of the Closing of all the respective agreements then to be performed and conditions then to be satisfied by the Issuer, the City and the County.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance reasonably satisfactory to the Underwriter.

If the Issuer, the City and the County shall be unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the 2003 Bonds contained in this Agreement, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the 2003 Bonds shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Underwriters, the Issuer, the City nor the County shall be under

any further obligation hereunder, except that the respective obligations of the Issuer, the City, the County and the Underwriters set forth in Sections 4, 7 and 9 hereof shall continue in full force and effect.

7. *Indemnification.*

(a) The Issuer, the City and the County severally (each, an "*Indemnifying Party*") will indemnify and hold harmless the Underwriters against any losses, claims, damages or liabilities to which the Underwriters may become subject, under federal securities laws, or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Preliminary Official Statement or Official Statement, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case only as to data or matters for which such Indemnifying Party is responsible, and will reimburse the Underwriters for any legal or other expenses reasonably incurred by the Underwriters in connection with investigating or defending any such action or claim; provided, however, that the Issuer, the City and the County shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Official Statement or Official Statement or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Issuer by the Underwriters expressly for use therein.

(b) The Underwriters will indemnify and hold harmless the Issuer, the City and the County against any losses, claims, damages or liabilities to which the Issuer, the City or the County may become subject, under federal securities laws, or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Official Statement or Official Statement, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or omission or alleged omission was made in the Preliminary Official Statement or Official Statement or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Issuer by the Underwriters expressly for use therein; and will reimburse the Issuer, the City and the County for any legal or other expenses reasonably incurred by the Issuer, the City and the County in connection with investigating or defending any such action or claim.

(c) Promptly after receipt by an indemnified party pursuant to subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party or shall otherwise have an actual or potential conflict in such representation), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses or other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation.

(d) If the indemnification provided for in this Section is unavailable to or insufficient to hold harmless an indemnified party or parties under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then the indemnifying party or parties shall contribute to the amount paid or payable by such indemnified party or parties as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the parties from the offering of the 2003 Bonds. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party or parties failed to give the notice required under subsection (c) above, then the indemnifying party or parties shall contribute to such amount paid or payable by such indemnified party or parties in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the parties in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the parties shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Issuer bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer, the City or the County on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct and to prevent such statement or omission. The Issuer, the City, the County and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party or parties as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party or parties in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), the Underwriters shall not be required to contribute any amount in excess of the amount by which the total price at which the 2003 Bonds were offered to the public exceeds the amount of any damages which the Underwriters have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged untrue statement or omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Issuer, the City and the County under this Section shall be in addition to any liability which the Issuer, the City and the County may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Underwriters within the meaning of the 1933 Act. The indemnity and contribution agreements contained in this Section and the representations and warranties of the Issuer, the City and the County contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Underwriters or any person controlling the Underwriters, by or on behalf of the Issuer, its officers or directors or any other person controlling the Issuer, by or on behalf of the City, its officials or any other person controlling the City or by or on behalf of the County, its officials or any other person controlling the County and (iii) acceptance of and payment for any of the 2003 Bonds.

8. *Termination.* The Underwriters shall have the right to cancel their obligation to purchase the 2003 Bonds if, between the date of this Agreement and the Closing, the market price or marketability of the 2003 Bonds shall be materially adversely affected, in the reasonable judgment of the Underwriters, by the occurrence of any of the following:

(a) legislation shall be enacted by or introduced in the Congress of the United States or recommended to the Congress for passage by the President of the United States, or the Treasury Department of the United States or the Internal Revenue Service or any member of the Congress or in the State legislature or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or of the State or the United States Tax Court shall be rendered, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed, the effect of any or all of which would be to impose, directly or indirectly, federal income taxation or State income taxation upon revenues or other income of the general character to be derived by the Issuer pursuant to the Indenture, or upon interest received on obligations of the general character of the 2003D Bonds or, with respect to State taxation of the interest on the 2003 Bonds as described in the Official Statement, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal income tax consequences or State income tax consequences of any of the transactions contemplated herein;

(b) legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the 2003 Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the 1933 Act, or that the Indenture is not exempt from qualification under or other requirements of the Trust Indenture Act, or that the issuance, offering or sale of obligations of the general character of the 2003 Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise, is or would be in violation of the federal securities law as amended and then in effect;

(c) any state blue sky or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the 2003 Bonds as described herein, or issued a stop order or similar ruling relating thereto;

(d) a general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, the establishment of minimum prices on either such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so;

(e) the New York Stock Exchange or other national securities exchange or any governmental authority shall impose, as to the 2003 Bonds or as to obligations of the general character of the 2003 Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters;

(f) any amendment to the federal or State Constitution or action by any federal or State court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the Issuer, its property, income or securities (or interest thereon);

(g) any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) there shall have occurred since the date of this Agreement any materially adverse change in the affairs of the Issuer, the City, the County or financial condition of the Waste Management Facility not disclosed in the Official Statement;

(i) the United States shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, financial or otherwise;

(j) any fact or event shall exist or be discovered to have existed that, in the Underwriters' judgment, requires or has required an amendment of or supplement to the Official Statement; and

(k) the purchase of and payment for the 2003 Bonds by the Underwriters, or the resale of the 2003 Bonds by the Underwriters, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission.

9. *Expenses.*

(a) The Underwriters shall be under no obligation to pay, and the Issuer shall pay, any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to (i) the cost of preparation and printing of the 2003 Bonds, (ii) the fees and disbursements of Co-Bond Counsel, Issuer's Counsel, County Special Counsel and Underwriters' Counsel; (iii) the fees and disbursements of Milt Lopus Associates (the "*Issuer's Financial Advisor*"), Public Financial Management, Inc. (the "*County's Financial Advisor*"), IMAGE, as Co-Swap Advisor, and of the Trustee and the 1998 Trustee; (iv) the fees and disbursements of any engineers, accountants, and other experts, consultants or advisors retained by the Issuer; and (v) the fees for bond ratings and credit enhancement fees or premiums, costs and expenses and CUSIP Service Bureau charges.

(b) The Underwriters shall pay (i) the cost of preparation and printing of this Agreement, the Blue Sky Survey and Legal Investment Memorandum, if any; (ii) all advertising expenses in connection with the public offering of the 2003 Bonds; and (iii) all other expenses incurred by them in connection with the public offering of the 2003 Bonds.

10. *Notices.* Any notice or other communication to be given under this Agreement to: (i) the Issuer may be given by delivering the same in writing at The Harrisburg Authority, One Keystone Plaza, Suite 104, Front and Market Streets, Harrisburg, Pennsylvania 17101, Attention: Thomas J. Mealy; (ii) the City may be given by delivering the same in writing at The City of Harrisburg, Rev. Dr. Martin Luther King, Jr. City Government Center, 10 North Second Street, Harrisburg, Pennsylvania 17101, Attention: Stephen R. Reed; (iii) the County may be given by delivering the same in writing at The County of Dauphin, Second and Market Streets, Harrisburg, Pennsylvania 17101, Attention: Chairman, Board of Commissioners; and (iv) the Underwriter may be given by delivering the same in writing to RBC Dain Rauscher Inc., One Logan Square, 17th Floor, 130 North 18th Street, Philadelphia, Pennsylvania 19103, Attention: James F. Losty.

11. *Parties in Interest.* This Agreement as heretofore specified shall constitute the entire agreement between us and is made solely for the benefit of the Issuer, the City, the County and the Underwriters (including successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof. This Agreement may not be assigned by the Issuer, the City or the County or, without the prior written consent of the Issuer, the City and the County, the Underwriter. All of the representations, warranties and agreements of the Issuer, the City and the County contained in this Agreement shall remain operative and in full force and effect, regardless of (i) any

investigations made by or on behalf of the Underwriter; (ii) delivery of and payment for the 2003 Bonds pursuant to this Agreement; and (iii) any termination of this Agreement.

12. *Responsibility for Sufficiency of Funds.* The Underwriters make no representation as to the sufficiency of the proceeds of the 2003 Bonds to complete the Retrofit Project, or as to the likelihood that the Issuer, the City and the County will secure all approvals and permits with respect to the Waste Management Facility or the County Municipal Waste Disposal Plan.

13. *Effectiveness.* This Agreement shall become effective upon the acceptance hereof by the Issuer and approval by the City and the County and shall be valid and enforceable at the time of such acceptance.

14. *Choice of Law.* This Agreement shall be governed by and construed in accordance with the law of the State.

15. *Severability.* If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

16. *Business Day.* For purposes of this Agreement, "business day" means any day on which the New York Stock Exchange is open for trading.

17. *Section Headings.* Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

18. *Counterparts.* This Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document. Execution may be by faxed signatures, with original hard copy signatures to be distributed subsequently to all parties.

19. *Limitation on Individual Liability.* No recourse shall be had by the Underwriters for any claims based on this Agreement or otherwise against any member, officer or agent of the Issuer, the City or the County in his or her individual capacity, all such liabilities, if any, being expressly waived and released by the Underwriters.

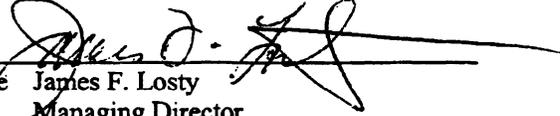
20. *Authorization to Act as Broker.* The Issuer hereby authorizes the Underwriter, IMAGE and the Issuer's Financial Advisor to act as co-brokers in acquiring investment vehicles with respect to the proceeds of the 2003 Bonds. The Issuer acknowledges its understanding that the foregoing entities may or will be paid by the providers of such investments certain broker fees, the amounts of which will be disclosed to the Issuer.

[Remainder of page left blank intentionally.]

If you agree with the foregoing, please sign the enclosed counterpart of this Agreement and return it to the Underwriter. This Agreement shall become a binding agreement between you and the Underwriter when at least the counterpart of this letter shall have been signed by or on behalf of each of the parties hereto.

Respectfully submitted,

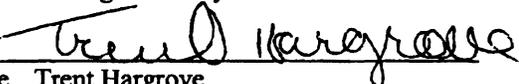
RBC Dain Rauscher Inc.

By   
Name James F. Losty  
Title Managing Director  
Date December 19, 2003

ACCEPTANCE

ACCEPTED this 19<sup>th</sup> day of December, 2003

The Harrisburg Authority

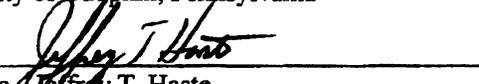
By   
Name Trent Hargrove  
Title Chairman

APPROVED

City of Harrisburg, Dauphin County, Pennsylvania

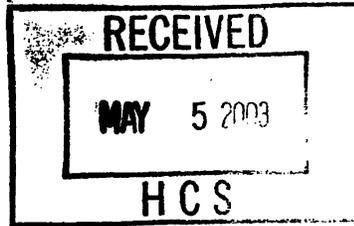
By   
Name Stephen R. Reed  
Title Mayor

County of Dauphin, Pennsylvania

By   
Name Jeffrey T. Haste  
Title Chairman, Board of Commissioners



**RBC  
Dain Rauscher**



One Logan Square, 17th Floor  
130 North 18th Street  
Philadelphia, PA 19103  
(215) 832-1500  
(215) 832-1515 Fax  
(888) 848-4677 Toll Free

May 2, 2003

The Honorable Stephen R. Reed  
City of Harrisburg  
City Government Center  
Ten North Market Square  
Harrisburg, Pa. 17101

Dear Mayor Reed:

I am writing to give you an update on the status of the restructuring of the resource recovery indebtedness. As you know City Council passed the ordinance guaranteeing the debt on April 8<sup>th</sup>. The debt proceedings were filed with the Pennsylvania Department of Economic Development on April 21<sup>st</sup>. Once the 20-day approval period has run at DCED, the restructuring issue will be marketed with settlement expected to occur on May 29<sup>th</sup>.

As discussed during our meeting with you on April 25<sup>th</sup>, the ever-increasing debt load on the resource recovery facility is rapidly exhausting the City's ability to access the bond market for capital requirements. By any measure, the City's overall debt burden when guaranteed debt is included is extremely high in comparison to other municipalities around the United States. This results in higher costs for credit enhancement and eventually higher borrowing costs if a borrowing is feasible at all. We received a formal commitment for bond insurance for this restructuring issue from FSA this week. Despite the fact that FSA was the insurer of record on the Bonds being refunded, the cost for the new policy came in at 100 basis points. This represented an increase of 10 basis points from the last insurance quote for the Series of 2002 Resource Recovery Bond Issue. Additionally, the insurer stipulated that no new money is added to the financing above the \$2 million approved for working capital. Unfortunately, there are no other options for insurance from the major "AAA" rated insurers.

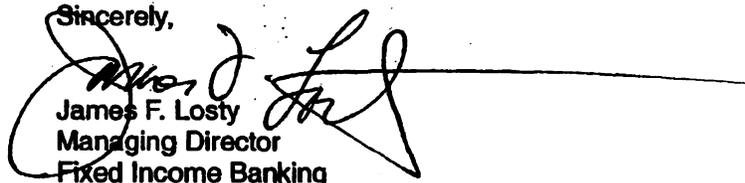
In November, 2002 when I first discussed the resource recovery situation with you and various options were discussed, I indicated that a restructuring was an extremely costly route to take because total debt service would increase significantly by spreading out the existing debt over 30 years rather than the 20 year current schedule. This restructuring does provide debt relief in 2003 and significant debt relief from 2006 through 2015 with additional relatively minor relief from 2016-2022. Beyond 2022 debt service increases and of course extends the final maturity from 2025 to 2034. Consequently, the final nine years of the debt requires annual payments of approximately \$7.2 million where there previously was no debt payment required. Over the life of the restructuring issue, the City will be obligated to pay over \$40 million more in debt service translating into a present value "cost" of approximately \$3.5-\$4.5 million. The final "cost" of this restructuring will not be known until the Bonds are sold and the existing Bonds repurchased and redeemed but this is a summary of current projections.

Prior to releasing the Preliminary Official Statement for this restructuring Bond Issue, regulatory requirements in connection with public offerings of debt stipulate that an accurate assessment of an issuer's financial situation be disclosed. Towards that end, the working group has met and held discussions with City officials to determine the City's ability to meet cash flow requirements given the delay in a retrofit bond issue that would provide working capital. While the final answer is not yet determined, Tom Mealy and Bob Kroboth have been working vigorously and are expected to reach a conclusion early in the week of May 5<sup>th</sup>. Assuming they conclude that no cash flow borrowing is required, the POS will be finalized by May 9<sup>th</sup>. If a cash flow borrowing will be required, discussions will have to commence with possible lenders any of whom will almost certainly require a City Council resolution.

As part of the cash flow analysis being prepared by City officials, a projection of the resource recovery revenues and expenses is being prepared for the next 24-30 months. The primary variables in the projection are with retrofit and without retrofit and with layoffs and without layoffs. I encourage you to review these projections as soon as they are available because they have significant impact on the ability to obtain credit enhancement for the proposed retrofit bond issue. Without credit enhancement there will be no cost effective borrowing avenue to fund the retrofit bond issue. While preliminary discussions have begun with credit enhancement providers for the retrofit, there are many issues that yet need to be resolved prior to any enhancer reaching a credit decision. Given the size of the projected retrofit bond issue and the City's existing debt, a sub "AAA" guarantor is probably the most likely candidate.

Please feel free to call me at any time to discuss any aspect of these two proposed financings. Given how important they are to the City's economic health I want to keep you fully informed as we proceed. I can be reached at 215-832-1503 (office) or 610-291-2522 (cell) at any time. Thank you very much.

Sincerely,



James F. Losty  
Managing Director  
Fixed Income Banking

JFL/ph

CC Mr. Thomas J. Mealy  
Mr. Robert F. Kroboth  
Mr. Daniel R. Lispi  
Mr. Hugh C Sutherland, Esq.  
Mr. Andrew J. Giorgione, Esq.  
Mr. Richard D. Michael, Esq.  
Ms. Carol P. Cocheres, Esq.  
Mr. Bruce Barnes

*In the opinion of Bond Counsel, assuming continuing compliance by the Authority with certain covenants, the interest on the 2003D Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax. Interest on and accruals of original issue discount with respect to the 2003E Bonds and the 2003F Bonds are not excluded from gross income for federal income tax purposes. The 2003 Bonds are exempt from Pennsylvania personal property taxes; and the interest on the 2003 Bonds is exempt from Pennsylvania Corporate Net Income Tax and from personal income taxation by the Commonwealth of Pennsylvania, or by any of its political subdivisions, under existing law. (See “Tax Matters – 2003D Bonds” and “Tax Matters – 2003E Bonds and 2003F Bonds” herein).*

**The Harrisburg Authority**  
**(Dauphin County, Pennsylvania)**  
**\$96,480,000 Guaranteed Resource**  
**Recovery Facility Revenue Bonds, Series D of 2003**  
consisting of  
**\$31,480,000 Subseries D-1**  
**\$65,000,000 Subseries D-2**  
**\$14,500,000 Guaranteed Federally Taxable**  
**Resource Recovery Facility Revenue Bonds, Series E of 2003**  
**\$14,020,000 Guaranteed Federally Taxable**  
**Resource Recovery Facility Revenue Bonds, Series F of 2003**

**Dated:** See inside cover  
**Due:** December 1, as shown on inside front cover

**Interest Payable:** June 1 and December 1  
**First Interest Payment:** June 1, 2004

The Harrisburg Authority (the “Authority”) will issue its Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the “2003D Bonds”), its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 (the “2003E Bonds”) and its Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (the “2003F Bonds”) (the 2003D Bonds, 2003E Bonds and 2003F Bonds, collectively, the “2003 Bonds”) in the aggregate principal amounts shown above. The 2003 Bonds are issuable only in fully-registered form, without coupons, and, when issued, will be registered and held in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). So long as Cede & Co. is the registered owner of 2003 Bonds as nominee of DTC, reference herein to the registered owners shall mean Cede & Co. and not the Beneficial Owners (as such phrase is defined herein). Purchases of the 2003 Bonds will be made in book-entry form and certificates representing ownership interests in the 2003 Bonds will not be issued to the purchasers of the 2003 Bonds. See “THE 2003 BONDS - Book-Entry-Only System” herein.

The 2003 Bonds are limited obligations of the Authority and will be issued under and secured under a Trust Indenture, dated as of December 1, 2003 (the “Indenture”), between the Authority and Commerce Bank/Pennsylvania, National Association, as trustee (the “Trustee”). The 2003 Bonds are payable solely from (i) Receipts and Revenues as such term is defined in the Indenture; (ii) certain funds and accounts held under the Indenture; (iii) moneys which may be made available pursuant to a City Bond Guaranty Agreement, dated as of December 1, 2003 (the “City Bond Guaranty”), among the City of Harrisburg, Dauphin County, Pennsylvania (the “City”), as guarantor, the Authority and the Trustee; and (iv) all other property from time to time pledged to the payment of the principal of, premium, if any, and interest on the 2003 Bonds. See “SECURITY FOR THE 2003 BONDS” herein. In addition, the 2003D Bonds and the 2003E Bonds are payable from moneys which may be made available pursuant to a County Bond Guaranty Agreement, dated as of December 1, 2003 (the “County Bond Guaranty”), among the County of Dauphin, Pennsylvania (the “County”), as guarantor, the Authority and the Trustee. **The County Bond Guaranty does not secure the 2003F Bonds.**

Under the City Bond Guaranty, the City has unconditionally guaranteed, for the benefit of the registered owners of the 2003 Bonds, the full and prompt payment of principal of and interest on the 2003 Bonds when due according to the terms of the City Bond Guaranty, for which obligation the City has pledged its full faith, credit and taxing power. Under the County Bond Guaranty, the County has unconditionally guaranteed, for the benefit of the registered owners of the 2003D Bonds and the 2003E Bonds, the full and prompt payment of principal of and interest on the 2003D Bonds and the 2003E Bonds when due according to the terms of the County Bond Guaranty, for which obligation the County has pledged its full faith, credit and taxing power. **The County Bond Guaranty does not secure the 2003F Bonds.** See “SECURITY FOR THE 2003 BONDS - City Bond Guaranty for the 2003 Bonds” and “SECURITY FOR THE 2003 BONDS - County Bond Guaranty for the 2003D Bonds and 2003E Bonds” herein.

Interest on the 2003 Bonds is payable on June 1 and December 1 in each year until maturity or earlier redemption, commencing June 1, 2004, by the Trustee. So long as Cede & Co. is the registered owner of the 2003 Bonds, the Trustee will pay principal of, premium, if any, and interest on the 2003 Bonds to DTC, which will remit such principal, premium, if any, and interest to DTC Participants (as such phrase is defined herein), who will in turn remit such principal, premium, if any, and interest to the Beneficial Owners of the 2003 Bonds, as more fully described herein.

The 2003 Bonds are subject to redemption prior to maturity as described herein.

The 2003D Bonds are subject to mandatory tender for purchase as described herein.

Payment of the principal of and interest on the 2003 Bonds when due will be guaranteed by municipal bond insurance policies (collectively, the “Bond Insurance Policy”) to be issued simultaneously with the delivery of the 2003 Bonds by Financial Security Assurance Inc. (the “Bond Insurer”).



Maturity Schedule shown on inside front cover

THE 2003 BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND NOT A DEBT OF THE COMMONWEALTH OF PENNSYLVANIA (THE “COMMONWEALTH”), OR ANY POLITICAL SUBDIVISION THEREOF EXCEPT THE CITY AS PROVIDED IN THE CITY BOND GUARANTY AND THE COUNTY, SOLELY WITH RESPECT TO THE 2003D BONDS AND 2003E BONDS, AS PROVIDED IN THE COUNTY BOND GUARANTY. NEITHER THE GENERAL CREDIT OF THE AUTHORITY NOR THE TAXING POWER OR THE GENERAL CREDIT OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION, AGENCY OR INSTRUMENTALITY THEREOF EXCEPT THE CITY AS PROVIDED IN THE CITY BOND GUARANTY AND THE COUNTY, SOLELY WITH RESPECT TO THE 2003D BONDS AND THE 2003E BONDS, AS PROVIDED IN THE COUNTY BOND GUARANTY, IS PLEDGED FOR PAYMENT OF PRINCIPAL OF OR INTEREST ON THE 2003 BONDS. THE AUTHORITY HAS NO TAXING POWER.

**This cover page contains certain information for reference purposes only. It is not a complete summary of the issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.**

The 2003 Bonds are offered for delivery when, as and if issued by the Authority and received by the Underwriters and subject to the approving legal opinion of Obermayer Rebmann Maxwell & Hippel LLP, Harrisburg and Philadelphia, Pennsylvania, and Stanley H. Mitchell, Esquire, Harrisburg, Pennsylvania, Co-Bond Counsel. Certain legal matters will be passed upon for the Authority by its Solicitor, Rhoads & Simon LLP, Harrisburg, Pennsylvania; for the Underwriters by their counsel, Eckert Seamans Cherin & Mellott, LLC, Harrisburg, Pennsylvania; for the City by Steven R. Dade, City Solicitor; and for the County by Mette, Evans & Woodside, County Special Counsel. It is expected that the 2003 Bonds will be available for delivery in New York, New York on or about December 30, 2003.

RBC DAIN RAUSCHER  
THE WILLIAMS CAPITAL GROUP, L.P.  
ALLISON-WILLIAMS COMPANY

COMMERCE CAPITAL MARKETS, INC.  
MESIROW FINANCIAL, INC.  
MERRILL LYNCH & CO., INC.

ARTHURS, LESTRANGE & COMPANY, INC.

**Kroboth, Robert**

**From:** Kroboth, Robert  
**Sent:** Wednesday, October 25, 2006 7:23 PM  
**To:** 'Losty, James (RBCCM-USDM)'; CCocheres@eckertseamans.com  
**Cc:** Lingle, Linda; Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
**Subject:** RE: Conference Call at 11:00 Am Thursday for final review of circular

Jim: thank you for the thorough explanation. This message will be shared with the Mayor.

Bob

-----Original Message-----

**From:** Losty, James (RBCCM-USDM) [mailto:James.Losty@Rbcdain.com]  
**Sent:** Wednesday, October 25, 2006 2:27 PM  
**To:** Kroboth, Robert; CCocheres@eckertseamans.com  
**Cc:** Lingle, Linda; Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
**Subject:** RE: Conference Call at 11:00 Am Thursday for final review of circular

Bob,

Certainly my email attached below concerning the call tomorrow identifies some of the issues of concern to us as remarketing agent and specifically to our legal and compliance professionals here at RBC.

However, as a general statement, I will tell you as a underwriter or remarketing agent for the sale of municipal securities we are governed by a number of regulatory agencies including The Securities and Exchange Commission and the National Association of Securities Dealers. Both oversight agencies have explicit rules and regulations concerning the sale of securities (I will not go into the myriad details about areas they Focus on). Of particular note here is the explicit requirement that offering circulars give full and complete disclosure to investors of everything known and relevant at the time the circular is printed and "deemed final". Typically, the issuer is asked to sign a certificate indicating that all information in the offering circular is full, accurate and complete as of the time of printing. There have been several significant rulings courts and oversight Authorities in recent years on this very point-the failure to give complete accurate information in an offering circular (including for the Forum Place in the City of Harrisburg).

Consequently, given all the known facts surrounding the retrofit of the resource recovery facility and the problems encountered in completing project as well as the operating difficulties in start-up, the gap in funding to complete required improvements, the difficulty with the major contractor/engineer, the very high debt associated with the incinerator, and the subordinate nature of these Notes below all other incinerator debt, it is imperative that the Offering Circular alert potential investors to these facts and highlight the distinct possibility that if all the aforementioned problems with the retrofit are not addressed and corrected almost immediately, there is a high likelihood that some source of funds other than revenues from the resource recovery facility will be needed to pay the Notes. Given that the Notes are backed by a General Obligation of the City, it is imperative that investors are made aware of these factors and directed to the City's credit as the possible source of repayment of debt service.

Bob, unfortunately this is not something that is optional. To comply with US Securities rules and regulations this is imperative.

I hope this is helpful and I am happy to discuss with you if that would be useful. Thanks,  
Jim -----Original Message-----

**From:** Kroboth, Robert [mailto:RKroboth@CityofHBG.com]  
**Sent:** Wednesday, October 25, 2006 1:50 PM  
**To:** Losty, James (RBCCM-USDM); CCocheres@eckertseamans.com  
**Cc:** Lingle, Linda  
**Subject:** FW: Conference Call at 11:00 Am Thursday for final review of circular

*Carol and Jim: I know you are extremely busy with this transaction, which probably explains why I have yet to receive a brief narrative explaining to the Mayor why we must*

represent that the City's guarantee MAY be called upon, as we discussed during Monday's conference call. Thanks.

Bob

p.s. Carol, I'm working on the stuff I owe you.

-----Original Message-----

From: Lingle, Linda  
Sent: Wednesday, October 25, 2006 1:40 PM  
To: Losty, James (RBCCM-USDM); CCocheres@eckertseamans.com; BBarnes@miltlopus.com; Andrew.Giorgione@bipc.com; Kenneth.Luttinger@bipc.com; Ertel, Kevin (RBCCM-USDM); Kroboth, Robert; bruce@foreman-foreman.com; Dade, Steven; Lukens, John; ddispi@driconsultingdev.com; hspumberg@fsa.com  
Cc: RMichael@eckertseamans.com; Ertel, Kevin (RBCCM-USDM); Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
Subject: RE: Conference Call at 11:00 Am Thursday for final review of circular

Please bear in mind that the Mayor will have to review the language before the circular is issued. And I recommend that the areas of concern be highlighted so that he can focus on them immediately.

Linda Lingle  
Business Administrator

-----Original Message-----

From: Losty, James (RBCCM-USDM) [mailto:James.Losty@Rbcdain.com]  
Sent: Wednesday, October 25, 2006 12:44 PM  
To: CCocheres@eckertseamans.com; BBarnes@miltlopus.com; Andrew.Giorgione@bipc.com; Kenneth.Luttinger@bipc.com; Ertel, Kevin (RBCCM-USDM); Kroboth, Robert; Lingle, Linda; bruce@foreman-foreman.com; Dade, Steven; Lukens, John; ddispi@driconsultingdev.com; hspumberg@fsa.com  
Cc: RMichael@eckertseamans.com; Ertel, Kevin (RBCCM-USDM); Hellberg, Brian (RBC Dain); Wong, Mary (RBCCM-USDM)  
Subject: RE: Conference Call at 11:00 Am Thursday for final review of circular

There is a conference call scheduled for 11 am tomorrow for a final review of proposed remarketing circular. Carol Cocheres will circulate another draft some time today that will be the focus of the call. Please pay particular note to blacklined sections that highlight the following:

1. Uncertainty with regard to plans for funding the additional \$10 million barlow estimates will be necessary to complete retrofit
2. Language will be explicit about the potential shortfalls of revenues at incinerator and the distinct possibility that the City will be forced to pay debt service through tax revenues or other revenues.
3. The difficult current budgetary pressures on this year's budget and the ongoing TRAN difficulty will be moved to front of OS (currently is in the City Appendix).

These are the major areas of focus that I wanted to bring to everyone's attention. These are a direct result of direction from internal RBC Compliance and Legal professionals and are a requirement of RBC in order to proceed with a remarketing of these Notes.

Please email me or call me if there are any questions on this. The timing of transaction is now down to a final couple of days and a remarketing circular must be "deemed final" and circulated to potential buyers almost immediately. Thanks, Jim

-----Original Message-----

From: PHedenberg@eckertseamans.com [mailto:PHedenberg@eckertseamans.com]  
On Behalf Of CCocheres@eckertseamans.com  
Sent: Sunday, October 22, 2006 6:58 PM  
To: Losty, James (RBCCM-USDM); BBarnes@miltlopus.com; Andrew.Giorgione@bipc.com; Kenneth.Luttinger@bipc.com; Ertel, Kevin (RBCCM-USDM); rkroboth@cityofhbg.com; llingle@cityofhbg.com; bruce@foreman-foreman.com; sdade@cityofhbg.com;

jlukens@cityofhbg.com; ddispi@drlconsultingdev.com; hspumberg@fsa.com  
Cc: RMichael@eckertseamans.com  
Subject: Limited Offering Remarketing Circular

Attached for your review and comment is the draft front part Remarketing Circular revised on the basis of comments received and meetings held last week. Both a clean copy and a blacklined copy showing changes are attached.

There are still some unanswered questions and sections to be completed with information needed from persons on this list.

In addition, attached is Appendix A relating to the City of Harrisburg.

Howard Spumberg of FSA is being forwarded copies of the forepart and Appendix A with this e-mail. Are there any other persons who should receive copies? With Barlow discussed so much in the text, perhaps a representative of Barlow should be sent this e-mail for review and comment. Dan and Andy, what do you think? And do you have any suggested name at Barlow?

If you have any questions or comments prior to the Monday afternoon call, please call me. Any written comments will be appreciated as soon as possible due to the tight schedule for posting or printing the Remarketing Circular.

Clean Copy	Blacklined Copy	Appendix A
(See attached file: 10319546.doc)		(See attached file: 10320011.doc)
	(See attached file: 10319892.doc)	

Please note my new email address is ccocheres@eckertseamans.com.

Carol P. Cocheres, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
Harrisburg, Pa. 17101  
Phone 717-237-6023  
Fax 717-237-6019  
E-Mail ccocheres@eckertseamans.com

This communication may contain federal tax advice. Recent IRS regulations require us to advise you that any discussion of federal tax issues in this communication was not intended or written to be used and cannot be used to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting these IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the Firm's Tax partners if you have any questions regarding federal tax advice.

Scanned by Symantec Anti-Virus and Content Filtering before delivery.

This e-mail message and any files transmitted with it are subject to attorney-client privilege and contain confidential information intended only for the person(s) to whom this email message is addressed. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.



2:00

Andrew Giorgione, Esq. (Buchanon Ingersoll)



**SENATE LOCAL GOVERNMENT COMMITTEE**

**NOVEMBER 13, 2012 PUBLIC HEARING**

**SWORN TESTIMONY OF ANDREW:J. GIORGIONE. ESQ.**

Good afternoon Mr. Chairman and members of the Committee. My name is Andrew Giorgione and I am a shareholder at Buchanan Ingersoll Rooney, PC ("Buchanan"). I am appearing today at your request and am accompanied by John Leathers, Esq., who is General Counsel to Buchanan.

Based on your letter, it is my understanding that the purpose of the hearing today is to discuss the Local Government Unit Debt Act and how it was applied to various borrowings for the Harrisburg Resource Recovery Facility from 2003 to 2007. The purpose of my sworn testimony is to provide some background on our work for The Harrisburg Authority (the "Authority").

I have been a resident of the City of Harrisburg since 1990. Upon graduating law school in 1992, I worked in the City Solicitor's Office for the City of Harrisburg. I left the City and joined Obermayer Rebmann Maxwell & Hippel ("Obermayer") in January 1996. Obermayer represented the Authority for many years prior to my employment and I began doing work for the Authority when I joined Obermayer. Obermayer served as special counsel to the Authority for various matters including litigation, environmental and public finance. During my time at Obermayer, I, along with other members of Obermayer, worked on the 2003 financings identified in the January 2012 Forensic Investigation Report (the "Report").

In July 2005, I joined the law firm of Klett Lieber Rooney & Schorling, PC ("Klett"). At that time, most matters for the Authority were transferred with me to Klett. Klett merged with Buchanan in July 2006.

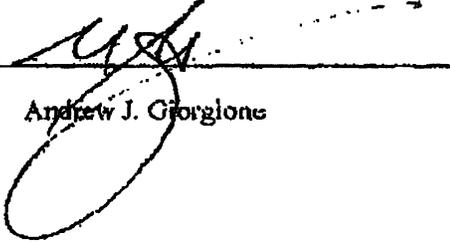
In 2007, City Council enacted legislation to assume control of appointments to the Authority, and in July 2007, appointed new members and Buchanan no longer represented the Authority. To be clear, neither I nor Buchanan have represented the Authority in any matters since July 2007 and did not participate in the 2007 financing which closed later in the year.

At the time our representation of the Authority ended, we turned over a list of outstanding matters to the Authority's new solicitor, the firm of Goldberg Katzman and Shipman ("Goldberg"), along with all related files and records. We also met with representatives of the Goldberg firm on at least three (3) occasions. Later, in 2008, the Authority initiated litigation against CIT Capital USA and we provided documents and testimony for that matter.

Our only other substantive contact with the Authority came in 2011, when Glenn Weiner, Esq., requested documents relative to our representation of the Authority. Attached is our reply to that request, in which we directed Mr. Weiner to request copies of our records from the Goldberg firm to whom we had transferred the records as the Authority's successor counsel. Thus, in reply, we identified the location of our former records and also offered to provide any further documents upon directive of the Authority. Mr. Weiner did not reply.

As you know, on page 14 of the Report, Buchanan is identified as a party that did not "provide[d] the information requested." In light of the firm's attached reply to Mr. Weiner, such representation was not accurate.

I, Andrew J. Giorgione, under penalty of perjury and subject to the penalties of 18 Pa.  
C.S. Section 4904 relating to unsworn falsification to authorities, verify that the foregoing is true,  
and correct to the best of my knowledge, information or belief.



---

Andrew J. Giorgione

**Buchanan Ingersoll & Rooney PC**  
Attorneys & Government Relations Professionals

John R. Leathers  
General Counsel  
412 562 1880  
john.leathers@birc.com

One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
T 412 562 8900  
F 412 562 1041  
www.buchananingersoll.com

January 24, 2011

VIA FIRST CLASS MAIL AND TELECOPY (215) 568-6603

Glenn A. Weiner, Esquire  
Klehr Harrison Harvey Brazburg  
1835 Market Street  
Philadelphia, Pennsylvania 19103

Re: The Harrisburg Authority - CIT

Dear Mr. Weiner:

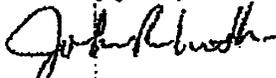
I am receipt of your letter of January 21, 2011, directed to Messrs. Gierasch and Vipond of the Harrisburg Office of Buchanan Ingersoll & Rooney PC. I take your letter as a demand for a document hold on materials relating to the Firm's representation of The Harrisburg Authority.

Please be advised that at some point in mid-2007, the Firm was replaced as counsel for THA by Ron Katzman at Goldberg Katzman. At that time, Mr. Katzman requested and was given a large number of the files relating to the Firm's representation of THA. Later, Mr. Katzman wanted still more documents, these particularly relating to the THA - CIT transaction. We made those available to him in pdf format at this time.

You should also be advised that THA requested that the Firm entered into a Tolling Agreement in December 2007, and that was done in January 2008.

In view of the clear adversity between the Firm and THA, you should cease all contact with any Firm personnel other than me. If you wish documents arising from the Firm's representation, you should obtain them from Mr. Katzman. We will not be producing still another set of documents simply because THA has again decided to change counsel. If it should turn out that we have documents that have not previously been produced, we will require a written directive from an appropriate official at THA to make those available.

Sincerely yours,



John R. Leathers  
General Counsel

cc: Jonathan Vipond, Esq.  
Stephen C. Gierasch, Esq.

LLGM DRAFT 12/30/03

FINAL CONTRACT WAS  
EXECUTED 12/31/03

Agreement for the  
Sale and Installation of Equipment

Between

The Harrisburg Authority

and

Barlow Projects Harrisburg, LLC

Dated: \_\_\_\_\_, 2003

Why is this Amended? - THERE WAS NO PREVIOUS CONTRACT.

**Amended and Restated  
Agreement for the  
Sale and Installation of Equipment**

**Between**

**The Harrisburg Authority**

**and**

**Barlow Projects Harrisburg, LLC**

**Dated as of December 31, 2003**

DRAFT WAS DATED 12/30/03 -  
ONE DAY EARLIER.

so available on the Substantial Completion Date shall be included on the Punchlist and shall be provided by the Final Completion Date.

**ARTICLE VII  
COMMENCEMENT OF THE WORK**

Section 7.01 Conditions Precedent. A "Notice to Proceed" from the Authority to Seller initiating the commencement of the Work shall not be issued until:

(a) Completion of the Authority Financing shall have occurred and the Seller has been given reasonable assurances that funds have been obtained, provided to the Bond Fund Trustee, and are immediately available for disbursement to pay amounts due to Seller hereunder;

(b) Seller shall have received such certificates and other documents as are customary and are reasonably requested, including an opinion of counsel to the Authority in form and substance satisfactory to Seller;

(c) The following Seller Bonds shall have been posted by Subcontractors: a seven million dollar (\$7,000,000) equipment delivery, assembly and installation bond on the Combustion Technology, and a six million dollar (\$6,000,000) equipment delivery, assembly and installation bond on the APC Technology. An additional fourteen million dollar (\$14,000,000) payment and performance bond will be posted after the Notice to Proceed is issued, but before the commencement of the Work. Additional bonds, totaling approximately four million dollars (\$4,000,000) will be posted by the manufacturers of certain additional Equipment.

(d) Seller shall have provided Certificates of Insurance.

① THESE Bonds do NOT PROTECT THE Authority.  
② INSUFFICIENT PENALTY AMOUNT

**ARTICLE VIII  
TIME OF PERFORMANCE**

Section 8.01 Time of Performance.

(a) Within three (3) Days after issuance by the Authority of the Notice to Proceed, Seller shall commence and diligently pursue the Work, assigning to it a priority that will permit Work to be completed in accordance with the Project Schedule and Section 6.02 (Responsibilities of Seller). Subject to Section 8.01(c), Seller shall execute the Work so as to reach (1) Substantial Completion no later than \_\_\_ ( ) Days after issuance of Notice to Proceed (the "Scheduled Substantial Completion Date") and (2) Final Completion no later than \_\_\_ ( ) Days after the Scheduled Substantial Completion Date (the "Scheduled Final Completion Date" and collectively with the Scheduled Substantial Completion Date, "Time of Performance").

(b) This Time of Performance shall be adjusted if:

(i) the Notice to Proceed is delayed beyond January 1, 2004; or

Agreement for the  
Sale and Installation of Equipment

Between

The Harrisburg Authority

and

Barlow Projects Harrisburg, LLC

Dated: \_\_\_\_\_, 20032004

	<u>Page</u>
ARTICLE I. DEFINITIONS	1
ARTICLE II. INCORPORATION PROVISIONS	11
Section 2.01 Incorporation of Recitals	11
Section 2.02 Incorporation of Exhibits and Schedules	11
ARTICLE III. CONTRACT PRICE AND ADJUSTMENTS TO CONTRACT PRICE	11
Section 3.01 Contract Price	11
Section 3.02 Contract Price Adjustments. <i>Global</i>	11
ARTICLE IV. TERMS OF PAYMENT	12
Section 4.01 Payment To Seller	12
Section 4.02 Taxes	13
Section 4.03 Building Permit Fees	<del>14</del> 13
Section 4.04 Liens	<del>14</del> 13
ARTICLE V. REPRESENTATIONS	14
Section 5.01 Authority Representations	14
Section 5.02 Seller Representations	<del>15</del> 14
ARTICLE VI. RESPONSIBILITIES OF PARTIES	15
Section 6.01 Responsibilities of the Authority	15
Section 6.02 Responsibilities of Seller	17
Section 6.03 Labor Relations.	<del>20</del> 19
Section 6.04 Trade Subcontractors and Suppliers.	20
Section 6.05 Inspection and Correction of the Work.	<del>21</del> 20
Section 6.06 Drawings, Data, and Submittals; Review and Comment.	21
Section 6.07 Spare Parts.	22
ARTICLE VII. <del>COMMENCEMENT OF THE WORK</del> <u>BONDS AND CONDITIONS</u>	
<u>PRECEDENT</u>	<del>22</del> 22
Section 7.01 Conditions Precedent	<del>23</del> 22
<u>Section 7.02 Additional Bonds to be Provided</u>	<del>23</del> 23
ARTICLE VIII. TIME OF PERFORMANCE	23
Section 8.01 Time of Performance.	23
ARTICLE IX. MECHANICAL COMPLETION AND START-UP	<del>24</del> 23
Section 9.01 Mechanical Completion.	<del>24</del> 23
Section 9.02 Start-Up.	25
ARTICLE X. PERFORMANCE TESTS AND SUBSTANTIAL COMPLETION	<del>26</del> 25
Section 10.01 Performance Tests.	<del>26</del> 25
Section 10.02 Substantial Completion.	<del>26</del> 25

**AGREEMENT FOR THE SALE AND INSTALLATION OF EQUIPMENT**

This Agreement for the Sale and Installation of Equipment (the "Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, ~~2003~~, **2004**, between The Harrisburg Authority, a body corporate and politic of the Commonwealth of Pennsylvania, with its principal offices at One Keystone Plaza, Suite 104 Harrisburg, Pennsylvania 17101 (hereinafter the "Authority") and Barlow Projects Harrisburg, LLC, a Delaware limited liability company, with its principal offices at 2000 Vermont Drive, Fort Collins, Colorado ("Seller") (collectively referred to herein as the "Parties").

**WITNESSETH:**

WHEREAS, the Authority owns an existing waste-to-energy facility for combustion of municipal solid waste with energy recovery known as the Harrisburg Materials, Energy, Recycling and Recovery Facility (the "Facility"); and

WHEREAS, the Facility requires substantial improvements necessary to comply with Federal emission requirements; and

WHEREAS, Barlow Projects, Inc., has proposed to the Authority a plan for improving the Facility to convert Acceptable Waste (as hereinafter defined) to steam, while meeting Federal emission requirements (the "Project"), using the Equipment (as hereinafter defined); and

WHEREAS, the Authority wishes to procure the Equipment for use in the Project, and key items of the Equipment are patented by or proprietary technology of the Seller; and

WHEREAS, the Seller wishes to supply the Equipment, assemble it at the Facility Site, and install it at the Facility Site, ~~subject to~~; and

WHEREAS, the Parties entered into an Interim Equipment Agreement for the Sale and Installation of Equipment, dated December 30, 2003 (the "Interim Equipment Agreement") to allow certain Work to proceed pending the completion of negotiations on this Agreement; and  
*(as hereinafter defined)*

WHEREAS, the Parties have now completed their negotiations, and desire to set forth the terms and conditions set forth herein of their agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein expressed, and intending to be legally bound, the Parties agree as follows:

**ARTICLE I.  
DEFINITIONS**

so available on the Substantial Completion Date shall be included on the Punchlist and shall be provided by the Final Completion Date.

ARTICLE VII. *SECURITY PACKAGE*  
COMMENCEMENT OF THE WORKBONDS AND CONDITIONS PRECEDENT

Section 7.01 Conditions Precedent. A "Notice to Proceed" <sup>OTHER</sup> from the Authority to Seller ~~initiating~~ Conditions Precedent. The Parties acknowledge that the following conditions precedent were satisfied on or before the commencement of the Work shall not be issued until: date this Agreement was executed:

*Security Package*

*Special Billing Agreement  
Delayed for  
Equipment Financing*

*Retainage*

*Mrs Bonds - app. - ~~posted~~*

*Subcontractor's  
1 Bond*

(a) Completion of the Authority Financing shall have occurred and the Seller has been given reasonable assurances that funds have been obtained, provided to the Bond Fund Trustee, and are immediately available for disbursement to pay amounts due to Seller hereunder.

*No invoices will be ordered and payments will be due for the APC Technology or the Combustion Technology until the same have been delivered.*

(a) Seller shall have received such certificates and other documents as are customary and ~~are~~ were reasonably requested, including an opinion of counsel to the Authority in form and substance satisfactory to Seller;

(b) The following Seller Bonds shall have been posted by Subcontractors: a seven million dollar (\$7,000,000) equipment delivery, assembly and installation bond on the Combustion Technology, and a six million dollar (\$6,000,000) equipment delivery, assembly and installation bond on the APC Technology. ~~An additional fourteen million dollar (\$14,000,000) payment and performance bond will be posted after the Notice to Proceed is issued, but before the commencement of the Work. Additional bonds will be posted by the manufacturers of the following items:~~

(c) Seller shall ~~have~~ has provided Certificates of Insurance.

*16,000,00*

Section 7.02 Additional Bonds to be Provided. The Parties acknowledge that an additional fourteen million dollar (\$14,000,000) payment and performance bond will be posted by the Seller within ( ) days after this Agreement is executed. Additional bonds, totaling approximately four million dollars (\$4,000,000) will be posted by the manufacturers of certain additional Equipment, prior to completion of the Work.

ARTICLE VIII.  
TIME OF PERFORMANCE

Section 8.01 Time of Performance.

(a) ~~Within three (3) Days after issuance by the Authority of the Notice to Proceed. The Parties acknowledge that the Seller has already commenced certain Work, pursuant to the Interim Equipment Agreement.~~ Seller shall commence and diligently pursue the remainder of the Work, assigning to it a priority that will permit the Work to be completed in accordance with the Project Schedule and Section 6.02 (Responsibilities of Seller). Subject to Section 8.01(c), Seller shall execute the Work so

BARLOW'S SECURITY PACKAGE - SECTION VII  
IN LIEU OF PERFORMANCE BOND

SEE TABLE OF CONTENTS THEN PAGE 23

CLOSING OF MAY 6, 2004.

**AMENDED AND RESTATED  
AGREEMENT FOR THE SALE AND  
INSTALLATION OF EQUIPMENT  
(with Exhibits)**

← NO PREVIOUS  
CONTRACT

IN THE "DRAFT" OF THIS DOCUMENT  
SECTION VII WAS ENTITLED  
"COMMENCEMENT OF THE WORK."

THIS DRAFT WORDING IS TOTALLY DIFFERENT  
THAN WHAT APPEARS IN THE FINAL CONTRACT,

	<u>Page</u>
ARTICLE I. DEFINITIONS.....	2
Section 1.01 Definitions.....	2
Section 1.02 Interpretation.....	11
ARTICLE II. INCORPORATION PROVISIONS .....	12
Section 2.01 Incorporation of Recitals.....	12
Section 2.02 Incorporation of Exhibits .....	12
ARTICLE III. CONTRACT PRICE AND ADJUSTMENTS TO CONTRACT PRICE .....	12
Section 3.01 Contract Price.....	12
Section 3.02 Contract Price Adjustments .....	12
ARTICLE IV. TERMS OF PAYMENT.....	12
Section 4.01 Payment To Seller.....	12
Section 4.02 Taxes .....	14
Section 4.03 Liens.....	14
ARTICLE V. REPRESENTATIONS .....	14
Section 5.01 Authority Representations .....	14
Section 5.02 Seller Representations.....	15
ARTICLE VI. RESPONSIBILITIES OF PARTIES .....	16
Section 6.01 Responsibilities of the Authority .....	16
Section 6.02 Responsibilities of Seller .....	17
Section 6.03 Labor Relations.....	20
Section 6.04 Trade Subcontractors and Suppliers. ....	21
Section 6.05 Inspection and Correction of the Work.....	21
Section 6.06 Drawings, Data, and Submittals; Review and Comment.....	22
Section 6.07 Spare Parts. ....	23
ARTICLE VII. SELLER'S SECURITY PACKAGE .....	23
Section 7.01 Security .....	23
ARTICLE VIII. TIME OF PERFORMANCE .....	24
Section 8.01 Time of Performance. ....	24
ARTICLE IX. MECHANICAL COMPLETION AND START-UP .....	24
Section 9.01 Mechanical Completion. ....	24
Section 9.02 Start-Up.....	26
ARTICLE X. PERFORMANCE TESTS AND SUBSTANTIAL COMPLETION .....	26
Section 10.01 Performance Tests.....	26
Section 10.02 Substantial Completion.....	26

IN THE " DRAFT CONTRACT " THIS WAS ENTITLED  
 " COMMENCEMENT OF THE WORK "

not include work accomplished or to be accomplished by the Authority, the Authority's other contractors, or the Steam Host.

(f) For the purposes of this Agreement "Redline" shall mean the last revision of the construction Drawings hand marked to reflect actual arrangement resulting from construction.

(g) All Drawings, specifications and data provided pursuant to this section related to the Equipment shall be subject to the confidentiality provisions of this Agreement.

#### Section 6.07 Spare Parts.

(a) Seller shall purchase, at its sole cost and expense, spare parts for the Facility (the "Primary Spare Parts") listed in Exhibit K and make them available by the beginning of Start-up. The costs associated with the Primary Spare Parts are included in the Work.

(b) Seller may use any Primary Spare Parts item prior to the Substantial Completion Date, but must replace each such item, at its sole cost and expense, prior to the Substantial Completion Date to the extent such items are available and as soon thereafter as possible for long lead time items; provided, however, that any such items not so available on the Substantial Completion Date shall be included on the Purchaser and shall be provided by the Final Completion Date.

### ARTICLE VII. SELLER'S SECURITY PACKAGE

Section 7.01 Security. Seller's performance of its obligations hereunder shall be secured by the following:

(a) Special billing arrangement for certain Equipment. The Parties agree that Thirteen Million Dollars (\$13,000,000) of the amount due hereunder is directly related to the APC Technology and the Combustion Units. The Seller shall supply progress invoices monthly as an indication of work performed, but no amount will be due until said Equipment is delivered to the Site. Upon delivery, this amount will be invoiced by the Seller, subject to the retainage provisions of Section 7.01(c).

(b) Seller Bonds. Subject to the Authority's prior review and acceptance of such instruments, the Seller shall cause each of the following to be provided:

(i) Approximately Eighteen Million Dollars (\$18,000,000) of financial security posted by Seller's Subcontractor to assemble and install the Equipment. This financial security will be posted within ten (10) days of the execution of an assembly and installation contract between the Seller and Seller's Subcontractor.

(ii) Approximately Five Million Dollars (\$5,000,000) of financial security posted by the manufacturers of the following Equipment: the selective non-catalytic reduction system, the solids handling system, the refuse cranes and

THESE BONDS  
SECURE THE  
SUB CONTRACTORS  
THE GENERAL I.E.  
CONTRACTOR  
(SELLER)

IF SELLER  
DOESN'T PAY

SUBS, THE AUTHORITY HAS NO BOND PROTECTION.

the instrumentation. This financial security will be posted within ten (10) days of the execution of each pertinent purchase order between the Seller and the pertinent manufacturer.

(c) Retainage. The Twenty Percent retainage (which will accumulate up to approximately Nine Million Dollars (\$9,000,000), required by this Agreement.

(d) Maintenance Security. Within thirty (30) Days after Substantial Completion, the Seller shall post financial security in the form of a bond, letter of credit, cash, or other acceptable financial security in the amount of One Million Dollars (\$1,000,000). This financial security shall remain in effect until the expiration of the Warranty Period, and shall only be used to ensure Seller's performance of its obligations pursuant to Article XIV (relating to Warranties).

(e) Seller's Certificates of Insurance.

## **ARTICLE VIII. TIME OF PERFORMANCE**

### **Section 8.01 Time of Performance**

(a) The Parties acknowledge that the Seller has already commenced certain Work, pursuant to the Interim Equipment Agreement. Seller shall diligently pursue the remainder of the Work, assigning to it a priority that will permit the Work to be completed in accordance with the Project Schedule and Section 6.02 (Responsibilities of Seller). Subject to Section 8.01(e), Seller shall execute the Work so as to reach (1) Substantial Completion for all Combustion Units no later than the Scheduled Substantial Completion Date; and (2) Final Completion no later than the Scheduled Final Completion Date.

(b) This Time-of Performance shall be adjusted in the event of any qualifying event or condition that affects the Work provided for in this Agreement, including any Force Majeure.

(c) Any adjustment to the Time of Performance shall be processed in accordance with Article XV (Changes In Work), Section 20.04 (Force Majeure) and Article XXI (Dispute Resolution) herein.

(d) If during the progress of the Work, Seller determines that it will not be able to perform its Work in accordance with the Project Schedule, Seller shall promptly notify the Authority thereof.

## **ARTICLE IX. MECHANICAL COMPLETION AND START-UP**

### **Section 9.01 Mechanical Completion**

(a) Mechanical Completion shall occur when:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

ATTEST: [SEAL]

Donald R. Linn  
Secretary

AUTHORITY:

THE HARRISBURG  
AUTHORITY

By: Wesley D. [Signature]  
Chairman

GUARANTOR:  
BARLOW PROJECTS, INC.

By: Cl. [Signature]  
Treasurer

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

SUITE 400  
200 LOCUST STREET  
HARRISBURG, PA 17101

(717) 234-9730  
FAX (717) 234-9734  
[www.obermayer.com](http://www.obermayer.com)

FILE NO. 57285-027

ANDREW J. GIORGIONE  
EXTENSION: 1315  
E-MAIL: [Andrew.Giorgione@Obermayer.com](mailto:Andrew.Giorgione@Obermayer.com)

October 10, 2003

*VIA HAND DELIVERY*

To: Members, Harrisburg City Council  
From: Andrew J. Giorgione, Esq.  
c: Hon. Stephen R. Reed  
Members, Finance Team  
Re: 2003 Guaranteed Resource Recovery Retrofit Financing

At your October 7, 2003 Public Meeting, you requested certain documents and information related to the above referenced financing. The documents or information is as follows:

1. Fees of the MBE Consultants

The MBE Consultants have been engaged by Reynolds Construction Management, which has been engaged by the City as its representative to oversee the retrofit construction and to achieve or exceed the City's MBE participation goals. In order to fulfill its MBE participation role, Reynolds has engaged three consultants at fees totaling \$6,000 per month. James Kirkland is being paid \$3,500 per month, James White is being paid \$1,000 per month and Tamara Jelks is being paid \$1,500 per month. All of these consultants appeared before you at your September 24, 2003 meeting.

2. Estimated Underwriter Fees

On October 1, 2003, we provided to you a list of the Underwriters participating in this deal and their percentage allocation of the bonds to be sold. Until the bonds are sold, the exact amount of the fees the Underwriters will receive from the actual sale of the bonds will not be known and will depend in large part on the sales performance of each firm. Assuming the sales of the bonds breaks down along the lines

PHILADELPHIA  
PENNSYLVANIA  
488807

HARRISBURG  
PENNSYLVANIA

PITTSBURGH  
PENNSYLVANIA

CHERRY HILL  
NEW JERSEY

VINELAND  
NEW JERSEY

WILMINGTON  
DELAWARE

Members, Harrisburg City Council  
October 10, 2003  
Page 2

of the percentage each firm has been allocated (RBC Dain Rauscher has indicated that they will attempt to make available either the actual bonds or the sales credit associated with the bonds to the various co-managers), the sales credit portion of the underwriting spread should accrue as follows:

	<u>Underwriter</u>	<u>Contact</u>	<u>Estimated Fee</u>
Lead Underwriter	RBC Dain Rauscher	Jim Losty	\$145,000
Co-Underwriters	Commerce Capital	Peter Egan	\$112,000
	Williams Capital	Arthur McCreary	\$ 96,000
	Mesirow Financial	Dwight White	\$ 96,000
	Allison-Williams	Dan O'Neill	\$ 64,000
	Merrill Lynch	Brian Brode	\$ 64,000
	Arthurs Lestrangle	Mike Bova	\$ 64,000

3. Amount of the Debt

We have asked Bruce Barnes to provide you with the total amount of debt for the City and all its Authorities. Mr. Barnes indicated that he thought he could have this information to you by today, October 10, 2003.

4. Breakdown of County Guaranty Fee

The County Fee breaks out as follows: (i) the actual guaranty fee is \$1,750,000 and (ii) the costs for the professionals are \$130,000, which can be further broken out as \$75,000 for counsel, \$50,000 for financial advisor and \$15,000 for engineer.

5. Basis for 6% v. 4% Interest Rate Cap

The prices for the interest rate cap are as follows:

4.00% BMA Cap for 25 years	approximately 150 basis points per annum
5.00% BMA Cap for 25 years	approximately 115 basis points per annum
6.00% BMA Cap for 25 years	approximately 75 basis points per annum

These prices are based on the market rates as of October 8, 2003 and will fluctuate depending on the level of interest rates at the time the cap is purchased. The 6% level was selected because it was viewed by the Administration and the Lead Underwriter as a level that provided a reasonable maximum level of interest rate exposure while still providing most of the benefit of variable rate debt. The prices at 4% and 5% for the cap would be too high to justify use of variable rate debt, but at 6%, we were able to achieve significant interest rate cost savings and acceptable security against future interest rate peaks. Recall that, since 1990, variable rates have averaged 3.25%. If the Authority were to purchase a cap at 4% or 5% it

Members, Harrisburg City Council  
October 10, 2003  
Page 3

would be paying significant more money to protect against an interest rate increase that may never happen. Such proceeds are better spent paying down the total debt of the project.

6. Financial Impact per Household

A failure to approve the financing and complete the project will trigger an immediate budgetary deficit of \$15 million (carryover from 2003 and projected for 2004) that will without question trigger a significant property tax increase and an increase in utility disposal charges. Quantification of those increases and the impact on residents can be explained as follows:

A one mill tax increase yields a collectible amount of \$1,366,500 when applied to both residential and commercial property. In order to raise the entire \$15 million from property taxes, a 10.9 mill increase would be required. Obviously, this would cripple the City taxpayers, so the Administration has considered a mix of tax increases, disposal fee increase and severe spending cuts and layoffs to raise the \$15 million shortfall should Council not approve this bond issue. A 5.2 mill tax increase would raise approximately \$7.1 million. For a residential property owner in the City assessed at \$100,000, 5.2 mills would mean an increase in City property taxes and fees totaling \$516 per year. An additional \$120 annual increase in disposal fees for residents and a proportional increase in commercial rates would represent a tripling of the current fee. The increased disposal fee would raise approximately \$3 million in additional revenue. **Therefore, these two increases combined would cost a household with an assessment of \$100,000 approximately \$636 per year.** Most importantly, these increases would generate a little more than \$10 million in new revenue, leaving a remaining gap of almost \$5 million which would have to be made up from some other source or from significant cuts in City personnel and services. The ripple effect of tax and fee increases, and decreased services will greatly harm the local and regional economy, including residents and businesses alike.

In sum, it has been the direction of the Mayor for us to work with the Administration to create a retrofit project that completely avoids tax and disposal fee increases and layoffs. As set forth in the base case proforma, we have achieved that goal.

7. Proof of Minority Participation in Financing

As discussed last evening, Stan Mitchell, Esq., who has his own solo practice, is serving as co-bond counsel with us on this transaction. Attorney Mitchell has been assigned responsibility for assisting us in document preparation and for attending all financing team and City Council meetings. Mr. Mitchell's role is to assist bond counsel and he has generally 10-15% of the bond counsel responsibilities similar to his participation in the restructuring deal earlier this year.

With regard to the Underwriters, The Williams Capital Group is a minority-owned investment banking firm. Enclosed are documents from Arthur McClearin of Williams Capital discussing its minority ownership structure. Also, Dwight White from Mesirow Financial is an Underwriter in the deal and has a long history in participating in City/Authority bond transactions. Although I understand that Mesirow is

Members, Harrisburg City Council  
October 10, 2003  
Page 4

not a minority-based firm, Mr. White is a major principal in the company and is directly credited for the generation of bond work from the City. Together, Messrs. McClearin and White have a 30% interest in the underwriting responsibilities and bond sale fees in this deal.

8. Amended Bond Documents

We will have for you amended versions of the Guaranty Ordinance, Guaranty Agreement and Reimbursement Agreement by Monday for purposes of Tuesday's meeting. As instructed by you, we will include language in the Guaranty Agreement which restricts the use of the issuance fee to be paid by the Authority on this issue (\$50,000). The restriction will provide that no fees may be spent for any artifacts related to the City museum projects.

Please contact me if you need any further information.

# TRUST INDENTURE

Dated as of December 1, 2003

Between

THE HARRISBURG AUTHORITY

and

COMMERCE BANK/PENNSYLVANIA, NATIONAL ASSOCIATION  
as Trustee

---

SECURING

GUARANTEED RESOURCE RECOVERY FACILITY  
REVENUE BONDS, SERIES D OF 2003

GUARANTEED FEDERALLY TAXABLE RESOURCE  
RECOVERY FACILITY REVENUE BONDS, SERIES E OF 2003

GUARANTEED FEDERALLY TAXABLE RESOURCE  
RECOVERY FACILITY REVENUE BONDS, SERIES F OF 2003

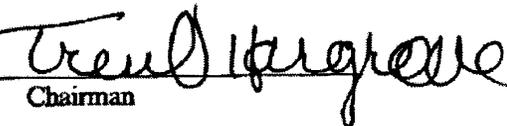
SECTION 5.03. Contract Bonds. All contracts which provide for the furnishing of material or the doing of work with regard to the Improvements, if applicable, or to Capital Additions shall be in compliance with all Federal and Commonwealth statutes, rules and regulations and shall be subject to the approval of the Consulting Engineers. To the extent required by applicable law, the Authority will require each Person with whom it may contract or with whom the City may contract, pursuant to the City's responsibilities under the Management Agreement, for construction to furnish a performance bond and a payment bond each for not less than 100% of the full amount of the contract entered into with such Person or such greater or lesser amount as may be required by applicable law, and to carry such insurance as may be required by law and as may be recommended by the Consulting Engineers. The proceeds of any such performance bond shall forthwith, upon the receipt thereof by the Authority, be deposited to the credit of the applicable account of the Construction Fund and applied toward the completion of the construction covered by the contract in connection with which such performance bond shall have been furnished, except that any such proceeds as shall constitute liquidated damages for delay shall be deposited to the credit of the Revenue Fund.

IN WITNESS WHEREOF, The Harrisburg Authority, has caused this Indenture to be executed by its Chairman and its corporate seal to be hereunto impressed and attested by its Secretary, and Commerce Bank/Pennsylvania, National Association, as Trustee, in evidence of its acceptance of the trusts hereby created, has caused this Indenture to be executed by one of its authorized officers.

ATTEST:

THE HARRISBURG AUTHORITY

  
Secretary

By:   
Chairman

[SEAL]

COMMERCE BANK/PENNSYLVANIA,  
NATIONAL ASSOCIATION

By:   
Authorized Officer



November 19, 2003

Via E-Mail

**Daniel R. Lispi**  
Assistant to the Mayor for Special Projects  
City of Harrisburg  
10 North Second Street  
Martin Luther King, Jr. Government Center  
Harrisburg, PA 17101

RE: Contract security

Dear Dan:

Over the course of the last couple of weeks and as the result of several conversations involving our respective project and finance teams, the Authority and its finance team have come to the conclusion that the requirements necessary to satisfy the conditions of the CIT project financing plan are not acceptable. As a result, Barlow Projects has developed an alternative for the Authority's consideration. The security package is a combination of payment and performance bonds and significant cash retainage. It offers the Authority the security needed to assure a successful project and generates a project savings of approximately \$5 million that can be added to project contingency.

The Barlow scope of work will include all costs necessary to fabricate and install the proprietary combustion and air pollution control systems chosen by the Authority. The scope will include all related systems and services necessary to process waste and produce steam. Barlow will guarantee the process and the performance of its system along with the price and the schedule. In addition Barlow will supply the engineering and procurement services necessary for the Authority to procure the systems necessary to produce electricity including the turbine generator, the cooling tower and condenser and the other contractors packages related to the electrical, plumbing, HVAC, and elevator contracts.

Table A is an illustration of the major cost components of the Barlow system. The Barlow system itself includes approximately \$47.4 million in installed equipment. By utilizing a combination of payment and performance bonds on key systems and contract retention of almost \$9 million, Barlow is offering the Authority contract security equal to 91% of the value of the installed equipment. Payment and Performance Bonds and the contract retention will be held by the Authority until the Barlow system has been completed and passed its performance tests. This is defined as Substantial Completion in the contract.

The remaining \$11.2 million of Barlow's contract represents the various services offered by us and our own project contingency.

2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
WWW.BARLOWPROJECTS.COM

**TABLE A- Major cost components (current estimates)**  
(\$ in millions)

Major cost components	Contract - Security		Form of Security
	value	Provided	
<b>Equipment</b>			
Boilers	8.00	8.00	Retention
Aireal combustion system	7.00	7.00	P&P Bond
Barlow/Procedair system	6.00	6.00	P&P Bond
Selective Non Catalytic Reduction	1.80	1.80	P&P Bond*
Cranes	0.80	0.80	P&P Bond*
Continuous Emission Monitoring	0.50	0.50	P&P Bond*
Plant control system	0.50	0.50	P&P Bond*
Water treatment system	0.30	0.30	P&P Bond*
All other equipment	5.10	0.79	Retention
	<b>30.00</b>	<b>25.69</b>	
<b>Bulk Commodities and Construction</b>			
Equipment Installation - Cianbro	17.00	17.00	P&P Bond
Stack repairs	0.40	0.40	P&P Bond*
	<b>17.40</b>	<b>17.40</b>	
<b>Barlow System</b>	<b>47.40</b>	<b>43.09</b>	<b>91%</b>
<b>Professional services</b>			
Project development			
Legal and other professional services			
Engineering			
Procurement			
Project management			
Start -up and testing			
Spare parts			
Contingency			
	<b>11.20</b>		
<b>Current Barlow Contract Estimate</b>	<b>58.60</b>	<b>8.79</b>	<b>15% retention</b>

❖ Bonds have been requested on these components, costs have not been determined for these bonds. In addition, the equipment and contract work that is not in Barlow's scope of supply, as detailed above, will all be securitized by either payment and performance bonds or letters of credit.

We will be available to participate in the conference call at 3:00 PM today to discuss this alternative in detail.

Sincerely Yours,



Ronald E. Barmore  
Senior Vice President

CC: Tom Mealy, Andrew Giorgione, Jay Hopper, Michael Kline

UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA

THE HARRISBURG AUTHORITY,

and

COUNTY OF DAUPHIN,

Plaintiffs,

vs.

NO. 4:08-cv-00180-JEJ

CIT CAPITAL USA, INC.,

and

AIREAL TECHNOLOGIES OF  
HARRISBURG, LLC,

Defendants.

DEPOSITION OF

ANDREW J. GIORGIONE

VOLUME I

DECEMBER 10, 2008

9:01 A.M.

HANGLEY, ARONCHICK, SEGAL & PUDLIN

30 NORTH THIRD STREET

SUITE 700

HARRISBURG, PENNSYLVANIA

SUSAN O'HARA MOORE, CSR, RMR, CLVS



**ESQUIRE**  
DEPOSITION SERVICES®

Toll Free: 800.345.4940  
Facsimile: 215.988.1843

Suite 1210  
1600 John F. Kennedy Blvd  
Philadelphia, PA 19103  
[www.esquirecom.com](http://www.esquirecom.com)

1 Q. For the contracts to do the retrofit  
2 work?

3 A. No.

4 Q. Why not?

5 A. I don't recall.

6 Q. Was any analysis undertaken to determine  
7 whether Barlow had the financial wherewithal to  
8 fulfill its contractual obligations?

9 A. I don't recall.

10 Q. At the end of the day after this played  
11 out, apparently there was no performance bond or  
12 other type of bond that Barlow posted. Do you  
13 have a recollection whether that was ever raised  
14 during the negotiations with Barlow in agreeing  
15 to the various contracts for the construction of  
16 the retrofit facility?

17 A. The original -- as I recall, the original  
18 contracts were signed the end of December 2003.  
19 The financing was complete. Subsequent to that,  
20 there were certain conditions that had to be met  
21 to begin construction, one of which Barlow had to  
22 provide bonding for the construction portion of  
23 the work. And they were unable to secure a bond  
24 to do the work. So the contracts were amended to  
25 address that fact.



**ESQUIRE**  
DEPOSITION SERVICE

Toll Free: 800.345.4940  
Facsimile: 215.988.1843

Suite 1210  
1600 John F. Kennedy Blvd  
Philadelphia, PA 19103  
[www.esquirecom.com](http://www.esquirecom.com)

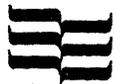
1 Q. When the contracts were amended to 1  
2 relieve that condition, who participated in the 2  
3 decision to relieve Barlow of that condition? 3

4 A. I don't think it's correct to say that 4  
5 they were relieved of that condition. There were 5  
6 multiple forms of security that were built into 6  
7 the retrofit contracts. And there was a bond 7  
8 that was provided through Barlow's subcontractor 8  
9 for approximately 17 or 18 million for the actual 9  
10 fabrication of the component parts of the plant. 10  
11 And that was provided by Barlow's subcontractor, 11  
12 Cianbro. 12

13 And there were several other forms of 13  
14 security built into the agreement, including 14  
15 substantial retainage, including reimbursement 15  
16 provisions for equipment and materials that was 16  
17 delayed until those materials actually reached 17  
18 the site. And there were other forms of security 18  
19 that I don't recall but that are in the contract 19  
20 that was eventually signed in May of 2004. 20

21 Q. How did the Harrisburg Authority 2  
22 administer or oversee the retrofit project and 2  
23 Barlow's work? 2

24 A. The Harrisburg Authority did not have 2  
25 construction consultants directly that oversaw 2



20  
1  
e 2  
3  
4  
ere 5  
o 6  
7  
or 8  
ual 9  
it. 10  
or, 11  
12  
13  
14  
t 15  
as 16  
d 17  
rity 18  
act 19  
20  
21  
d 22  
23  
24  
w 25

the construction. They had an in-house engineer. I don't know the extent of what he oversaw. The point person for the project was Tom Mealy. We always reported to Tom.

Q. So there was nobody who was engaged from outside of the Harrisburg Authority to help Mr. Mealy evaluate Barlow's progress?

A. No.

Q. And who was left to evaluate Barlow's progress?

A. The City of Harrisburg had John Lukens and his staff on the site that oversaw construction. Barlow also engaged a local construction contractor who was on site, but they reported directly to Barlow. So I don't believe there was anyone.

Q. Dan Lispi eventually left the employ of the Harrisburg Authority?

A. Correct, City of Harrisburg.

Q. He was employed by the City of Harrisburg?

A. Correct.

Q. Thank you.

Was a decision then made to engage his services as an independent contractor?

345.49  
988.18



**ESQUIRE**

DEPOSITION SERVICES

Toll Free: 800.345.4940  
Facsimile: 215.988.1843

Suite 1210  
1600 John F. Kennedy Blvd  
Philadelphia, PA 19103  
www.esquirecom.com

Suite 1210  
Kennedy Blvd  
Philadelphia, PA 19103

not include work accomplished or to be accomplished by the Authority, the Authority's other contractors, or the Steam Host.

(f) For the purposes of this Agreement "Redline" shall mean the last revision of the construction Drawings hand marked to reflect actual arrangement resulting from construction.

(g) All Drawings, specifications and data provided pursuant to this section related to the Equipment shall be subject to the confidentiality provisions of this Agreement.

**Section 6.07 Spare Parts.**

(a) Seller shall purchase, at its sole cost and expense, spare parts for the Facility (the "Primary Spare Parts") listed in Exhibit K and make them available by the beginning of Start-up. The costs associated with the Primary Spare Parts are included in the Work.

(b) Seller may use any Primary Spare Parts item prior to the Substantial Completion Date, but must replace each such item, at its sole cost and expense, prior to the Substantial Completion Date to the extent such items are available and as soon thereafter as possible for long lead time items; provided, however, that any such items not so available on the Substantial Completion Date shall be included on the Punchlist and shall be provided by the Final Completion Date.

**ARTICLE VII.  
SELLER'S SECURITY PACKAGE**

**Section 7.01 Security.** Seller's performance of its obligations hereunder shall be secured by the following:

(a) **Special billing arrangement for certain Equipment.** The Parties agree that Thirteen Million Dollars (\$13,000,000) of the amount due hereunder is directly related to the APC Technology and the Combustion Units. The Seller shall supply progress invoices monthly as an indication of work performed, but no amount will be due until said Equipment is delivered to the Site. Upon delivery, this amount will be invoiced by the Seller, subject to the retainage provisions of Section 7.01(c).

(b) **Seller Bonds.** Subject to the Authority's prior review and acceptance of such instruments, the Seller shall cause each of the following to be provided:

(i) Approximately Eighteen Million Dollars (\$18,000,000) of financial security posted by Seller's Subcontractor to assemble and install the Equipment. This financial security will be posted within ten (10) days of the execution of an assembly and installation contract between the Seller and Seller's Subcontractor.

(ii) Approximately Five Million Dollars (\$5,000,000) of financial security posted by the manufacturers of the following Equipment: the selective non-catalytic reduction system, the solids handling system, the refuse cranes and

the instrumentation. This financial security will be posted within ten (10) days of the execution of each pertinent purchase order between the Seller and the pertinent manufacturer.

(c) Retainage. The Twenty Percent retainage (which will accumulate up to approximately Nine Million Dollars (\$9,000,000), required by this Agreement.

(d) Maintenance Security. Within thirty (30) Days after Substantial Completion, the Seller shall post financial security in the form of a bond, letter of credit, cash, or other acceptable financial security in the amount of One Million Dollars (\$1,000,000). This financial security shall remain in effect until the expiration of the Warranty Period, and shall only be used to ensure Seller's performance of its obligations pursuant to Article XIV (relating to Warranties).

(e) Seller's Certificates of Insurance.

## **ARTICLE VIII. TIME OF PERFORMANCE**

### **Section 8.01 Time of Performance.**

(a) The Parties acknowledge that the Seller has already commenced certain Work, pursuant to the Interim Equipment Agreement. Seller shall diligently pursue the remainder of the Work, assigning to it a priority that will permit the Work to be completed in accordance with the Project Schedule and Section 6.02 (Responsibilities of Seller). Subject to Section 8.01(c), Seller shall execute the Work so as to reach (1) Substantial Completion for all Combustion Units no later than the Scheduled Substantial Completion Date; and (2) Final Completion no later than the Scheduled Final Completion Date.

(b) This Time of Performance shall be adjusted in the event of any qualifying event or condition that affects the Work provided for in this Agreement, including any Force Majeure.

(c) Any adjustment to the Time of Performance shall be processed in accordance with Article XV (Changes In Work), Section 20.04 (Force Majeure) and Article XXI (Dispute Resolution) herein.

(d) If during the progress of the Work, Seller determines that it will not be able to perform its Work in accordance with the Project Schedule, Seller shall promptly notify the Authority thereof.

## **ARTICLE IX. MECHANICAL COMPLETION AND START-UP**

### **Section 9.01 Mechanical Completion.**

(a) Mechanical Completion shall occur when:

so available on the Substantial Completion Date shall be included on the Punchlist and shall be provided by the Final Completion Date.

ARTICLE VII. *SECURITY PACKAGE*  
COMMENCEMENT OF THE WORKBONDS AND CONDITIONS PRECEDENT

Section 7.01 Conditions Precedent. A "Notice to Proceed" <sup>OTHER</sup> from the Authority to Seller ~~initiating Conditions Precedent~~. The Parties acknowledge that the following conditions precedent were satisfied on or before the commencement of the Work shall not be issued until: date this Agreement was executed:

*Security Package*

*Special Billing Approval  
Delayed for  
Equipment*

*Retention*

*Mr's Bonds - app.*

*Subcontractor's  
1 Bond.*

(a) Completion of the Authority Financing shall have occurred and the Seller has been given reasonable assurances that funds have been obtained, provided to the Bond Fund Trustee, and are immediately available for disbursement to pay amounts due to Seller hereunder.

*No invoices will be rendered and payments will be due on the APC Technology or the Combustion Technology until the same have been delivered.*  
(a) Seller shall have received such certificates and other documents as are customary and ~~are~~ were reasonably requested, including an opinion of counsel to the Authority in form and substance satisfactory to Seller;

(b) The following Seller Bonds shall have been posted by Subcontractors: a seven million dollar (\$7,000,000) equipment delivery, assembly and installation bond on the Combustion Technology, and a six million dollar (\$6,000,000) equipment delivery, assembly and installation bond on the APC Technology. ~~An additional fourteen million dollar (\$14,000,000) payment and performance bond will be posted after the Notice to Proceed is issued, but before the commencement of the Work. Additional bonds will be posted by the manufacturers of the following items:~~

(c) Seller shall have has provided Certificates of Insurance. *18,000,00*

Section 7.02 Additional Bonds to be Provided. The Parties acknowledge that an additional fourteen million dollar (\$14,000,000) payment and performance bond will be posted by the Seller within ( ) days after this Agreement is executed. Additional bonds totaling approximately four million dollars (\$4,000,000) will be posted by the manufacturers of certain additional Equipment, prior to completion of the Work.

ARTICLE VIII.  
TIME OF PERFORMANCE

Section 8.01 Time of Performance.

(a) ~~Within three (3) Days after issuance by the Authority of the Notice to Proceed. The Parties acknowledge that the Seller has already commenced certain Work pursuant to the Interim Equipment Agreement.~~ Seller shall commence and diligently pursue the remainder of the Work, assigning to it a priority that will permit the Work to be completed in accordance with the Project Schedule and Section 6.02 (Responsibilities of Seller). Subject to Section 8.01(c), Seller shall execute the Work so

LEBOEUF, LAMB, GREENE & MACRAE  
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

125 WEST 55TH STREET  
NEW YORK, NY 10019-5389

November 18, 2003

TO: Ron Barmore  
(cc: Joseph A. Tato)

FROM: Michael D. Klein  
Jonathan P. Nase

RE: Payment and Performance Bonds

This memorandum is in response to your inquiry regarding payment and performance bonds.

The Municipality Authorities Act, 53 Pa. C.S. § 5614(b), provides that a municipal authority is to award contracts for supplies and materials costing at least \$10,000 following a competitive process. This requirement does not apply where the authority is purchasing "patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer." *Id.* The statutory subsection dealing with contracts for supplies and materials does not require bonds or other forms of financial security from the contractor.

In contrast, the statutory subsection dealing with an authority's award of contracts for services for "construction, reconstruction, repair or work of any nature" does require bonds or other forms of financial security from the contractor. Specifically, with regard to contracts exceeding \$10,000:

No contract shall be entered into for construction or improvement or repair of a project or portion thereof unless the contractor gives an undertaking with a sufficient surety approved by the authority and in an amount fixed by the authority for the faithful performance of the contract.

53 Pa. C.S. § 5614(a)(2). This provision gives the authority discretion over the amount of the bond or other financial security.

You have been told that 73 P.S. § 1621 controls all authority contracts in excess of \$50,000, and requires a performance bond equal to 100% of the contract amount. Please be advised that the cited statutory section was repealed in 1998.

However, the Public Works Contractors' Bond Law of 1967, at 8 P.S. § 193.1(a), requires an authority to obtain certain types of financial security:

Before any contract exceeding ten thousand dollars (\$10,000) for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highway work, of any contracting body is awarded to any prime contractor . . . .

Two bonds (or other form of financial security, in lieu of a bond) are required from a prime contractor. The first is a performance bond, to secure the performance of the contract. The second is a payment bond, to ensure the payment of laborers and material men. Each financial security is to be in the amount of 100% of the amount of the contract. Id.

We see nothing in this Law that creates a similar requirement for financial security where the authority is contracting for services other than construction, reconstruction, alteration or repair of a public building or public work, or, more importantly, where the authority is contracting for materials and supplies (such as patented and manufactured products).

Thus, an authority must require financial security from a prime contractor on a construction project, but need not require such security from other contractors. Please note that the statute does not define the term "prime contractor." We will perform additional research on this point, and send you the results in a separate memorandum.

We hope this information is useful. Please contact us if you have any questions or concerns about this memorandum.

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

ONE PENN CENTER - 19<sup>TH</sup> FLOOR  
1617 JOHN F. KENNEDY BOULEVARD  
PHILADELPHIA, PA 19103-1895  
(215) 665-3000  
FAX (215) 665-3165  
[www.obermayer.com](http://www.obermayer.com)

Hugh C. Sutherland, Esq.  
215-665-3096  
hcs@Obermayer.com

April 11, 2003

TO: Distribution

FROM: Hugh C. Sutherland

RE: Resource Recovery Facility Revenue Refunding Bonds - DCED Documents

For those of you who have not received a revised draft of the Debt Statement in the last two hours, here it is. In this case the change is to increase the amount of self-liquidating lease rental debt of the City by including therein both the Resource Recovery Facility 1998A Bonds in the assumed amount of \$11,100,000 and the 2002 Notes in the principal amount of \$17 million. This leaves the only non-self-liquidating debt being the Leasing Authority 1997 debt of \$205,000.

We are making this change to be consistent with what we understand the Barlow Report will show which is that it is assumed as of this date that all Resource Recovery Facility debt will be self-sustaining.

If at some future time a subsequent engineer's report should determine that not all of the Resource Recovery Facility debt will be self-sustaining, then at that time any debt statement then filed by the City would have to reflect that changed situation and the City's debt statement as of that time would show increased lease rental debt in the amount of whatever amount of Resource Recovery Facility debt was determined by the engineer not to be self-sustaining.

HCS/csb  
encl.

Distribution:

Judith B. Schimmel, Esq.  
Robert F. Kroboth  
Daniel R. Lispi  
Thomas J. Mealy  
J. Bruce Walter, Esq.  
Bruce A. Barnes  
Hugh C. Sutherland, Esq.  
Warren W. Ayres, Esq.  
Andrew J. Giorgione, Esq.  
Stanley Mitchell, Esq.  
James F. Losty  
James B. Konieczny  
Dwight L. White  
Richard D. Michael, Esq.  
Carol P. Cocheres, Esq.  
Mary Beth Phillips  
Kenneth R. Nilson  
Glen Grell, Esquire

**ECKERT SEAMANS**  
ATTORNEYS AT LAW

**FACSIMILE**

213 Market Street, Eighth Floor  
Harrisburg, PA 17101-2132  
Telephone: 717.237.6000  
Facsimile: 717.237.6019  
www.escm.com

Boston  
Haddonfield, NJ  
Harrisburg  
Morgantown, WV  
Philadelphia  
Pittsburgh  
Washington, DC

To: Ronald Barmore  
Fax Number: 970.226.8559  
To: Hugh C. Sutherland, Esq.  
Fax Number: 215.665.3165  
To: Daniel R. Lispi  
Fax Number: 717.255.6488  
To: James F. Losty  
Fax Number: 215.832.1515  
To: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Date: April 11, 2003 Time: \_\_\_\_\_  
From: Richard D. Michael Direct Dial: 717.237.6036

We are transmitting 10 pages, including this page.

Message: **Combined comments from Hugh Sutherland and me.**

**NOTICE OF CONFIDENTIALITY:** The statements upon and any documents included with this facsimile transmittal sheet contain information from the firm of Eckert Seamans Cherin & Mellott, LLC, that is *confidential, privileged and exempt from disclosure* under applicable laws. This information is intended to be for the exclusive use of the named addressee. If you are not the addressee, note that any disclosure, copying, distribution or use of the contents of this transmittal is prohibited. If you have received this facsimile in error, please immediately notify us at 717.237.6000 (collect) so that we can arrange for the retrieval of the original documents at no cost to you.

**ECKERT SEAMANS CHERIN & MELLOTT, LLC**

Harrisburg Authority Refinancing



March 24, 2003

City of Harrisburg  
10 North Second St.  
Martin Luther King, Jr. Government Center  
Harrisburg, PA 17101

RE: <sup>The</sup> Harrisburg <sup>(Authority)</sup> Guaranteed Resource Recovery Facility Revenue 2003 Notes Series A, B, C, and <sup>and</sup> D; Report on Exclusion of Self-Liquidating Debt <sup>, Guaranteed by the City of Harrisburg</sup>

Gentlemen:

(71,000,000) in lease rental debt, evidenced by its proposed quantity of up to \$76,000,000

This report is submitted pursuant to Section 8026 of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") in connection with the application by the City of Harrisburg, Dauphin County, Pennsylvania (the "City"), for exclusion of up to \$76,000,000 principal amount, in self-liquidating bonds, in separate taxable and tax-exempt series (the "2003 Notes"), to be issued by The Harrisburg Authority (the "Authority"). <sup>notes</sup>

The Harrisburg Authority ~~(the Authority)~~ is the owner and the City the operator of a fully <sup>integrated</sup> waste management system (the "System") for the disposal of waste generated in the City and the region. The System consists of two 400 ton/per day mass burn incinerator units, a trash transfer station and associated landfill. <sup>I thought it was 250</sup>

The City is currently operating the incinerator units in compliance with <sup>(on)</sup> Consent Orders issued by the United States Environmental Protection Agency (the "EPA") and the Pennsylvania Department of Environmental Protection (the "DEP"). These orders have reduced the combustion capacity of the incinerator units to 249 tons per day, per unit and require that the units cease the combustion of waste by midnight June 18, 2003. After that date, the System may only operate as a transfer station and landfill unless the units are rebuilt to comply with all applicable new Air Quality Program permits and a Solid Waste Management Program permit modification. The Authority and the City are actively pursuing a plan to complete a major modification resulting in a modern waste-to-energy process (the "Retrofit") that can effectively process 400 tons per day, per unit, to comply with the New Source Performance Standards for Municipal Waste Combustors as required by the Clean Air Act Amendments and the rules promulgated thereunder, meet the operating permit requirements of the DEP, and be operated and maintained in a manner consistent with the numerous successful waste-to-energy facilities operating in Pennsylvania and other states. <sup>and emission guidelines</sup>

In preparation of this report, we have used and relied upon certain information provided to us by sources that we believe to be reliable, but we have not independently verified or confirmed such information. We have also made certain assumptions with respect to conditions which may exist or events which may occur in the future. In addition, assumptions regarding future decisions of the Authority, the City, economic conditions, contractual commitments, and competing alternatives were required to estimate revenues and expenses for the System. While these assumptions are reasonable for the purpose of this report, they are dependent upon future events, the Authority and the City's operation and management decisions (including the decisions regarding the Retrofit of the System to meet the Clean Air Act Amendments) and actual market conditions, which may differ from those assumed. Some assumptions may not materialize or may vary significantly due to unanticipated or uncontrollable events and circumstances. To the extent that actual future conditions or events differ from those assumed herein or provided to us by others, the actual results may vary from those forecast in this report. A set of primary assumptions, upon which this analysis is based, is attached as Exhibit 1. The detailed economic assumptions for the revenue and expense projections are contained in footnotes to Exhibit 3.

amendments to the federal Clean Air Act (the "Clean Air Act Amendments")

2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
[WWW.BARLOWPROJECTS.COM](http://WWW.BARLOWPROJECTS.COM)

Harrisburg Authority Refinancing

The County Ordinance authorizes a quantity of 2003 Notes in the amount aggregate principal amount of \$77,000,000, the Report uses \$76,500,000 -- is the plan to still exclude the lower amount as self-liquidating, then assume that no greater than \$76.5 million, and then we go back to the Department of Community and Economic Development and file an non-completion of side notice, to remove the excess of \$7 million over the actual bond

In compliance with the requirements of the Act, we offer the following information:

- I. The System will use the proceeds of its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Refunding Revenue Notes and/or Bonds, Series A of 2003 (the "2003 A Notes"), Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes and/or Bonds, Series B of 2003 (the "2003 B Notes"), Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes and/or Bonds, Series C of 2003 (the "2003 C Notes") and ~~Guaranteed Resource Recovery Facility Subordinate Commercial Revenue Note, Series D of 2003 (the "2003 D Note")~~ (the Series 2003 A, 2003 B, 2003 C Notes and ~~2003 D Note~~, collectively, the "2003 Notes"), in the aggregate principal amount ~~not to exceed \$76,500,000~~ 77,000,000 to finance the 2003 Restructuring Project consisting of financing the costs of the advance refunding of or retirement of up to all of the outstanding Authority Guaranteed Resource Recovery Facility Revenue Notes, Series A of 2000 and Guaranteed Federally Taxable Resource Recovery Facility Revenue Notes, Series B of 2000, and the advance refunding of a portion of the Authority's Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A of 1998, Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series B of 1998, Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series C of 1998 and Guaranteed Taxable Resource Recovery Facility Refunding Revenue Bonds, Series D of 1998, funding a debt service reserve fund for the 2003 Notes, and paying the costs of issuance of the 2003 Notes. A detailed source and use of funds statement as furnished to us by RBC Dain Rauscher is set forth in Exhibit 2 attached hereto. (providing up to \$2,000,000 of working capital)
- II. The debt service schedule setting forth the dates, interest rates and the amount of each stated maturity of the 2003 Notes, and the amount of the annual debt service for each year during the life of the 2003 Notes as furnished to us by RBC Dain Rauscher is set forth in Exhibit 2 attached hereto.
- III. Based on discussions with City staff and its consultants, a Retrofit plan <sup>has</sup> been developed by the Authority and the estimated date of the Retrofit completion is 12/31/05.
- IV. Based on the strategies and assumptions contained in this report and the estimated annual five-year revenues and expenses presented in Exhibit 3, the estimated net revenues of the System for each year of the remaining life of the 2003 Notes will be sufficient to pay the annual debt service on the 2003 Notes.
- V. Based on the assumptions for the implementation of the developed strategies, the Authority Retrofit budget, the Authority operating plan and budget, and resultant projections of revenues and expenses set forth in Exhibit 3, the estimated gross revenues computed should be adequate to pay the operating and maintenance expenses of the System, pay the annual debt service on the bonds necessary to finance the Retrofit, and meet the annual debt service payments on the 2003 Notes.

Respectfully Submitted,  
Barlow Projects, Inc.

*RE Barnore*

Ronald E. Barnore  
Senior Vice President

and meet the annual debt service payments on the other outstanding notes and bonds of the System

Harrisburg Authority Refinancing

CERTIFICATE

I the undersigned, Ronald E. Barmore of Barlow Projects, Inc., certify that

1. Barlow Projects, Inc. (BPI) is providing comprehensive <sup>Authority's</sup> design engineering and development services for the Harrisburg Authority (Authority) for the Retrofit of the Resource Recovery Facility project.
2. BPI has read and is familiar with Section 8026 of the Local Government Unit Debt Act, Title 53, Part VII, Subpart B, Chapter 80, Pennsylvania C.S.A., pertaining to self-liquidating debt. <sup>Resource Recovery</sup>
3. BPI is familiar with the costs of retrofitting the Facility as well as the costs of operating and maintaining solid waste processing facilities similar to the Authority Facility.
4. I have over 20 years of relevant experience in the waste to energy industry and collectively, the senior management of BPI has in excess of 75 years of experience in the industry.
5. I certify that I am qualified to act with regard to the ~~Harrisburg~~ Resource Recovery Facility and that the Report on Self-Liquidating Debt was prepared under my direct supervision.
6. BPI is of the opinion, based upon the assumptions outlined in the Report that the estimates of System <sup>(hereinafter defined)</sup> net revenues have been computed as a result of the Authority's best estimate of System gross revenues, Retrofit costs, and operating and maintenance costs for the Resource Recovery Facility.
7. BPI is of the opinion, based upon the assumptions outlined in the Report, that the Series 2003 A, 2003 B, 2003 C Notes <sup>and 2003 D Notes</sup> (collectively, the "2003 Notes") in the collective <sup>amount</sup> amount of \$77,000,000 <sup>(and)</sup> relative to the Authority integrated waste management system (the "System") for the disposal of waste generated in the City and the region is self liquidating as defined in the Local Government Unit Debt Act.
8. I further certify that BPI has been requested by the Authority <sup>and the City</sup> to prepare and deliver this certificate in accordance with the provisions of the Local Government Unit Debt Act.

77,000,000

is the total debt incurred by the City by its guarantee of

By:

*RE Barmore*

Ronald E. Barmore  
Senior Vice President <sup>not an engineer?</sup>  
Barlow Projects, Inc.

Date: March 24, 2003

**Hugh Sutherland**

---

**From:** Giorgione, Andrew [andrew.giorgione@obermayer.com]  
**Sent:** Tuesday, May 13, 2003 9:38 AM  
**To:** Daniel R. Lispi (E-mail); James Losty (E-mail); Hugh Sutherland  
**Subject:** [Barlow Projects letterhead]

Boys -

Attached in highlights are Ron Barmore's proposed changes to the letter. Please advise asap if okay.

A

<<HCSdraft Barlow letter supplement- Hsbg. Resource Recov. 2003\_v1.DOC>>

[Barlow Projects letterhead]

May 9, 2003

City of Harrisburg  
10 North Second Street  
Martin Luther King, Jr. Government Center  
Harrisburg, PA 17101

RE: The Harrisburg Authority Guaranteed Resource Recovery Facility  
Indebtedness – Report on Exclusion of Self-Liquidating Debt

Gentlemen:

The purpose of this letter is to supplement my report to you previously transmitted, dated March 24, 2003. The original report and this supplement are submitted pursuant to Section 8026 of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") in connection with the proposed incurrence by the City of Harrisburg, Dauphin County, Pennsylvania (the "City") of up to \$77,000,000 in lease rental debt, evidenced by the City's proposed guaranty of up to \$77,000,000 principal amount of 2003 Notes to be issued by The Harrisburg Authority (the "Authority").

As is evidenced by Exhibit 3 to my report the projected revenues and expenses of the Authority's fully integrated waste management system, as set forth in finding V of my report should be adequate to pay all operating and maintenance expenses of the System, to pay the annual debt service on the bonds necessary to finance the projected Retrofit of the System, which are expected to be issued later this year, to pay the annual debt service payment on the 2003 Notes and also to meet the annual debt service payments on the 1998A system debt not refunded~~other outstanding notes and bonds of the System~~. As shown on the Sources and Uses table in Exhibit 2, which is attached hereto, together with a revised schedule of debt service for ~~Schedule~~ Exhibit 2 showing application of \$77,000,000 of 2003 Notes, the application of the 2003 Notes and other available monies will defease and/or retire all of the Series A of 1998 System debt except \$10,695,000 \_\_\_\_\_ thereof, all of the Series B of 1998 System debt, all of the Series C of 1998 System debt, all of the Series D of 1998 System debt, all of the Series A of 2000 System debt and all of the Series B of 2000 System debt (See LRA 3497). This will leave outstanding only the aforesaid \$10,695,000 \_\_\_\_\_ Series A of 1998 System debt, the 2003 Notes and the \$17,000,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002. Accordingly, the exclusion of

lease rental debt covered by this report, in addition to the \$77,000,000 of 2003 Notes, is the \$10,695,000 \_\_\_\_\_ of the Series A of 1998 Bonds expected to remain outstanding (which have already been recognized as self-liquidating on your records pursuant to a separate application filed by the City at the time that lease rental indebtedness was incurred; LRA 3238). The \$17,000,000 of Series A of 2002 Notes have never been requested to be excluded as self-liquidating lease rental debt. (See LRA 3820.)

I also wish to clarify my statement in paragraph 22 of Exhibit 1 of the original report. The language in paragraph 22 is designed to reflect the fact that an estimate is not a guaranty. The projection period in Exhibit 3 is limited but this does not detract from my conclusion in Part V of my report letter which addresses the System debt over its life as required by Section 8026(a)(5) of the Act.

Respectfully Submitted,

Barlow Projects, Inc.

---

Ronald E. Barmore  
Senior Vice President

CERTIFICATE

I the undersigned, Ronald E. Barmore of Barlow Projects, Inc., certify that:

1. Barlow Projects, Inc. (BPI) is providing comprehensive design engineering and development services for the Harrisburg Authority (Authority) for the Retrofit of the Authority's Resource Recovery Facility project.
2. BPI has read and is familiar with Section 8026 of the Local Government Unit Debt Act, Title 53, Part VII, Subpart B, Chapter 80, Pennsylvania C.S.A., pertaining to self-liquidating debt.
3. BPI is familiar with the costs of retrofitting the Resource Recovery Facility as well as the costs of operating and maintaining solid waste processing facilities similar to the Resource Recovery Facility.
4. I have over 20 years of relevant experience in the waste to energy industry and collectively, the senior management of BPI has in excess of 75 years of experience in the industry.
5. I certify that I am qualified to act with regard to the Resource Recovery Facility and that the Report on Self-Liquidating Debt was prepared under my direct supervision.
6. BPI is of the opinion, based upon the assumptions outlined in the Report that the estimates of System (hereinafter defined) net revenues have been computed as a result of the Authority's best estimate of System gross revenues, Retrofit costs, and operating and maintenance costs for the Resource Recovery Facility.
7. BPI is of the opinion, based upon the assumptions outlined in the Report, that the lease rental debt incurred by the City by its guarantee of Series 2003 A, 2003 B, and 2003 C Notes, collectively, the "2003 Notes" in the aggregate maximum par amount of \$77,000,000 relative to the Authority integrated waste management system (the "System") for the disposal of waste generated in the City and the region is self liquidating as defined in the Local Government Unit Debt Act.
8. I further certify that BPI has been requested by the Authority and the City to prepare and deliver this certificate in accordance with the provisions of the Local Government Unit Debt Act.

By:



Ronald E. Barmore  
Senior Vice President  
Barlow Projects, Inc.

Date: March 24, 2003



May 13, 2003

City of Harrisburg  
10 North Second Street  
Martin Luther King, Jr. Government Center  
Harrisburg, PA 17101

RE: The Harrisburg Authority Guaranteed Resource Recovery Facility  
Indebtedness – Report on Exclusion of Self-Liquidating Debt

Gentlemen:

The purpose of this letter is to supplement my report to you previously transmitted, dated March 24, 2003. The original report and this supplement are submitted pursuant to Section 8026 of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") in connection with the proposed incurrence by the City of Harrisburg, Dauphin County, Pennsylvania (the "City") of up to \$77,000,000 in lease rental debt, evidenced by the City's proposed guaranty of up to \$77,000,000 principal amount of 2003 Notes to be issued by The Harrisburg Authority (the "Authority").

As is evidenced by Exhibit 3 to my report the projected revenues and expenses of the Authority's fully integrated waste management system, as set forth in finding V of my report should be adequate to pay all operating and maintenance expenses of the System, to pay the annual debt service on the bonds necessary to finance the projected Retrofit of the System, which are expected to be issued later this year, to pay the annual debt service payment on the 2003 Notes and also to meet the annual debt service payments on the outstanding 1998A System debt not refunded. As shown on the Sources and Uses table in Exhibit 2, which is attached hereto, together with a revised schedule of debt service for Exhibit 2 showing application of \$77,000,000 of 2003 Notes, the application of the 2003 Notes and other available monies will defease and/or retire all of the Series A of 1998 System debt except \$10,695,000 thereof, all of the Series B of 1998 System debt, all of the Series C of 1998 System debt, all of the Series D of 1998 System debt, all of the Series A of 2000 System debt and all of the Series B of 2000 System debt (See LRA 3497). This will leave outstanding only the aforesaid \$10,695,000 Series A of 1998 System debt, the 2003 Notes and the \$17,000,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002. Accordingly the exclusion of lease rental debt covered by this report, in addition to the \$77,000,000 of 2003 Notes, is the \$10,695,000 of the Series A of 1998 Bonds expected to remain outstanding (which have already been recognized as self-liquidating on your records pursuant to a separate application filed by the City at the time that

---

2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
WWW.BARLOWPROJECTS.COM

lease rental indebtedness was incurred; LRA 3238). The \$17,000,000 of Series A of 2002 Notes have never been requested to be excluded as self-liquidating lease rental debt. (See LRA 3820.)

I also wish to clarify my statement in paragraph 22 of Exhibit 1 of the original report. The language in paragraph 22 is designed to reflect the fact that an estimate is not a guaranty. The projection period in Exhibit 3 is limited but this does not detract from my conclusion in Part V of my report letter which addresses the System debt over its life as required by Section 8026(a)(5) of the Act.

Respectfully Submitted,

Barlow Projects, Inc.



---

Ronald E. Barmore  
Senior Vice President

**THE HARRISBURG AUTHORITY**

**Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue  
and Refunding Revenue Bonds, Series A of 2003**

**Guaranteed Federally Taxable Resource Recovery Facility Subordinate  
Variable Rate Refunding Revenue Notes, Series B of 2003**

**Guaranteed Resource Recovery Facility Subordinate Refunding  
Revenue Notes, Series C of 2003**

**CLOSING MEMORANDUM**

Date, Time and Place of Preclosing: June 3, 2003  
3:00 p.m.  
Obermayer Rebmann Maxwell & Hippel LLP  
200 Locust Street  
Suite 400  
Harrisburg, Pennsylvania 17101

Date, Time and Place of Closing: June 4, 2003  
9:30 a.m.  
Obermayer Rebmann Maxwell & Hippel LLP  
200 Locust Street  
Suite 400  
Harrisburg, Pennsylvania 17101

**INDEX**

**Parties**

Issuer	The Harrisburg Authority
Issuer Counsel	Rhoads & Sinon LLP
Financial Advisor to the Issuer	Milt Lopus Associates
City	City of Harrisburg, Dauphin County, Pennsylvania
City Solicitor	Judith B. Schimmel, Esquire
Special Counsel to Issuer, City	Obermayer Rebmann Maxwell & Hippel LLP
Note Counsel (or Bond Counsel)	Obermayer Rebmann Maxwell & Hippel LLP
Underwriters	RBC Dain Rauscher Inc. Mesirow Financial, Inc.
Underwriters' Counsel	Eckert Seamans Cherin & Mellott, LLC
Remarketing Agent	RBC Dain Rauscher Inc.

**Giorgione, Andrew**

**From:** Keith Mrochek [keithmrochek@mvalaw.com]  
**Sent:** Wednesday, December 28, 2005 1:39 PM  
**To:** Giorgione, Andrew  
**Cc:** Randy Perkins; Tom.Simpson@cit.com; Cliff.Wilson@cit.com; Dan.Morash@cit.com; Michael.Switt@cit.com  
**Subject:** RE: CIT - Barlow/Harrisburg

Andy - I have heard back from CIT regarding their credit meeting. As noted last night, being the last money into the project, CIT continues to feel that they should also be the first money out of the deal with respect to this bridge financing. Therefore, CIT's concerns remain exactly as outlined last night and, in order to get this deal approved, CIT needs to have each of those concerns addressed as discussed. This includes obtaining as much comfort as possible concerning the operating expense issue - both in the form of consents from the Authority, City and, if possible, the bond insurer and in the form of a subordination from the City with respect to reimbursement payments. While this does make the sub-license fees priority operating expenses as related to the City's guaranty payments, it does not necessarily argue in favor of such fees being considered debt - at least no more so than before. It is not at all unusual to prioritize certain operating expenses to debt of a project - even in default scenarios. The issue of whether the payments made under the sub-license are treated as priority operating expenses is paramount to CIT's underwriting of this transaction.

As to your concern regarding our scrutiny/review of the role of the Authority and City in this transaction, please keep in mind that, although we understand that neither the Authority nor the City is the named "borrower" for purposes of this financing, (a) CIT's comfort that the facility will be repaid is dependent upon payments being made by the Authority to the borrower under the sub-license as priority payments and the non-interference by all interested parties with respect to such payments and their priority; (b) the completion of the facility will benefit not only the borrower, but the Authority and the City as well; and (c) the completion of the facility is dependent upon new money being placed into an already troubled deal and that new money in workout situations like this does not generally take a subordinated or unprotected position.

Keith A. Mrochek  
Moore & Van Allen PLLC  
100 N. Tryon Street  
47th Floor  
Charlotte, NC 28202-4003  
Phone (direct): 704-331-3522  
Fax (direct): 704-339-5822  
mrochek@mvalaw.com

-----Original Message-----

**From:** Giorgione, Andrew [mailto:AGIorgione@klettrooney.com]  
**Sent:** Wednesday, December 28, 2005 10:59 AM  
**To:** Keith Mrochek  
**Cc:** Randy Perkins  
**Subject:** RE: CIT - Barlow/Harrisburg

I am having some concern with highlighting in the Sublicense that it is an Operating Expense. I think too much attention to this, creates a roadmap to some sort of City guaranteed borrowing that can be undone by the bondholders if there is a default.

Again, on the second issue, that any City reimbursement must be subordinate to the Sublicense payment again highlights this as debt. This is another new issue and I am not comfortable that my clients, the City, the Authority would agree to it. We would also have to get comfortable that the County and insurer would not have to sign off.

12/28/2005

BIRHBG003315

LAW OFFICES  
**OBERMAYER REBMAN MAXWELL & HIPPEL LLP**

SUITE 400  
200 LOCUST STREET  
HARRISBURG, PA 17101

(717) 234-9730  
FAX (717) 234-9734  
[www.obermayer.com](http://www.obermayer.com)

FILE NO. 57285-027

ANDREW J. GIORGIONE  
EXTENSION: 1315  
E-MAIL: [Andrew.Giorgione@Obermayer.com](mailto:Andrew.Giorgione@Obermayer.com)

November 26, 2003

*VIA HAND DELIVERY*

Bernadette Barattini, Esquire  
Assistant Counsel  
Department of Community and Economic Development  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120-0225

*P*  
NOV 26 2003  
DEP  
HARRISBURG

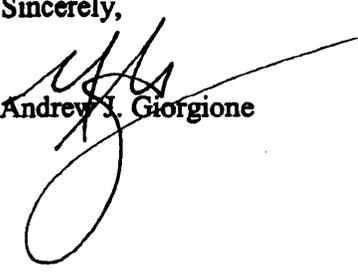
**Re: The Harrisburg Authority  
Guaranteed Resource Recovery Refunding Bonds, Series D-F of 2003**

Dear Ms. Barattini:

Enclosed for filing is the attached Supplement to the Self-Liquidating Debt Report concerning the above-referenced proceedings.

Please contact me if you have any questions concerning this letter or the attached.

Sincerely,

  
Andrew J. Giorgione

Enclosures

c: Hugh Sutherland, Esq. (w/enclosure)  
Carol P. Cocheres, Esq. (w/enclosure)

PHILADELPHIA  
PENNSYLVANIA  
498939

HARRISBURG  
PENNSYLVANIA

PITTSBURGH  
PENNSYLVANIA

CHERRY HILL  
NEW JERSEY

VINELAND  
NEW JERSEY

WILMINGTON  
DELAWARE

BIRHBG025141

**Giorgione, Andrew J.**

**From:** Lingle, Linda [LLingle@CityofHBG.com]  
**Sent:** Thursday, April 26, 2007 10:09 AM  
**To:** Giorgione, Andrew J.  
**Cc:** tharambrose@aol.com; Kroboth, Robert; Dade, Steven; Stuart, Jeb  
**Subject:** RE: contract comments

Andy: the proceeds from the sale of City-owned artifacts are earmarked to payoff the long-term \$7 million loan the City had to take out last year to retire the TRAN. Although records indicate that about \$7 million was paid to acquire the artifacts, I have no idea how much they will bring at auction, the first one of which is scheduled for October of this year. As for the THA-owned artifacts, I understand that \$165,110.74 was paid to acquire such. Although the Mayor agreed to sell THA-owned artifacts in conjunction with the sale of the City-owned artifacts, it was not specified what would happen to the proceeds of the sale of THA-owned artifacts.

Linda Lingle  
Business Administrator

**From:** Giorgione, Andrew J. [mailto:andrew.giorgione@bipc.com]  
**Sent:** Wednesday, April 25, 2007 3:38 PM  
**To:** Lingle, Linda  
**Cc:** tharambrose@aol.com  
**Subject:** FW: contract comments

Linda -

Based on Bob's answer below, I need to know the City's position with regard to the sale of the Western Artifacts. The County wants to know what the Mayor intends to do with the proceeds.

**Andrew J. Giorgione, Esquire**  
BUCHANAN INGERSOLL & ROONEY  
17 N. Second Street, 15th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-4863  
Fax: (717) 233-0852  
andrew.giorgione@bipc.com

**From:** tharambrose@aol.com [mailto:tharambrose@aol.com]  
**Sent:** Wednesday, April 25, 2007 3:33 PM  
**To:** Giorgione, Andrew J.  
**Subject:** Re: contract comments

A potential security risk was detected and removed from this email.

About \$165,000 worth of artifacts are owned by the Authority. The rest by the City. I believe the amount is about \$7,000,000? These amounts represent the cost of the artifacts. No valuation has been established to my knowledge. Any costs incurred in selling the artifacts will reduce the proceeds. Several questions arise: Will all the artifacts be sold and what will a purchaser be willing to pay?

4/26/2007

**BIRHBG039686**

THA  
file  
022

>>> "Giorgione, Andrew" <andrew.giorgione@obermayer.com> 12/23/03 06:58AM >>>  
Ron/Jon -

Jon, since Ron responded to me directly, I assume you are okay with a direct response to him.

As to the facts set forth in your email, as Dan has explained to you on numerous occasions, this is not the type of contract he wanted and security for your performance remains a key issue. Barlow was unable to deliver the CIT option and, as an alternative, is unwilling to deliver a fully secure contract.

This remains cause for concern and that concern was heightened last week when you set forth a payout schedule under both contracts in which you demanded over \$10 m at closing including over 35% payment for your services under the Prof. Services Agmt. ("PSA"). As to your Nov. 18 letter, I am not aware that anyone accepted your Nov. 18th letter other than to receive it and understand that Barlow would not, at that time, be willing or able to deliver a fully bonded contract. Finally, whether statutorily required or not, full security is what Dan wants and given the size and scope of this project and your company, Dan must demand such in order to protect THA and the City's investment in this facility.

We proposed to you a 20% retention on the Equipment Contract side and 5% on the PSA side (or 15%/7%) as a means to full security for the \$44.9 m Equipment Contract. That proposal was made as means to strike a balance - to achieve full security for the City and THA, but also to give THA and the City some comfort that handing Barlow over \$10 m at closing would come with full security that Barlow will deliver. It is unfortunate that your email purports to respond to that proposal. As discussed then, the alternatives seem cumbersome particularly at this late date.

The current facts are that we still do not know the scope of the \$27 m in bonds proposed and any restrictions as discussed last week on those bonding proceeds. Further, we still do not know the scope of the warranty amounts that make up the equipment bonding of approximately \$3.9 m. Finally, we still have not seen the backup for the \$3.8 m in professional services incurred by Barlow to date.

Even more critical is that it is Dec. 23, 2003 and THA and City are prepared to have bond proceeds available and give a notice to proceed by Dec. 31. Our confidence that Barlow will also be ready is fading.

I suggest we have a conference call immediately.

Andrew

BIRHBG039684

**MEETING WITH MAYOR REED  
BARLOW CONTRACTING MATTERS  
JANUARY 9, 2006**

**A. Summary of Bridge Financing and Significant Risk**

1. Barlow to borrow \$25 million from CIT to be repaid from proceeds from sale of the Facility. Closing planned for later this week.
2. Stop gap measure demanded by CIT if sale does not occur is repayment of the borrowing by the Authority through a Technology Licensing/Purchase Agreement.
3. THA has secured commitments from Barlow to assist with repayment.
4. If sale does not occur, THA can continue to pay CIT or, other option is a borrowing late next year if the sale does not occur to take out CIT.

**B. Background**

1. November – Barlow out of money
2. Litigation with Cainbro; vendors uneasy
3. Barlow wanted \$ from THA
4. THA refused
5. Barlow turned to CIT, who was looking at financing via a lease, for Bridge
6. Dec. 1, Dan and I met with CIT in NY
  - a.) Advised THA would assist with Bridge, but did not want to participate in guaranteeing any payback.
  - b.) Dec. 2, CIT advised that it had preliminary approval to proceed with both transactions.
7. Discussions ensued with both Barlow and CIT on both deals.
8. CIT provided conditions to both loans, which looked within reason.

**C. THA took efforts to keep work progressing**

1. On Dec. 21, THA agreed to advance \$1.475 through Barlow to contractors to keep work moving.

2. THA obtained a work order deduction from Barlow to advance these funds.
3. Work is proceeding on this basis while we work on the Bridge loan.
4. Effort was put towards closing Barlow Bridge loan by Christmas.

D. CIT then raised serious concerns of Bridge loan repayment structure. Needed some form of stop gap payment if Barlow failed.

1. CIT proposed a "Technology Licensing Payment" from THA, which we initially rejected.
2. Barlow agreed to assist with payment requirements.
3. Summary of Sub-Licensing Agreement and Amendment No. 9.
  - a.) Quarterly payments of \$750,000 or \$3 million per year for approximately 13 years or until \$25 million paid. Interest rate is 7%. (Barlow in 2006);
  - b.) After \$25 million is repaid, .50 cents per ton thereafter for 7 years (Barlow to pay);
  - c.) Payments from Barlow to be secured by construction contingency or LOC;
  - d.) Payments to CIT regardless if working; if Units are not working after 2006, Barlow must continue to make payments to THA to pay CIT;
  - e.) End of the year, cash sweep to be applied to principal;
  - f.) Strong remedies to CIT - If THA breaches, CIT has right to get injunction and shut down; and
  - g.) THA can't increase expenses above 25%.

E. Sale Transaction

1. CIT has provided list of conditions to close and has agreed to accept power purchase risk.
2. List looks doable.
3. Highly confidential - Given difficulty with CIT, Barlow has agreed to engage counsel to obtain other lenders and, at least, keep CIT honest.

F. All during process, THA continuously looking at alternatives to Barlow.

**Kreiser, Donna L.**

**From:** Giorgione, Andrew J.  
**Sent:** Friday, March 09, 2007 2:52 PM  
**To:** Kreiser, Donna L.

Donna -

I dropped a file on your desk related to a "financing" by CIT related to the Incinerator Project. Payments are due quarterly by The Harrisburg Authority to CIT in the amount of \$750,000 per quarter.

Because of the final difficulties at the Facility, THA cannot make the payments. We met with CIT today and it has agreed to consider a forbearance agreement. I need for you to draft that agreement.

The forbearance will be in 2 phases. From now until June 30, 2007 and then June 30 to December 31, 2007. In the first phase, we will not be paying CIT and will be working with them to develop a payoff of the financing in the second phase taking into consideration CIT's agreement to forbear.

Any chance you can help put something like this together for me by mid-next week. This is urgent and I need your high-powered brain muscles.

I have a funeral on Monday, but am around on Tuesday.

**Andrew J. Giorgione, Esquire**  
BUCHANAN INGERSOLL & ROONEY  
17 N. Second Street, 15th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-4863  
Fax: (717) 233-0852  
[andrew.giorgione@bipc.com](mailto:andrew.giorgione@bipc.com)

*corporate?  
with w/d →  
forbear  
No waiver of rights*

3/12/2007

BIRHBG003171

**Giorgione, Andrew J.**

**From:** tharambrose@aol.com  
**Sent:** Wednesday, April 25, 2007 4:35 PM  
**To:** Giorgione, Andrew J.  
**Subject:** Fwd: Revenue Reporting

Andy, FYI

The following shows the shortfall in revenue as reported by Covanta and as recorded in the Solid Waste Revenue Fund for 2007 to April 18. I am sending this because my revenue projections for 2007 and 2008 are lower than Covanta's. Assuming that there will only be 2 units in operation during 2007 (when unit 3 is fixed they will repair the other two) and based on revenue as reported by Covanta for March of \$1,016,000 with 2 units operating, the annual level would only be \$12,192,000. (This includes solid waste, steam, electric and scrap) They are projecting \$18,447,000. Note also that the steam line is down and total steam sales sold to date for 2007 is only \$159,754. Until we identify a funding source to repair the line, we will not be recovering steam sales revenue which they have projected at \$2,970,000.

January

- Revenue Tracking \$659,000
- Solid Waste Revenue \$618,000

February

- Revenue Tracking \$944,000
- Solid Waste Revenue \$682,000

March

- Revenue Tracking \$1,016,000
- Solid Waste Revenue \$681,000

April (Through 18th.)

- Revenue Tracking \$849,000
- Solid Waste Revenue \$614,000

As presently reported, the revenue tracking report overstates the revenue available to the Authority for the following reasons:

- Covanta's revenue tracking report shows revenue from haulers who collect waste from City residents computed at a truck hauling rate per ton of \$60. Revenue for City residents however, is calculated on a per customer basis and is billed to City residents as part of the water and sewer bill. Payment of the bills is collected by the City and then transferred to the Authority.
- Covanta's revenue tracking report also reports revenue for waste from several City agencies

4/25/2007

BIRHBG002658

including Bureau of Neighborhood Services, Department of Parks and Recreation and Department of Building, Housing and possibly others. In the past the practice has been that City departments are not charged.

- Waste Management invoices are not being paid for trash delivered to the facility. (due to accumulation of hauling expense incurred when the incinerator is not in operation which occurred during 2006.)
- Timing difference contributes to a direct reconciliation of the revenue. Daily tracking report is calculated on tonnage delivered at the plant daily. Solid Waste Revenue Fund shows cash deposited into the fund for waste delivered during the prior month.
- The revenue tracking report does not reflect uncollectible accounts.

**For purposes of reconciling the difference, it is necessary to eliminate the revenue from all waste haulers that collect City waste from Covanta's revenue tracking report. I have advised Covanta to make the change in their reporting.**

With regard to Waste Management, the outstanding balance accumulated during 2006 is gradually being offset as the volume of waste delivered to the incinerator by Waste Management exceeds the volume of waste hauled from the facility. (this should be resolved in several months?)

In the past, the RRF has accepted waste from City agencies without payment. As we proceed, this practice should change. Realistically, there may be little hope of recovering revenue in 2007, however, the City budgets should reflect the new fee in 2008.

Robert D. Ambrose, P.E., Executive Director  
The Harrisburg Authority  
One Keystone Plaza, Suite 104  
Front and Market Streets  
Harrisburg, PA 17101  
Telephone: (717) 232-3777  
Telefax: (717) 232-8590  
e-mail: THARambrose@aol.com

AOL now offers free email to everyone. Find out more about what's free from AOL at [AOL.com](http://AOL.com).

4/25/2007

BIRHBG002659

# STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

01 LAST NAME FIRST NAME MI SUFFIX

GIORGIONE ANDREW J

02 STREET ADDRESS (work or residence) City State Zip Code Area Code Phone

2911 N. SECOND ST. HARRISBURG PA 17110 (717) 232-6269

COUNTY OF RESIDENCE DAUPHIN

03 STATUS Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)

A  Candidate (including write-in) C  Public Official (Current) D  Public Employee (Current)  Check here if this is an amended form

B  Nominee C  Public Official (Former) D  Public Employee (Former)

04 PUBLIC POSITION OR PUBLIC OFFICE (member, Commissioner, job title, etc.) you are  seeking  hold  held

A  seeking  hold  held

B  seeking  hold  held

05 POLITICAL SUBDIVISION/AGENCY in which you are/were an Official or Employee, or are a candidate or nominee (Twp., Boro, Board, Commission, Dist., Agency, Authority, etc.)

A

B

06 OCCUPATION OR PROFESSION (This may be the same as block 4) 07 YEAR The information below represents financial interests for the PRIOR year.

ATTORNEY 2005

08 REAL ESTATE INTERESTS (See instructions on page 2) If NONE, check this box.

09 CREDITORS (See instructions on page 2). If NONE, check this box.

Creditor Interest Rate

10 DIRECT OR INDIRECT SOURCES OF INCOME (including, but not limited to employment. See instructions on pg. 2) If NONE, check this box.  (OFFICIAL USE ONLY)

Name Address

KLETT LOONEY LIEBER & SCHILLING 17 N. SECOND ST. 15TH FLOOR, HBG

JEN GROUP 3800 N. THIRD ST., HBG

TOTAL STREET SERVICE LLC 633 FISHING CREEK DRIVE RD., HBG.

11 GIFTS (See instructions on page 2) If NONE, check this box.

Source of Gift Value of Gift

Address of Source of Gift Reason for Gift

12 TRANSPORTATION, LODGING, HOSPITALITY (See instructions on page 2) If NONE, check this box.

Source (Name and Address) Value

13 OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS (See instructions on page 2) If NONE, check this box.

Business Entity Position Held

KLES SHAREHOLDER

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instructions on page 2) If NONE, check this box.

Name and Address of Business Interest Held

SEE ATTACHED

15 BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instructions on page 2) If NONE, check this box.

Business (Name and Address) Interest Held Relationship Date Transferred

Transferee (Name and Address)

The undersigned hereby affirms that the foregoing information is true and correct to best of said persons knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification to authorities) and the Public Official and Employees Ethics Act, 65 Pa.C.S. §1109(b).

Signature [Signature] Date 2/23/06

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.



**CONFIDENTIAL**

May 12, 2006

Thomas J. Mealy  
Executive Director  
Harrisburg Authority  
One Keystone Plaza, Suite 104  
Front and Market Streets  
Harrisburg, PA 17101

RE: Verification of Use of Proceeds on CIT \$25 Million Funding

Dear Tom,

Please find attached a listing by vendor on how the proceeds were spent on the \$25 million funding from CIT. This is a true and accurate reflection of the use of the CIT funds to the very best of my knowledge.

Should you require anything further, please let me know.

Sincerely,

Gregory S. Gemert  
Chief Financial Officer

Enclosures

---

2000 Vermont Drive, Fort Collins, CO, 80525  
Phone: (970) 226-8557 / Fax: (970) 226-8559  
[www.barlowprojects.com](http://www.barlowprojects.com)

BIRHBG013606

**CIT Funding - Detail by Vendor**

<b>Vendor Name</b>	<b>Total</b>
Airgas East	14,476.36
Allentown Valve & Fitting Co.	41,279.68
Applied Control Equipment	2,874.62
AMETEK Solidstate Controls	343.53
Arch Environmental Equipment	3,113.22
ASGCO Manufacturing, Inc.	5,384.00
AshTech Corporation	5,101.55
Automation Products, Inc	3,858.64
Avogadro Environmental Corp.	26,685.00
Electrical Labor	941,130.90
I&C Labor	197,079.98
RG&S Labor	1,230,999.67
Start up Labor	468,049.34
Engineering Labor	82,836.69
BPI Labor	123,379.37
Electrical & I&C Travel Expenses	67,795.44
Start up, BPI & RG&S Expenses	278,485.43
CIT Closing Costs	1,300,661.83
Basic Chemical Solutions,LLC	450.00
Beckwith Electric	2,610.00
B W Sinclair	4,133.01
BinMaster Level Controls - Garner Industries	2,886.00
Bitterman Scales, LLC	1,600.60
Brimar Ind. Inc.	637.97
Bullseye Environmental, Inc.	2,434.67
Burns & McDonnell Engineering Company Inc	109,454.51
CEAVCO Audio Visual Company, Inc.	13,831.00
Celeco Transducer Products, Inc.	4,288.78
Century Technical Equipment LLC	8,653.91
Chalmers & Kulbeck Inc	5,485.12
Claubre Settlement	4,600,000.00
City of Harrisburg, Central Energy Office	55,911.28
Combustion Service & Equipment Co	82.98
Communication Express, Inc	1,481.06
Crane Repair Company	6,363.69
Custom Metals, Div. of Loricon, Inc.	76,544.00
Daniel Industries	1,499.09
Dauphin Electric a div. of CED	210,615.35
Davis Controls Corporation	2,254.75
Dearborn Crane and Engineering Company	323.22
Diverse Industrial Services Inc	15,600.00
DM Coatings Inc	22,450.67
Dresser, Inc. Masonellan Operations c/o NIC	13,778.00
Eastern Controls Inc	1,723.56
Ecolaire Power, Inc.	3,731.60
Edwards Business Machines	674.55
Effox, Inc.	12,419.94
Electro Rent Corporation	6,074.82
Fastenal Company	34,785.70
Fasteners Inc Southwestern Supply	1,841.55
Fleetwood Industrial Products	597.18
Flowserve Corporation	23,093.11
Flowserve US	24,187.00
Forerunner Corporation	17,957.02

**CONFIDENTIAL**

**CONFIDENTIAL****CIT Funding - Detail by Vendor**

<b>Vendor Name</b>	<b>Total</b>
Frontier Controls	438.04
Fuel Tech, Inc.	173,070.00
GE Supply Company	2,658.80
G.M. McCrossin, Inc.	1,334,027.01
G.R. Sponaugle & Sons	86,305.51
Global Technology & Engineering	3,323.69
Goyen Valve Corporation	1,456.90
Granger Industrial Supply	28,103.12
Graybar Electric Co. Inc.	50,995.98
Graymont Inc.	15,618.74
Guardian Industries, Inc.	2,109.97
Harris Group	46,996.93
Harrisburg Authority	1,208,357.54
Henderson Fluid Power	328.66
Houston Vibrator	3,611.08
Hungerford Insulation Co	3,700.00
IceSolv, LLC	2,800.00
Industrial Containers, Inc.	280.00
Industrial Design Services	34,419.59
Industrial Process Solutions	1,800.76
Ingersoll-Rand Company	1,887.60
Interior Furniture Resources, Inc	1,533.72
Intermountain Valve & Controls	7,835.25
JEM Group	59,295.38
JMC Instruments, Inc	728.56
LeBoeuf, Lamb, Greene & MacRae	481,829.39
Lenape Metals Distribution	2,925.00
M. Glosser & Sons Inc	62,587.98
MAC Equipment	3,583.01
Manspower Inc.	7,313.43
Martin Sprocket & Gear, Inc.	22,468.00
MAS Air Systems, LLC	30,432.00
McJunkin Corporation	731.16
McMaster-Carr Supply Co	18,552.96
Microsurface Corp	243.00
Midwesco Filter Resources, Inc	719.92
Mosaic Corp Nutrition LLC	28,477.95
Mobile Dredging & Pumping Co	16,725.00
Moore & Van Allen PLLC	14,879.22
Motion Industries, Inc.	2,307.10
Murray Associates Architects	65,724.60
Nalco Company	1,018.64
Nameplates and Labels	112.80
New Penn	53.46
Nichols-Given Associates, Inc.	946.00
Office Team	448.42
Ohio Belting & Transmission Co.	4,413.14
Pennsylvania Place	8,639.40
Pennsylvania Telephone Products	2,459.20
Personal Touch Cleaning Service	3,150.00
Powell	7,084.18
Power Flame Incorporated	5,306.37
PPC Lubricants	12,923.83
PPL ELECTRIC Utilities Corporation	3,363.14
Precision Testing Group, Inc	28,580.00

BIRHBG013608

**CIT Funding - Detail by Vendor**

<b>Vendor Name</b>	<b>Total</b>
Professional Service Industries, Inc.	2,454.80
Ram Industrial Services	1,910.00
Red-D-Arc Inc.	10,196.92
Rental Service Corporation	2,830.41
Rexel	17,735.18
Reynolds Construction Management	182,201.04
RG Group	5,246.52
Richmond Steel Inc	24,060.90
Rockwell Automation	2,094.48
Rosemount Inc.	1,100.22
Royal Instruments, Inc.	6,181.03
Saint-Gobain Ceramics	179,190.00
Sallas Vortex Corporation	2,253.87
Schaeffler Yesso Distribution, Inc.	4,724.84
Scott Specialty Gases	9,765.83
Solberg Manufacturing	1,476.95
Southeastern Mechanical Services, Inc.	7,690,757.80
SPX Valves & Controls-Copes-Vulcan	2,046.00
Structural Steel Services Inc	1,200.00
Suburban Energy Services	22,651.29
Sweet Arrow Springs	1,527.17
Tate-Jones Inc	12,545.16
Texas L.P.	61,737.59
The Benham Companies LLC	22,435.56
The Terraces at Springford	1,086.75
Thermon America's Inc.	14,239.02
Toolup.com	44.00
Transtec, Inc.	10,111.75
Tri-State Technical Sales Corp.	868.95
United Rentals (North America) Inc.	13,491.36
US Filter	4,336.44
US Security Associates, Inc.	1,032.22
Verizon/Harrisburg Office	1,028.36
VersiTech, Inc.	2,362,476.64
Walters Portable Toilets	5,069.98
Walton & Co. Inc.	212.89
Ward Enterprises	3,350.23
Waste Management Inc	22,372.87
Williams Scotsman	16,057.35
Winn-Marion Barber	164.43
Yokogawa c/o Northwest Instruments & Controls	38,347.43
York Barbell Co	2,512.36
Zampell Refractories Inc	257,481.34
<b>Total</b>	<b><u>25,000,000.00</u></b>

**CONFIDENTIAL**

BIRHBG013609

**Giorgione, Andrew**

**From:** Fred Clark [fclark@reynoldsconstruction.com]  
**Sent:** Monday, January 09, 2006 9:20 AM  
**To:** Giorgione, Andrew; tjmealy@aol.com; LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com  
**Subject:** RE: Mayoral Meeting

Good Morning Everyone!

Before the suggested 2 30 pm meeting that may take place today, for I saw Bruce, Tom, Andy, and Dan over the last several days and they did not mention there was a meeting schedule to take place on Monday with the Mayor..... No big deal, other than the emails that have just been sent Friday till now.

I was surprise to learn nor did I realize that after our last Harrisburg Authority Meeting, that there was a need or that we were asking or wanting to meet with the Mayor to discuss anything, so I am wondering the following questions if someone would be so kind to reply as to them I would very much appreciate it ... for I honestly do not know the answers.

Who called and asked for today's meeting?

Why are we meeting?

What is it that we want to discuss?

What is the hopeful or successful outcome as to what it is that we wish to accomplish?

If it seems usual to ask these questioning advance, I humbly apolgize in advance for I do not mean to seem too inquisitive.

Thanks

Freddie

**From:** Giorgione, Andrew [mailto:AGiorgione@klettrooney.com]  
**Sent:** Monday, January 09, 2006 9:01 AM  
**To:** tjmealy@aol.com; LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; Fred Clark; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com  
**Subject:** RE: Mayorial Meeting

Dan and I would suggest a meeting at 2:30 in Linda's or Tom's conference rooms to prepare for the meeting with the Mayor.

**From:** tjmealy@aol.com [mailto:tjmealy@aol.com]  
**Sent:** Friday, January 06, 2006 1:01 PM  
**To:** LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; Giorgione, Andrew; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; fclark@reynoldsconstruction.com; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com  
**Subject:** Mayorial Meeting

I was just informed by the Mayor that the meeting scheduled for Wednesday, January 11th, to discuss the Barlow matter has been rescheduled for Monday, January 9th, at 3:15 pm. The

1/9/2006

BIRHBG003330

LAW OFFICES  
**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

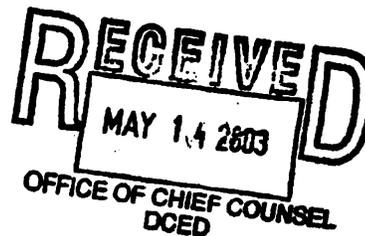
204 STATE STREET  
HARRISBURG, PA 17101

(717) 234-9730  
FAX (717) 234-9734  
FAX (717) 230-9834  
[www.obermayer.com](http://www.obermayer.com)

FILE NO. 57285-041

ANDREW J. GIORGIONE  
DIRECT DIAL: (717) 234-5315  
E-MAIL: [Andrew.Giorgione@Obermayer.com](mailto:Andrew.Giorgione@Obermayer.com)

May 14, 2003



*VIA HAND DELIVERY*

Bernadette Barattini, Esquire  
Department of Community and  
Economic Development  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

**Re: City of Harrisburg, Dauphin County, Pennsylvania  
Debt Statement Pursuant to Section 8110 of  
The Local Government Unit Debt Act**

Dear Ms. Barattini:

This acknowledges receipt of your letter dated April 25, 2003. This letter with attachments (and six copies thereof) sets forth the City's response to the questions you raised in the order presented.

First, the Ordinance authorizes the incurrence of a maximum amount of \$77 million in debt. If a maximum amount of \$81 million appears in the Ordinance, it is a typographical error and the incurrence amount, as advertised, shall not exceed \$77 million.

Second, included with this package is a Supplemental Self-Liquidating Debt Report showing the incurrence of \$77 million in debt.

Third, the portion of the existing debt issues being refunded is shown in Footnote No. 2 in the amended Debt Statement included with this package. The amended Debt Statement also addresses your issues of clarification on page 2 of your letter.

Fourth, the issues raised regarding outstanding debt issues in the debt statement have been addressed in prior proceedings. Included with this package are previous letters and documents provided

PHILADELPHIA  
PENNSYLVANIA  
457404

HARRISBURG  
PENNSYLVANIA

PITTSBURGH  
PENNSYLVANIA

CHERRY HILL  
NEW JERSEY

VINELAND  
NEW JERSEY

WILMINGTON  
DELAWARE

BIRHBG017319

**OBERMAYER REBMANN MAXWELL & HIPPEL LLP**

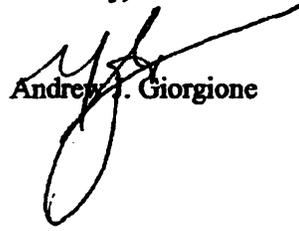
Bernadette Barattini, Esquire  
May 14, 2003  
Page 2

to DCED with regard to the issues set forth in your recent letter and tables setting forth the City's existing debt amounts prepared by the City's Financial Advisor, Bruce Barnes. Any questions regarding these proceedings of the outstanding debt amounts should be addressed to the Mr Barnes, at 717-234-1300.

Finally, as to LRA-3960, we understand that bond counsel for that proceeding will be addressing those matters later this year.

Please contact me if you have any questions concerning this matter.

Sincerely,

  
Andrew J. Giorgione

AJG:wvl  
Enclosures

c: Hugh Sutherland, Esquire  
Mr. Bruce Barnes  
Mr. Jim Losty

**SUPPLEMENTAL SELF-LIQUIDATING DEBT REPORT**

**BIRHBG017321**



May 13, 2003

City of Harrisburg  
10 North Second Street  
Martin Luther King, Jr. Government Center  
Harrisburg, PA 17101

**RE: The Harrisburg Authority Guaranteed Resource Recovery Facility  
Indebtedness – Report on Exclusion of Self-Liquidating Debt**

Gentlemen:

The purpose of this letter is to supplement my report to you previously transmitted, dated March 24, 2003. The original report and this supplement are submitted pursuant to Section 8026 of the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") in connection with the proposed incurrence by the City of Harrisburg, Dauphin County, Pennsylvania (the "City") of up to \$77,000,000 in lease rental debt, evidenced by the City's proposed guaranty of up to \$77,000,000 principal amount of 2003 Notes to be issued by The Harrisburg Authority (the "Authority").

As is evidenced by Exhibit 3 to my report the projected revenues and expenses of the Authority's fully integrated waste management system, as set forth in finding V of my report should be adequate to pay all operating and maintenance expenses of the System, to pay the annual debt service on the bonds necessary to finance the projected Retrofit of the System, which are expected to be issued later this year, to pay the annual debt service payment on the 2003 Notes and also to meet the annual debt service payments on the outstanding 1998A System debt not refunded. As shown on the Sources and Uses table in Exhibit 2, which is attached hereto, together with a revised schedule of debt service for Exhibit 2 showing application of \$77,000,000 of 2003 Notes, the application of the 2003 Notes and other available monies will defease and/or retire all of the Series A of 1998 System debt except \$10,695,000 thereof, all of the Series B of 1998 System debt, all of the Series C of 1998 System debt, all of the Series D of 1998 System debt, all of the Series A of 2000 System debt and all of the Series B of 2000 System debt (See LRA 3497). This will leave outstanding only the aforesaid \$10,695,000 Series A of 1998 System debt, the 2003 Notes and the \$17,000,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002. Accordingly the exclusion of lease rental debt covered by this report, in addition to the \$77,000,000 of 2003 Notes, is the \$10,695,000 of the Series A of 1998 Bonds expected to remain outstanding (which have already been recognized as self-liquidating on your records pursuant to a separate application filed by the City at the time that

---

2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
WWW.BARLOWPROJECTS.COM

BIRHBG017322

lease rental indebtedness was incurred; LRA 3238). The \$17,000,000 of Series A of 2002 Notes have never been requested to be excluded as self-liquidating lease rental debt. (See LRA 3820.)

I also wish to clarify my statement in paragraph 22 of Exhibit 1 of the original report. The language in paragraph 22 is designed to reflect the fact that an estimate is not a guaranty. The projection period in Exhibit 3 is limited but this does not detract from my conclusion in Part V of my report letter which addresses the System debt over its life as required by Section 8026(a)(5) of the Act.

Respectfully Submitted,

Barlow Projects, Inc.



---

Ronald E. Barmore  
Senior Vice President

---

2000 Vermont Drive, Fort Collins, Colorado, USA  
PH: (970) 226-8557 FAX: (970) 226-8559  
WWW.BARLOWPROJECTS.COM

BIRHBG017323

3:00

Carol Cocheres, Esq. (Ekert Seamens)



*Steam Plant Improvement Project*

**ECKERT SEAMANS CHERIN & MELLOTT**

**MEMORANDUM**

**TO:** Treat Hargrove  
**FROM:** Carol P. Cocheres  
Milton E. Lopus  
**DATE:** January 31, 1997  
**RE:** Possible Issues Which May Arise on the Audit Report for 1996 on the Resource Recovery Facility

1. The operating revenues of the Facility were insufficient in 1996 to pay for all operating expenses and debt service. A significant portion of the operating expenses, including the City's administrative fee, was paid with the proceeds of a \$3.5 million working capital loan, which closed on November 26, 1996. Proceeds from a working capital loan used for operating expenses probably would not fall within the definition of "Revenues" under the Bond Indenture. Thus, the auditors may determine that the Authority is not in compliance with the rate covenant under the Bond Indenture.
2. If there is non-compliance with the rate covenant, the Authority is required under the Bond Indenture to take steps to become in compliance, including raising Facility fees and charges. The auditors will ask what steps the Authority has taken in this regard.
3. For the 1995 audit, the deficiency in operating revenues to cover operating expenses was resolved for audit purposes with the City waiving certain operating expenses and its administrative fee. This waiver option may not be available for the 1996 audit since the operating expenses and the administrative fee were paid in 1996, in part, with the working capital loan proceeds.
4. In 1996, the auditors were very close to issuing a "Going Concern Letter" relating to the Facility. Due to the non-compliance with the rate covenant, the auditors may issue that letter this year.
5. The first document produced by the financing team in a bond issue is the most recent audit. Any audit problem or perceived problem comes to the attention of the rating agencies and eventually to bond insurers and investors. Certain problems can be overcome but may still cause bonds to become "story bonds". In any case, there is a distinct likelihood of higher insurance premiums and higher interest rates. Severe audit problems may cause municipal bond insurers to pass entirely on an issue.

**O'Hara, Jack**

---

**From:** Giorgione, Andrew  
**Sent:** Wednesday, November 19, 2003 11:40 AM  
**To:** Giorgione, Andrew; 'Losty, James'; 'ron.barmore@barlowprojects.com'; 'Carol Porell Cocheres'; 'Daniel R. Lispi'; Sutherland, Hugh; 'J. Bruce Walter'; O'Hara, Jack  
**Subject:** RE: Possible Supplement to the SLDR

This issue is resolved. Carol and I spoke with Bernadette and she has all the info. she needs in the existing SLDR.

-----Original Message-----

**From:** Giorgione, Andrew  
**Sent:** Wednesday, November 19, 2003 8:28 AM  
**To:** 'Losty, James'; ron.barmore@barlowprojects.com; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter  
**Subject:** RE: Possible Supplement to the SLDR

There is a need to two increases. I believe in 2016 and 2021. Is this something that should be specifically identified in the Supplement?

-----Original Message-----

**From:** Losty, James [mailto:James.Losty@Rbcdain.com]  
**Sent:** Wednesday, November 19, 2003 7:58 AM  
**To:** Giorgione, Andrew; ron.barmore@barlowprojects.com; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter  
**Subject:** RE: Possible Supplement to the SLDR

I don't have any great revelations here but I do think Ron's report indicates that eh Bonds will be covered throughout the life of the issue even if in some years cash balances are drawn down or a increase in a fee is necessary ( I thought we still have the need for a city increase out 12-15 years?). Additionally, if the debt on the 2002 bonds were to be taken out of the "other debt" since we are not seeking self liquidating status on it, the remaining debt would look even better.

-----Original Message-----

**From:** Giorgione, Andrew [mailto:andrew.giorgione@obermayer.com]  
**Sent:** Wednesday, November 19, 2003 6:34 AM  
**To:** ron.barmore@barlowprojects.com; Losty, James; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter  
**Subject:** RE: Possible Supplement to the SLDR

To put this in context, DCED has requested clarity on the issue of whether the debt will be self-liquidating through 2033. DCED was concerned that the proforma attached only shows through 2010. As you recall, we can point specifically to the report where Barlow addresses this issue, but we are considering Ron's comments below as a supplement to the Report.

The issue is whether we should just direct DCED to the language in the Report that says the debt is self-liquidating or should we file the supplement. One concern raised by Dan is that the full proforma shows shortfalls in 2011 and 2016-2019 as noted below. If we highlight this in the supplement, Dan is concerned we may be undermining our SLDR for the 2003 bonds, which show them to be self-liquidating.

We need to get back to DCED today on this issue. I would ask that you provide any

11/19/03

comments this morning on this issue.

Andrew

-----Original Message-----

**From:** Ron Barmore [mailto:ron.barmore@barlowprojects.com]

**Sent:** Tuesday, November 18, 2003 6:36 PM

**To:** James Losty; Giorgione, Andrew; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter

**Subject:** Possible Supplement to the SLDR

In the event that a supplement is required to address the self liquidating nature of the debt for the full term of the bonds the following statement can be made:

As indicated in the **Report on Exclusion of Self-Liquidating Debt** dated 11/13/2003,

*"Based on the assumptions for the implementation of the developed strategies, the Authority Retrofit budget, the Authority operating plan and budget, and resultant projections of revenues and expenses set forth in Exhibit 3, the estimated gross revenues computed should be adequate to pay the operating and maintenance expenses of the System, pay the annual debt service on the Retrofit Bonds and related periodic payments on the related swap and cap transactions, meet the annual debt service payments of the 1998A Bonds and meet the annual debt service payments on the other outstanding notes and bonds of the System."*

To further clarify the statement referenced above, the annual net revenues from the project are projected to meet all debt service payments for the Retrofit Bonds and related periodic payments on the related swap and cap transactions and meet the annual debt service payments of the 1998A Bonds in each year through the maturity of the respective issues.

In several years during the term of the project a minor contribution from the Cash Surplus accumulated from prior year net revenues will be required to fully meet the annual debt service payments on the other outstanding notes and bonds of the System. The table below illustrates the years and the amounts that will be required:

Year	
2011	\$ 7,000
2016	\$659,000
2017	\$577,000
2018	\$564,000
2019	\$536,000

The project is projected to build a Cash Surplus of over \$10 million by 2008 and at the end of each of the years mentioned above the Cumulative Cash Surplus is projected to remain in excess of \$10 million.

**Ron Barmore**  
**Barlow Projects, Inc.**  
**878-228-8557**  
**www.BarlowProjects.com**

11/19/03

RBC Dain Rauscher does not accept buy, sell or cancel orders by e-mail, or any instructions by e-mail that would require your signature. Information contained in this communication is not considered an official record of your account and does not supersede normal trade confirmations or statements. Any information provided has been prepared from sources believed to be reliable but is not guaranteed, does not represent all available data necessary for making investment decisions and is for informational purposes only.

This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you receive this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Information received by or sent from this system is subject to review by supervisory personnel, is retained and may be produced to regulatory authorities or others with a legal right to the information.

11/19/03

THE HARRISBURG AUTHORITY

\$20,961,574.40  
 GUARANTEED RESOURCE RECOVERY FACILITY  
 LIMITED OBLIGATION NOTES  
 SERIES C OF 2007

\$9,033,234.45  
 GUARANTEED FEDERALLY TAXABLE RESOURCE RECOVERY FACILITY  
 LIMITED OBLIGATION NOTES  
 SERIES D OF 2007

EXHIBIT "C"

<u>Payee</u>	<u>Obligation</u>	<u>2007C Account</u>	<u>2007D Account</u>	<u>Total</u>
County of Dauphin	Reimbursement of Advance to Covanta	\$2,250,000.00	-0-	\$2,250,000.00
County of Dauphin	Reimbursement of 12/1/07 Debt Service and Swap, Cap Payments	\$2,593,253.89	\$506,746.11	\$3,100,000.00
County of Dauphin	Payment of County System Fees (2006 and 2007)	\$1,067,783.00	-0-	\$1,067,783.00
City of Harrisburg	Reimbursement of Advance to Covanta	\$250,000.00	-0-	\$250,000.00
City of Harrisburg	Reimbursement of 11/1/07 Debt Service Payment	-0-	\$600,000.00	\$600,000.00
City of Harrisburg	Reimbursement of 6/1/07 and 9/1/07 Debt Service, Swap Payments	\$2,024,663.36	\$1,431,434.63	\$3,456,097.99
Commerce Bank, National Association	2008 Debt Service - 2003 Notes, Retrofit Bonds	\$5,313,967.00	\$3,822,707.00	\$9,136,674.00
Bank of New York	2008 Debt Service - 1998A Bonds	\$221,489.00	\$248,347.00	\$469,836.00
Manufacturers and Traders Trust Company	2008 Debt Service - 2002 Notes	-0-	\$914,417.86	\$914,417.86
Covanta Energy Services	Amounts Owed under Interim Operating Agreement	\$5,716,728.55	-0-	\$5,716,728.55
Public Financial Management	Financial Advisor Fees and Expenses	\$99,521.81	\$42,888.19	\$142,410.00
Eckert Seamans Cherin & Mellott, LLC	Note Counsel and Authority Special Counsel Fees Expenses	\$209,652.02 \$6,988.40	\$90,347.98 \$3,011.60	\$300,000.00 \$10,000.00

<u>Payee</u>	<u>Obligation</u>	<u>2007C Account</u>	<u>2007D Account</u>	<u>Total</u>
Mette Evans & Woodside	Authority Special Counsel Fees and Expenses	\$145,114.14	\$62,535.86	\$207,650.00
Commerce Bank, National Association	Trustee Fees	\$4,193.04	\$1,806.96	\$6,000.00
Goldberg Katzman, P.C.	Authority Litigation Counsel Fee	\$31,663.73	\$13,645.25	\$45,308.98
Milt Lopus Associates	Financial Advisor Fees	\$104,826.01	\$45,173.99	\$150,000.00
Foreman & Foreman, P.C.	Authority General Counsel Fees	\$2,044.11	\$880.89	\$2,925.00
Susquehanna Group Advisors	County Financial Advisor Fee	\$80,366.61	\$34,633.39	\$115,000.00
HRG Consulting Engineers	County Consulting Engineers	\$25,113.22	\$10,822.36	\$35,935.58
HDR Engineering, Inc.	Authority Consulting Engineers	\$26,905.34	\$11,594.66	\$38,500.00
Bear, Stearns & Co.	Placement Agent Fee	\$83,121.13	\$35,820.43	\$118,941.56
Dilworth Paxson LLP	Placement Agent Counsel Fee	\$34,942.00	\$15,058.00	\$50,000.00
		\$20,292,336.36	\$7,891,872.16	\$28,184,208.52

THE HARRISBURG AUTHORITY

\$20,961,574.40  
GUARANTEED RESOURCE RECOVERY FACILITY  
LIMITED OBLIGATION NOTES  
SERIES C OF 2007

\$9,033,234.45  
GUARANTEED FEDERALLY TAXABLE RESOURCE RECOVERY FACILITY  
LIMITED OBLIGATION NOTES  
SERIES D OF 2007

EXHIBIT "D"

**INVESTMENT DIRECTIONS**

Bond proceeds in the Funds and Accounts established under the Indenture shall be invested by the Trustee on behalf of the Authority in Investment Securities, as defined in and permitted under the Indenture.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

MEMORANDUM

**TO:** Honorable Stephen R. Reed, Mayor, City of Harrisburg  
**FROM:** Carol P. Cocheres  
**DATE:** August 22, 2007  
**RE:** Conversation with Chuck Zwally relating to Dauphin County Requirements as to the County's Guaranty of the proposed Covanta Loan and Working Capital Loan

---

As per our telephone conversation of August 20, 2007, I called Chuck Zwally of Mette Evans & Woodside, Special Counsel to Dauphin County, relating to the proposed County guaranties of The Harrisburg Authority's Covanta Loan and Working Capital Loan. I asked him to explore ways in which the present impasse among the City, the County and the Authority may be resolved. For example, what would be minimum County requirements to proceed with its guaranties in light of the probability that City Council will take no further action in 2007 with respect to the Resource Recovery Facility?

After my initial call to Mr. Zwally, he contacted me late yesterday afternoon (August 21, 2007) with several conditions, which, if met by the City and/or the Authority, may be sufficient to allow the County to proceed with the guaranties of the two loans. Those conditions/requirements are summarized as follows:

1. Certified copies of the City Council's Ordinances relating to the City's Guaranty of the Working Capital Loan and the City's Guaranty of the Covanta Loan.
2. Payment in full of the County's outstanding host/administrative fees for 2006 and for a portion of 2007 and all of the outstanding fees and out-of-pocket expenses of the County's consultants, engineers and counsel relating to the RRF. Payment would be due at closing on the Working Capital Loan, but County is not concerned about the source of payment recognizing that the Working Capital Loan as presently structured is not sufficient to pay the total amounts due to the County.
3. Written acknowledgement from the Mayor confirming and recognizing that the Covanta Loan and the Working Capital Loan are the last new money obligations in which the County will participate relating to the RRF. (The County would participate in refunding or restructuring of debt which the County previously guaranteed if such refunding or restructuring would be beneficial.)
4. Written acknowledgement from the Mayor that there are deficits or holes in the current plan or proposal of financing as presently approved by City Council. By City Council

not adopting a trash rate fee increase for the last quarter of 2007 and by guaranteeing the Working Capital Loan at less than the requested \$15 million (which due to delays may be closer to \$18 million), the completion of the Retrofit and start up of the RRF will result in additional deficits for 2007 and 2008. In light of the anticipated deficits in the current plan, the Mayor will endeavor to have those holes/deficits filled by appropriate City Council actions. The Mayor also expects to use other sources of funds or surplus funds as may be available to address the deficit issue.

5. It will be the mutual understanding of the City, Authority and the County that no receipts or revenues from the RRF will be used towards payment for any CIT obligation except on a subordinate basis to the outstanding senior debt guaranteed by the County.

In accordance with our telephone call this afternoon, attached to this e-mail is a first draft of a letter or acknowledgment from you as Mayor to the Chairman of the Dauphin County Commissioners setting forth the points requested above. Please call me with any questions.

# MEMO

## HARRISBURG CITY COUNCIL

Martin Luther King, Jr. City Government Center

Suite 1

Harrisburg, PA 17101

JULY 11, 2007

### CONFIDENTIAL

FROM: LINDA D. THOMPSON, CHAIR OF PUBLIC WORKS COMMITTEE

TO: CAROL COCHERES

RE: BILLS 23-2007 AND 24-2007

AS THE CHAIR OF THE PUBLIC WORKS COMMITTEE ALL MEMBERS HAVE AGREE THAT I WILL FACILITATE AND NEGOTIATE THESE CONDITIONS WITH ANY AND ALL PARTIES RELEVANT TO BILLS 23-2007 AND 24-2007.

THE FOLLOWING ARE OUR CONDITIONS, ADDITIONS, AND MODIFICATIONS REGARDING THE ABOVE BILLS. THIS IS MEANT TO BE A STARTING PLACE FOR DISCUSSION, NOT A BLOCKADE. THESE CONDITIONS ARE:

- 1.) THE CITY AND COUNTY SHALL BE COGUARANTORS; USING THE 80/20 SPLIT FORMULA
- 2.) THE PER TON INCREASE WILL BE APPLIED TO THE COUNTY AND CITY AS OF 1/01/08; THE COUNTY'S INCREASE SHALL BE EQUAL TO THE INCREASE OF CITY RESIDENTS, SUCH THAT EACH INDIVIDUAL IN THE COUNTY SHALL BEAR THE SAME INCREASE, I.E., UNDER THE PROPOSED INCREASE A CITY RESIDENT SHALL PAY AN ADDITIONAL \$180/YEAR WHEREAS A COUNTY RESIDENT SHALL PAY AN ADDITIONAL \$5-\$10/YEAR. INSTEAD, ALL RESIDENTS SHALL BEAR THE SAME INCREASE;
- 3.) FRED CLARK, JOHN KELLAR AND LEONARD HOUSE SHALL RESIGN IMMEDIATELY FROM THE THA BOARD. THE MAYOR SHALL CONSENT TO THE APPOINTMENT OF JAMES ELLISON, ERIC PAPPENFUSE AND ERICA BRYCE, ALL OF WHOM SHALL IMMEDIATELY BE SEATED ON THE THA BOARD;
- 4.) ALL PARTIES INVOLVED IN THE CURRENT INCINERATOR AGREEMENT/DEBACLE SHALL BE TERMINATED FROM CITY OR AUTHORITY EMPLOYMENT OR AS CONSULTANTS. THESE INCLUDE, BUT ARE NOT LIMITED TO: ANDY GIORGIONE, DAN LISPI, JOHN LUKENS, TOM MEALY, AND BRUCE BARNES;
- 5.) COVANTA'S INSURANCE SHALL BE INCREASED TO \$10,000,000; THERE SHALL BE NO EARLY TERMINATION FEE;

- 6.) **THA SHALL PUT OUT AN RFP FOR BIDS FOR THE PURCHASE OF THE INCINERATOR AS REPAIRED ON OR BEFORE JULY 1, 2009;**
- 7.) **A SPECIAL RESERVE FUND SHALL BE ESTABLISHED IN THE AMOUNT OF \$1 MILLION TO BE USED FOR FINANCIAL ASSISTANCE FOR HARRISBURG RESIDENTS FOR PROPERTY TAX AND WATER BILL ASSISTANCE. NO GRANT SHALL EXCEED \$200 FOR CITY UTILITIES ASSISTANCE AND \$300 FOR PROPERTY TAX ASSISTANCE. THIS MONEY CAN COME FROM THE "WORKING CAPITAL LOAN" DETAILS CAN BE WORKED BEFORE THE CLOSE OF THE 2007 CALENDAR YEAR.**
- 8.) **MWBE LOCAL PARTICIPATION ON THE RETROFIT PROJECT SHALL BE 30%;**
- 9.) **IF THE COUNTY WILL NOT BE A CO-GUARANTOR, THEN THEY WILL NOT BE RECEIVING THE \$5 FROM THE \$10/PER TON INCREASE;**
- 10.) **THERE WILL BE NO RESTRUCTURING OR ANY ASSUMPTION OF ANY PART OR FORM OF THE CIT AGREEMENT; THE CIT AGREEMENT SHALL BE SUBORDINATE TO RRF BONDS.**
- 11.) **IF COUNTY WILL NOT BE A CO-GUARANTOR, THA SHALL NOT BE RESPONSIBLE FOR ANY OF THE COUNTY'S CONSULTANT, LEGAL FEES, ETC. THE COUNTY SHALL BE FULLY RESPONSIBLE FOR ITS OWN FEES AND COSTS.**
- 12.) **ANY AND ALL MONIES RECOVERED IN THE BARLOW LITIGATION SHALL BE PLACED IN A SPECIAL FUND FOR AND SHALL BE USED TO PAY ANY DEBT SERVICE OBLIGATIONS ON ANY OUTSTANDING DEBT OF THE RETROFIT FOR WHICH THE CITY IS A GUARANTOR.**
- 13.) **THA SHALL PROVIDE CITY COUNCIL WITH ACCESS TO ANY AND ALL DOCUMENTS AND INFORMATION REGARDING THE BARLOW LAWSUIT AND THA'S FINANCIAL CONDITION. THA SHALL PROMPTLY ANSWER ANY COUNCIL QUESTIONS AND PROVIDE REQUESTED DOCUMENTS WITHIN 48 HOURS;**
- 14.) **THE CITY SHALL GUARANTEE THE COVANTA LOAN UP TO A MAXIMUM AMOUNT OF \$25,500,000. THE CITY SHALL GUARANTEE THE OPERATING CAPITAL LOAN UP TO A MAXIMUM OF \$11,000,000. OF THAT SUM, \$3.5 MILLION SHALL BE PAID TO COVANTA FOR UNPAID INVOICES, \$5.9 MILLION SHALL BE PLACED IN A SEPARATE INTEREST-BEARING ACCOUNT AND SHALL BE USED SOLELY FOR DEBT SERVICE PAYMENTS; FURTHERMORE, NO MONIES SHALL BE PAID FROM THAT ACCOUNT FOR DEBT SERVICE WITHOUT THE AFFIRMATIVE VOTE OF THE THA BOARD AT A PUBLIC MEETING PRIOR TO THE ACCOUNT WITHDRAWAL/DEBIT PAYMENT FOR DEBT SERVICE. ABSOLUTELY NONE OF THESE LOAN PROCEEDS SHALL BE USED TO PAY ANY PORTION OF THE CIT DEBT.**

- 15.) THA WILL REPORT ALL ASSETS TO THE CITY COUNCIL AND WORK WITH THE CITY ADMINISTRATION AND CITY COUNCIL TO DEVELOP A PLAN TO LIQUIDATE THOSE ASSETS IN ORDER TO HELP PAY-OFF THE COVANTA LOAN AND WORKING CAPITAL LOAN, WITHIN 90 DAYS
- 16.) IF AND WHEN THE INCINERATOR IS SOLD THE TIPPING FEE INCREASE THAT IS PASSED ON TO THE CITY RESIDENTS, SHALL INCLUDE A "ROLL BACK" CLAUSE THAT IS STRUCTURED IN THE AGREEMENT WITH ANY PURCHASER. THEREFORE ALL RESIDENTS WILL BEGIN PAYING THE SAME RATE FEE PRIOR TO THE INCREASE, AT LEAST 30 DAYS AFTER THE SALE.
- 17.) AN INDEPENDENT FORENSIC AUDIT WHICH GIVES THE FACTS AND TRUTH AS WELL AS PROVIDE AN ANALYSIS OF WHAT WENT WRONG, SO THAT THE SAME MISTAKE DOES NOT REOCCUR. IN ADDITION AN ANNUAL FORENSIC AUDIT SHOULD BE SUBMITTED TO COUNCIL BY THE AUDITOR, NOT THE AUTHORITY TO ENSURE THAT WE GET A COMPLETE DOCUMENT. THIS IS ESPECIALLY NECESSARY UNTIL WE HAVE IN PLACE SYSTEMS TO ENSURE WE ARE GETTING OURSELVES OUT OF DEBT. THE APPROVAL OF THE GUARANTEE WILL BE CONDITIONED ON AN INDEPENDENT FORENSIC AUDIT.
- 18.) ALL INFORMATION SUBMITTED TO COUNCIL ON ACTIONS TAKEN BY THA MUST BE LEGALLY CERTIFIED BY THA BOARD LEADERSHIP. THIS IS ESPECIALLY TRUE SHOULD THA HAVE TO CONTINUE WITH THE CURRENT BOARD. IN ADDITION, "ALL" SPENDING OF THA, WHO AUTHORIZED, AND FOR WHAT PURPOSE MUST BE CLEARLY DELINEATED IN A MONTHLY REPORT. AGAIN, ALL REPORTS SHOULD HAVE LEGAL CERTIFICATION AND SIGNED BY THA LEADERSHIP.
- 19.) ALL ACTIONS TAKEN BY THA THAT IMPINGES ON THE FINANCIAL STATUS OF HARRISBURG CITY RESIDENTS MUST BE BROUGHT BEFORE COUNCIL AND THE MAYOR (BOTH) AND IN WRITING PRIOR TO ACTION. THIS DOESN'T MEAN WE MUST APPROVE, BUT WE MUST BE NOTIFIED PRIOR TO THE ACTION AND HAVE THE OPPORTUNITY TO SUPPORT OR NOTE OUR DISAPPROVAL/CONCERN FOR SUCH AN ACTION. IN ADDITION, PUBLIC DISCLOSURE MUST BE MADE TO THE HARRISBURG COMMUNITY, 30 DAYS TIME FOR PUBLIC INPUT/COMMENT ON THE ISSUE, VIA A PUBLIC MEETING THAT IS SCHEDULED AT A TIME AND LOCATION ACCESSIBLE TO THE PUBLIC. THIS INCLUDES ANY CONTRACTUAL AGREEMENTS BETWEEN THE CITY AND THA. EXAMPLE FEE INCREASES.

- 20.) MAYOR REED AVAIL HIMSELF WITH COMMISSIONER JEFF HASTE AND MYSELF TO MEET WITH SECRETARY YABLONSKY TO GET A PROCESS MOVING TO DISCUSS THE SERVICES OF DCED'S FINANCIAL TEAM THAT IS WILLING TO ASSIST US WITH THE CONSIDERATION OF OPTIONS AVAILABLE IN ADDRESSING THIS SITUATION WITH THE CITY'S RRF.
- 21.) COVANTA SHOULD BE REQUIRED TO HOLD A PERFORMANCE BOND. NO AMENDMENTS SHALL BE MADE TO ANY AGREEMENT WITH ANY CONTRACTOR INCLUDING THE COVANTA AGREEMENT WITHOUT CITY COUNCILS KNOWLEDGE.

**CITY OF HARRISBURG, DAUPHIN COUNTY, PENNSYLVANIA  
DEBT STATEMENT PURSUANT TO SECTION 8110 OF  
THE LOCAL GOVERNMENT UNIT DEBT ACT**

STATEMENT AS OF OCTOBER 1, 2007

I.	Gross Incurred Debt	
A.	Elcctoral	\$ _____ .00
B.	Nonelectoral	\$ 52,463,561.60
C.	Lease Rental	\$ 462,410,476.14 <sup>1</sup>

The \$52,463,561.60 of Nonelectoral Debt consists of the following:

Federally Taxable General Obligation Bonds, Series A of 1995	GOB-12582	\$ 4,826,485.90
Federally Taxable General Obligation Bonds, Series A1 of 1997	GOB-12946	\$ 2,880,000.00
General Obligation Refunding Bonds, Series D of 1997	GOB-13161	\$ 20,590,676.55
General Obligation Refunding Notes, Series F of 1997	GON-9838	\$ 23,774,835.30
General Obligation Note, Series A of 2003	GON-11337	\$ 83,004.50
General Obligation Note, Series B of 2003	GON-11337	\$ 225,012.21
General Obligation Note, Series C of 2003	GON-11337	\$ 83,547.14
<b>TOTAL</b>		<b>\$ 52,463,561.60</b>

The \$462,410,476.14 of Lease Rental Debt consists of the following:

Harrisburg Parking Authority Guaranteed Parking Revenue Note, Series K of 2000	LRA-3409, E-2766	\$ 11,800,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series J of 2001	LRA-3409, E-2766	\$ 28,565,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Bonds, Series of 2001	LRA-3690, E-3001	\$ 17,090,000.00 <sup>2</sup>
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series N of 2003	LRA-4071, E-3420	\$ 6,370,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series O of 2003	LRA-4078, E-3428	\$ 13,160,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Bonds, Series P-1 of 2005 and Guaranteed Parking Revenue Bonds, Series P-2 of 2005 (Federally Taxable)	LRA-4381, E-3795	\$ 16,630,000.00
Harrisburg Parking Authority Guaranteed Parking Variable Rate Revenue Refunding Notes, Series Q of 2011 <sup>3</sup>	LRA-4441	\$ 29,000,000.00

<sup>1</sup> Does not include: (i) \$6,500,000 maximum principal amount, of lease rental debt proposed to be incurred by the City of Harrisburg, Dauphin County, Pennsylvania (the "City") pursuant to proceedings filed with the Department of Community and Economic Development (the "Department"), to which this Debt Statement is attached; or (ii) \$25,500,000, maximum principal amount, of lease rental debt proposed to be incurred by the City pursuant to proceedings filed with the Department on October 17, 2007, consisting of the guaranty by the City of the obligation of The Harrisburg Authority (the "Authority") to reimburse Covanta Harrisburg, Inc. ("Covanta") for amounts advanced under a certain management and professional services contract. The proposed lease rental debt to which this Debt Statement is attached consists of the guaranty by the City of \$6,500,000, maximum principal amount, Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue Note, Series A of 2007 (the "2007A Note"), to be issued by the Authority.

<sup>2</sup> Reflects actual amount of outstanding Bonds, as reflected in the debt service schedule sent to the Department on June 30, 2003. The schedule of actual debt service varies from the schedule of debt service included in the proceedings approved by the Department, and on file in the Department's records.

<sup>3</sup> Proceeds of the Series Q Notes, upon their expected issuance by the Harrisburg Parking Authority (the "Parking Authority") in 2011, will be applied on or about September 1, 2011 to refund and redeem all Series J Bonds then outstanding which are scheduled to mature after September 1, 2011. The principal amount of Series J Bonds scheduled to be so refunded and redeemed

Harrisburg Parking Authority Guaranteed Parking Revenue Bonds, Series R of 2007 LRA-4592, E-4063	\$ 16,965,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series S of 2007 LRA-4642, E-4131	\$ 15,000,000.00
Harristown Development Corporation Lease Revenue Bonds (Taxable), Series of 1992 LRA 2074, E-1399	\$ 7,355,863.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Revenue Bonds, Series A of 1998 LRA-3334, E 2587	\$ 6,920,525.00
Redevelopment Authority of the City of Harrisburg Guaranteed Revenue Bonds, Series B of 1998 LRA-3335, E-2588	\$ 16,716,758.20
Redevelopment Authority of the City of Harrisburg Taxable Guaranteed Revenue Bonds, Series of 2001 LRA-3688, E-3000	\$ 18,750,000.00
Redevelopment Authority of the City of Harrisburg Taxable Guaranteed Revenue Bond, Series of 2004 LRA-4148, E-3507	\$ 1,950,000.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Variable Rate Revenue Bonds (Stadium Project), Series A-1 of 2005 LRA-4281, E-3675	\$ 8,815,000.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Revenue Bonds (Stadium Project), Series A-2 of 2005 LRA-4281, E-3675	\$ 8,790,000.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Revenue Note, Series of 2006 LRA-4591	\$ 7,200,000.00
The Harrisburg Authority Guaranteed Sewer Revenue Note, Series A of 1998, Federally Taxable Guaranteed Sewer Revenue Note, Series B of 1998 LRA-3106, E-2382	\$ 2,137,329.94
The Harrisburg Authority Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A of 1998 LRA-3238, E-2492	\$ 11,270,000.00
The Harrisburg Authority Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002 LRA-3820	\$ 17,000,000.00
The Harrisburg Authority Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003, Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003, Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 LRA-3954, E-3295	\$ 75,925,000.00
The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 LRA-4089, E-3444	\$ <u>125,000,000.00</u>
 TOTAL	 \$ 462,410,476.14

on September 1, 2011 is \$26,660,000. The City is taking as a credit in Section II hereof the amount of Series J Bonds (\$26,660,000) expected to be so refunded and redeemed on September 1, 2011.

II. Credits and Exclusions \$ 440,696,962.04

	<u>Gross Indebtedness</u>	<u>Electoral</u>	<u>Nonelectoral</u>	<u>Lease Rental</u>
Less:				
1. Sinking funds, reserve funds or accounts, bond proceeds	\$ _____	.00	\$ _____	.00
2. Current appropriation	\$ _____	.00	\$ _____	.00
3. Uncollected special assessments	\$ _____	.00	\$ _____	.00
4. Delinquent taxes and liens	\$ _____	.00	\$ _____	.00
5. Self-liquidating and subsidized debt	\$ _____	.00	\$ _____	.00
6. Surplus cash	\$ _____	.00	\$ _____	.00
7. Solvent debts due	\$ _____	.00	\$ _____	.00
8. Indemnifying insurance	\$ _____	.00	\$ _____	.00
9. Credits	\$ _____	.00	\$ 4,826,485.90 <sup>4</sup>	\$ 26,660,000.00 <sup>5</sup>
<b>Total Net Indebtedness</b>	<b>\$ _____</b>	<b>.00</b>	<b>\$47,637,075.70</b>	<b>\$ 26,540,000.00<sup>6</sup></b>

III. Net Debt Outstanding

A. Net Electoral Debt	\$ 0.00
B. Net Nonelectoral Debt	\$ 47,637,075.70
C. Net Lease Rental Debt	<u>\$ 26,540,000.00</u>
D. Combined Net Nonelectoral Debt and Net Lease Rental Debt	\$ 74,177,075.70

IV. The aggregate principal amount of lease rental debt being incurred, evidenced by the City's guaranty of the Authority's 2007A Note \$ 6,500,000.00

V. The borrowing base as shown by appended borrowing base certificate \$ 55,659,263.00

VI. Applicable debt limitations

(a) nonelectoral - 250% of the borrowing base	\$ 139,148,157.50
(b) nonelectoral plus lease rental - 350% of the borrowing base	\$ 194,807,420.50

<sup>4</sup> Pursuant to Section 8022(c) of the Act, the principal amount of bonds issued to fund unfunded actuarial accrued liability, after deducting therefrom the principal amount of such bonds attributable to costs of issuance, underwriter's discount and original issue discount, is not subject to debt limitations. Applying such deductions to the principal amount of the City's Federally Taxable General Obligation Bonds, Series A of 1995, the debt incurred to fund unfunded actuarial accrued liability is \$4,826,485.90 and is not subject to "regular debt limits" under the Act.

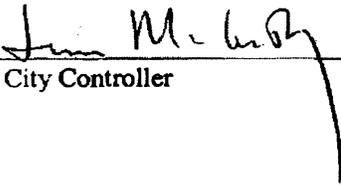
<sup>5</sup> Reflects the principal amount of the Parking Authority's Series J Bonds expected to be refunded and redeemed on September 1, 2011 with proceeds of the Parking Authority's Series Q Notes.

<sup>6</sup> The October 17, 2007 proceedings filed by the City for approval of lease rental debt in the maximum principal amount of \$25,500,000 did not include proceedings to exclude such debt as self-liquidating. If the incurrence of such lease rental debt is approved by the Department, the total net lease rental debt of the City would be \$52,040,000, and the combined net nonelectoral debt and net lease rental debt would be \$99,677,075.70, for purposes of Sections III and VI of this Debt Statement.

IN WITNESS WHEREOF, we, the undersigned, Mayor and City Controller, respectively, of the City of Harrisburg, Dauphin County, Pennsylvania, affix our signatures to this Debt Statement of the City, as of this 31<sup>st</sup> day of October, 2007.

CITY OF HARRISBURG,  
DAUPHIN COUNTY, PENNSYLVANIA

By:   
Mayor

By:   
City Controller

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF DAUPHIN

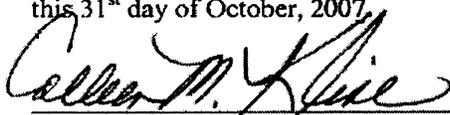
We, the undersigned, first being duly sworn individually according to law, verify, depose and say that: we are the Mayor and City Controller, respectively, of the City of Harrisburg, Dauphin County, Pennsylvania (the "Local Government Unit"); we prepared and executed the foregoing Debt Statement of the Local Government Unit; and the facts contained in the foregoing Debt Statement of the Local Government Unit are true and correct.

CITY OF HARRISBURG,  
DAUPHIN COUNTY, PENNSYLVANIA

By:   
Mayor

By:   
City Controller

SWORN TO AND SUBSCRIBED  
before me, a Notary Public,  
this 31<sup>st</sup> day of October, 2007.

  
Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Colleen M. Kline, Notary Public  
City Of Harrisburg, Dauphin County  
My Commission Expires July 4, 2010  
Member, Pennsylvania Association of Notaries

**Kroboth, Robert**

**From:** Giorgione, Andrew J. [andrew.giorgione@bipc.com]  
**Sent:** Monday, July 30, 2007 8:50 AM  
**To:** Lingle, Linda; Bruce Barnes; ccocheres@eckertseamans.com  
**Cc:** tharambrose@aol.com; Lukens, John; Kroboth, Robert; Dade, Steven;  
pstauder@CovantaEnergy.com  
**Subject:** RE: Resource Recovery Payables

Carol -

For purposes of your 10 am meeting with the County today, the below email from Linda answers one of the questions of the County - a breakdown of the Working Capital Loan and reimbursements to the City. You will note that the attachment lists ALL amounts due the City from the RRF; however, Linda lists in the email only those amounts which the City demands reimbursement, including the June Debt Service Payment, through the Loan. As an aside, if the City makes the September payment, it also demands reimbursement for that amount, which is already listed as a "Use" of the Loan proceeds. That attachment also provides a list of all vendors to be paid. You will note that the Unpaid bills for 2006 amount has changed from the original breakdown and now is only \$202,485.24. Of course, the difference is now listed in the Paid bills for 2006 because the City has made certain payments since this list was originally made. Regardless, the City is requesting reimbursement.

As I understand the position of the County, the large open issue is reimbursement to the City for debt service payments. I am not sure how the County expects the City to make \$4 M in unbudgeted debt service payments. Further, as I previously indicated to counsel to the County, if not paid now, the City and City Council will be in need of another TRAN before year-end and we do not need those negotiations in the mix if we are trying to pass the larger RRF plan, including rate increase, and a budget in the Fall.

The County also asked for a breakdown of transaction fees included in the "Other Expenditures." I believe Bruce is working on this. As you may recall, what funds are not used for the transaction will be used to cover projected shortfalls in 2008.

Finally, the County has demanded that its costs and fees for its professionals be paid through the Working Capital Loan. Council has indicated it will not agree to such payment, even though there is a contractual obligation to do so. I indicated to counsel to the County that the Authority recognizes this payment obligation and asked Chuck Zwally for a breakdown of such fees and costs. I expect it to be around \$100K based on what was told to me, but I am still awaiting a more exact figure. I further indicated that rather than making this an issue as this time, we negotiate a payment schedule with the County for reimbursement of such fees. Clearly, when the RRF is in full operating mode there will be more revenues for payment of obligations. Of course, the County has raised the prospect of the Authority meeting such payment obligation. Expect the County to also say that it is already making concessions on this point by not demanding a guarantee fee.

That is all I have for now. In sum, in terms of information, we have to get a breakdown of transaction fees.

Please contact me if you need additional information.

**Andrew J. Giorgione, Esquire**  
**BUCHANAN INGERSOLL & ROONEY**  
17 N. Second Street, 15th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-4863  
Fax: (717) 233-0852  
andrew.giorgione@bipc.com

7/30/2007

**Kroboth, Robert**

**From:** Lingle, Linda  
**Sent:** Tuesday, April 24, 2007 3:57 PM  
**To:** Kroboth, Robert  
**Subject:** RE: Attached File Per Your Request

Bob: I recognize why you made the clarification but we're in hot water either way -- with the bond holders if we "make the debt service payment" and with AFSCME if we "subsidize THA/Incinerator operating expenses." Perhaps we can just make a short term loan to THA to meet their payroll for the next several months.

Linda Lingle  
Business Administrator

**From:** Kroboth, Robert  
**Sent:** Tuesday, April 24, 2007 3:51 PM  
**To:** Lingle, Linda; 'Giorgione, Andrew J.'; Dade, Steven; Leinberger, William; 'tharambrose@aol.com'; 'JKeller@nextel.blackberry.net'; 'JKeller641@gmail.com'; 'thaboard@aol.com'; Lukens, John; 'Bruce Foreman'; 'Bruce Barnes'  
**Subject:** RE: Attached File Per Your Request

All: recall that it may behoove us to subsidize \$310,000 of THA/Incinerator operating expenses rather than subsidize the 5/1/07 debt service payment. Also, I recall Carol mentioning that the debt service needs to be funded for well in advance of 5/1. Karen or Bruce B., what is that date?

Bob K.

-----Original Message-----

**From:** Lingle, Linda  
**Sent:** Tuesday, April 24, 2007 3:33 PM  
**To:** Giorgione, Andrew J.; Dade, Steven; Kroboth, Robert; Leinberger, William; tharambrose@aol.com; JKeller@nextel.blackberry.net; JKeller641@gmail.com; thaboard@aol.com; Lukens, John; Bruce Foreman; Bruce Barnes  
**Subject:** FW: Attached File Per Your Request  
**Importance:** High

Attached is an updated report identifying 2006 outstanding bills associated with the ISGF. Pursuant to our discussion last Friday, the total page has been reconfigured to further identify amounts due to the City.

Andy: for purposes of your discussions with the County, I believe we would need them to fund the following for the City:

\$597,957.66 in bills to vendors which do not include the City, THA, the County or Waste Management and  
\$1,340,000 in 2007 loans from the General Fund which includes the 5/1 debt service payment of \$310,000.

If anyone has a different take, let me know.

Bill: please use this total page configuration going forward.

4/24/2007

Carol Cocheres/ESCM  
Sent by: Phyllis  
Hedenberg/ESCM

06/08/2007 04:13 PM

To hspumberg@fsa.com  
cc mcooper@fsa.com, RKroboth@CityofHBG.com,  
LLingle@CityofHBG.com, tharambrose@aol.com,  
thaboard@aol.com, SDade@CityofHBG.com,  
BBarnes@millopus.com, bruce@foreman-foreman.com  
bcc Richard Michael/ESCM

Subject The Harrisburg Authority - Notice of Material Event

As per my telephone call with Howard Spumberg this morning, attached are copies of the material event notices forwarded on behalf of The Harrisburg Authority (the "Authority") to the Nationally Recognized Securities Information Repositories in connection with the unscheduled draw on the City of Harrisburg Bond Guaranty for the payment of a portion of interest due on June 1, 2007 on each series of the following bond issue (the "Retrofit Bonds"):

The Harrisburg Authority, (Dauphin County, Pennsylvania) Guaranteed Resource Recovery Facility Revenue Bonds, \$31,480,000 Series D-1 of 2003

The Harrisburg Authority (Dauphin County, Pennsylvania) Guaranteed Resource Recovery Facility Revenue Bonds, \$65,000,000 Series D-2 of 2003

The Harrisburg Authority (Dauphin County, Pennsylvania) Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, \$14,500,000 Series E of 2003

The Harrisburg Authority (Dauphin County, Pennsylvania) Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, \$14,020,000 Series F of 2003

Mr. Spumberg asked that I also send copies of the notices to Michael Cooper, FSA Counsel, who is copied on this email.

In my conversation with Mr. Spumberg, I indicated that the Authority is working on a plan to address the difficulties facing the Resource Recovery Facility which resulted in a revenue shortfall to pay debt service on the Retrofit Bonds causing a draw on the City Bond Guaranty as well as a draw on the City Swap Guaranty. (The draw on the City's Swap Guaranty is not a material event under the Authority's and the City's respective Continuing Disclosure Agreements for which a material event notice has to be made. Draws on the City Bond Guaranty and City Swap Guaranty amounted to \$1,668,752.57 of the total amount of \$3,391,141 in debt service and swap and cap payments due on June 1, 2007 relating to the Retrofit Bonds.) Mr. Spumberg asked that if and when there was a written summary or description of the Authority's plan available to send a copy of such plan to him. I indicated that a written summary of the plan may be available next week for Harrisburg City Council and that the Authority would be willing to forward a copy of the plan to him.

If Mr. Spumberg or Mr. Cooper have any questions regarding the attached notices, please feel free to contact me.



L0331739.PDF

Please note my new email address is ccocheres@eckertseamans.com.

Carol P. Cocheres, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
Harrisburg, Pa. 17101  
Phone 717-237-6023

THA-ES000014

## INDEPENDENT AUDITOR'S REPORT

Members of the Board  
The Harrisburg Authority

We have audited the accompanying basic financial statements of The Harrisburg Authority (a component unit of the City of Harrisburg, Pennsylvania) as of and for the year ended December 31, 2005, as listed in the table of contents. These financial statements are the responsibility of The Harrisburg Authority's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The Harrisburg Authority as of December 31, 2005, and the changes in its financial position and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

The waste incinerator, operated as a component of the Resource Recovery Facility of The Harrisburg Authority, as required by the Environmental Protection Agency, was temporarily closed so that The Harrisburg Authority could undertake a modernization program. A significant financing was completed in December 2003 to fund the costs of the project. Additionally, the Resource Recovery Fund has experienced significant operating losses and has an accumulated deficit of \$77,962,617 at December 31, 2005. These issues are discussed further in Note 11 to the financial statements.

HEADQUARTERS  
457 EAST CALDWELL ROAD  
2ND FLOOR • CAMP HILL, PA 17011  
717-761-7910 • FAX 717-761-7911

225 MARKET STREET, SUITE 302  
HARRISBURG, PA 17101  
717-242-9089 • FAX 717-761-7911



1857 WILLIAM PENN WAY, SUITE 202  
LANCASTER, PA 17601  
717-745-6288 • FAX 717-745-8912

MAILING ADDRESS: P.O. BOX 1311  
HARRISBURG, PA 17105  
WEB SITE: [www.mcpa.com](http://www.mcpa.com)

**THE HARRISBURG AUTHORITY**

**FINANCIAL STATEMENTS  
WITH SUPPLEMENTARY INFORMATION**

**YEAR ENDED DECEMBER 31, 2005**

**AND**

**INDEPENDENT AUDITOR'S REPORT**



**BIRHBG001960**

# THE HARRISBURG AUTHORITY

## STATEMENT OF CASH FLOWS

YEAR ENDED DECEMBER 31, 2005

Cash flows from operating activities	
Receipts from customers and users	\$ 17,711,396
Payments to suppliers	(549,490)
Payments to management agent	<u>(16,520,640)</u>
Net cash provided by operating activities	<u>641,266</u>
Cash flows from investing activities	
Purchases of investments, net	58,068,715
Investment income received	6,391,731
Payments received on direct financing leases	<u>1,956,641</u>
Net cash provided by investing activities	<u>66,417,087</u>
Cash flows from capital and related financing activities	
Decrease in obligation to construct assets under direct financing lease	(718,660)
Decrease in advances to the City of Harrisburg	150,715
Acquisition and construction of capital assets	(48,117,932)
Interest paid	(15,661,737)
Principal paid on capital lease	(26,126)
Principal paid on long-term debt	<u>(4,441,023)</u>
Net cash used in capital and related financing activities	<u>(68,814,763)</u>
Net decrease in cash and cash equivalents	(1,756,410)
Cash and cash equivalents - beginning	<u>8,449,774</u>
Cash and cash equivalents - ending	<u>\$ 6,693,364</u>
Reconciliation of operating income (loss) to net cash provided by operating activities	
Operating income (loss)	\$ (2,570,063)
Adjustments to reconcile operating income (loss) to net cash provided by operating activities	
Depreciation	2,782,287
Miscellaneous nonoperating income (expense)	(511,156)
Decrease in accounts receivable	411,863
Increase in other receivables	(15,683)
Decrease in accounts payable	(50,240)
Increase in due to City of Harrisburg	1,971,227
Decrease in accrued landfill closure and postclosure care liability	<u>(1,376,969)</u>
Net cash provided by operating activities	<u>\$ 641,266</u>

The accompanying notes are an integral part of these financial statements.

**INTER-OFFICE MEMORANDUM**

**CITY OF HARRISBURG**

November 29, 2005

**TO:** Mayor Stephen R. Reed

**FROM:** Linda Lingle  
Business Administrator

**SUBJECT: Incinerator**

Mayor, this is to let you know that Barlow has informed us that they are approximately \$16 million over budget. This is in addition to the \$15 million borrowed in August to complete the project.

Barlow is meeting with its lender in New York on Thursday and The Authority has been asked to guarantee a new bridge loan for \$16 million or, in the alternative, make an additional commitment of excess revenue to facilitate the re-payment of the loan. Dan Lispi, Andy Giorgione, Bruce Foreman, Tom Mealy, John Lukens and I met yesterday to discuss this new development. It was agreed that The Harrisburg Authority would not guarantee Barlow's new loan, as it was felt that it would be difficult, if not impossible, to obtain the necessary approvals.

Although there was a consensus that The Authority could agree to make an additional commitment of excess revenues, if available, and although there was discussion about lowering the defeasance requirement by \$5 million, ultimately it was decided that Dan and Andy, who will be participating in the meeting with Barlow and its lender on Thursday, would not commit to any action on behalf of the City or The Authority, but would simply get a take on the likelihood that CIT would provide the bridge loan and maintain its commitment to finance Barlow's purchase of the Facility.

In the meantime, Barlow has pulled SMS employees who were working on Units 2 and 3 from the job, the first fire of Unit 1 on municipal waste which was scheduled for yesterday did not occur, but was shut down because of problems encountered with the feed tables, and we are exploring the possibility of having Reynolds complete the project. Earlier today we were told that Barlow has hired a new project director, and has engaged in discussions with five other lenders who are considering the interim construction financing needed to complete the project. Barlow has also proposed purchasing the Facility in phases such that The Authority would receive one-third of the purchase price as each unit is completed. Although there is some interest in this proposal, we are concerned about what happens if Barlow purchases Unit One and then does not complete Units Two and Three. In addition, we would have a number of AFSCME labor problems to sort through if a phased purchase were to occur. We will know more on Friday when Dan and Andy return from New York.

**cc:** Thomas Mealy                      Andrew Giorgione  
          John Lukens                      Daniel Lispi  
          Bruce Foreman                  File

**THE HARRISBURG AUTHORITY**

**\$20,961,574.40 Guaranteed Resource Recovery Facility  
Limited Obligation Notes, Series C of 2007**

**\$9,033,234.45 Guaranteed Federally Taxable Resource Recovery Facility  
Limited Obligation Notes, Series D of 2007**

**CLOSING MEMORANDUM**

**Date, Time and Place of Preclosing:**                    December 26, 2007  
2:00 p.m.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, Eighth Floor  
Harrisburg, Pennsylvania 17101

**Date, Time and Place of Closing:**                    December 27, 2007  
10:00 a.m.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, Eighth Floor  
Harrisburg, Pennsylvania 17101

**INDEX**

**Parties**

<b>Issuer</b>	<b>The Harrisburg Authority</b>
<b>Issuer General Counsel</b>	<b>Foreman &amp; Foreman, P.C.</b>
<b>Note Counsel/Issuer Special Counsel</b>	<b>Eckert Seamans Cherin &amp; Mellott, LLC</b>
<b>Issuer Litigation Counsel</b>	<b>Goldberg Katzman, P.C.</b>
<b>Issuer Financial Advisor</b>	<b>Public Financial Management</b>
<b>City</b>	<b>City of Harrisburg, Dauphin County, Pennsylvania</b>
<b>City Solicitor</b>	<b>Steven R. Dade, Esquire</b>
<b>County</b>	<b>County of Dauphin, Pennsylvania</b>
<b>County Special Counsel</b>	<b>Mette, Evans &amp; Woodside</b>
<b>County Financial Advisor</b>	<b>Susquehanna Group Advisors, Inc.</b>
<b>Placement Agent</b>	<b>Bear Stearns &amp; Co, Inc.</b>
<b>Placement Agent Counsel</b>	<b>Dilworth Paxson LLP</b>

THE HARRISBURG AUTHORITY

\$20,961,574.40  
GUARANTEED RESOURCE RECOVERY FACILITY  
LIMITED OBLIGATION NOTES  
SERIES C OF 2007

\$9,033,234.45  
GUARANTEED FEDERALLY TAXABLE RESOURCE RECOVERY  
FACILITY LIMITED OBLIGATION NOTES  
SERIES D OF 2007

**CLOSING ORDER AND RECEIPT**

RECEIPT, executed this 27<sup>th</sup> day of December, 2007, by The Harrisburg Authority (the "Authority"), Commerce Bank, National Association, as trustee (the "Trustee"), Bear Stearns & Co, Inc., as placement agent (the "Placement Agent"), the City of Harrisburg, Dauphin County, Pennsylvania (the "City") and the County of Dauphin, Pennsylvania (the "County").

As used herein the following terms have the indicated meaning:

2007 NOTES – The 2007C Notes and the 2007D Notes, collectively.

2007C NOTES – The Authority's Guaranteed Resource Recovery Facility Limited Obligation Notes, Series C of 2007, dated December 27, 2007, in the initial stated value of \$20,961,574.40. The 2007C Notes are issued as fully registered Notes in the maturity value of \$100,000 or any integral multiple of \$5,000 in excess thereof. The 2007C Notes will mature and accrete value as provided in Exhibit "A-1" attached hereto.

2007D NOTES - The Authority's Guaranteed Federally Taxable Resource Recovery Facility Limited Obligation Notes, Series D of 2007, dated December 27, 2007, in the initial stated value of \$9,033,234.45. The 2007D Notes are issued as fully registered Notes in the maturity value of \$100,000 or any integral multiple of \$5,000 in excess thereof. The 2007D Notes will mature and accrete value as provided in Exhibit "A-2" attached hereto.

INDENTURE – The 2007 Notes are described in and issued and secured under and pursuant to a Trust Indenture, dated as of December 15, 2007, between the Authority and the Trustee.

A. AMOUNT DUE FROM THE PURCHASERS OF THE 2007 NOTES:

2007C Notes

Maturity Amount	\$23,920,000.00
Less Original Issue Discount	(2,958,425.60)
Initial Stated Value	\$20,961,574.40

2007D Notes

Maturity Amount	\$10,765,000.00
Less Original Issue Discount	(1,731,765.55)
Initial Stated Value	\$ 9,033,234.45

Aggregate Amount Due from Purchasers of the 2007 Notes: \$29,994,808.85.

**THE AUTHORITY** hereby pursuant to Section 3.01 of the Indenture:

1. Has delivered or is delivering to the Trustee the within-described 2007 Notes and orders the Trustee to authenticate the same in accordance with the Indenture and deliver them to the Placement Agent as designated by the Placement Agent, but only upon receipt of the Aggregate Amount Due from the Placement Agent at Closing.

2. Directs the Trustee to make deposits and transfers to the funds, accounts and parties as set forth in Exhibits "B-1" and "B-2" attached hereto.

3. Authorizes the Trustee to pay (i) the costs of issuance of the 2007C Notes and certain initial costs of the Working Capital Project from the 2007C Account of the 2007 Clearing Fund and (ii) the costs of issuance of the 2007D Notes and certain initial costs of the Reimbursement Project from the 2007D Account of the 2007 Clearing Fund, as set forth in Exhibit "C" attached hereto.

4. Directs the Trustee to invest the amounts in the funds or accounts as set forth in Exhibit "D" attached hereto.

**THE TRUSTEE** hereby:

1. Acknowledges that it is the Trustee under the Indenture and hereby agrees to perform all obligations of the Trustee set forth in the Indenture.

2. Acknowledges receipt from Placement Agent of the Aggregate Amount Due from the Placement Agent at Closing.

3. Confirms the opening of the 2007C Account and the 2007D Account within the 2007 Clearing Fund.

4. Confirms that it has deposited and transferred the funds as set forth in Exhibits "B-1" and "B-2" attached hereto.

5. Certifies that it has authenticated each of the 2007 Notes and has delivered the 2007 Notes to the Placement Agent or in accordance with its instructions.

6. Certifies that the 2007 Notes have been duly executed in the name of the Authority by the manual signature of the Chairman of the Authority and that the seal of the Authority imprinted upon the 2007 Notes was duly attested by the manual signature of the Assistant Secretary-Treasurer of the Authority.

7. Agrees that it will invest the Funds and Accounts directed by the Authority pursuant to the instructions set forth in Exhibit "D" attached hereto.

**THE PLACEMENT AGENT** hereby:

Acknowledges receipt from the Trustee this day of the within-described duly executed, attested and authenticated 2007 Notes, and that the 2007 Notes shall be retained by the Trustee in custody.

**THE CITY** hereby:

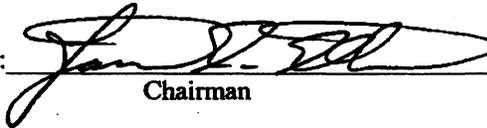
Acknowledges and approves of the payment by the Trustee of (i) the costs of issuance of the 2007C Notes and certain initial costs of the Working Capital Project from the 2007C Account of the 2007 Clearing Fund and (ii) the costs of issuance of the 2007D Notes and certain initial costs of the Reimbursement Project from the 2007D Account of the 2007 Clearing Fund, as set forth in Exhibit "C" attached hereto.

**THE COUNTY** hereby:

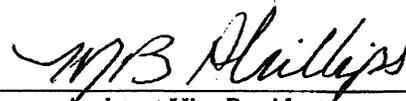
Acknowledges and approves of the payment by the Trustee of (i) the costs of issuance of the 2007C Notes and certain initial costs of the Working Capital Project from the 2007C Account of the 2007 Clearing Fund and (ii) the costs of issuance of the 2007D Notes and certain initial costs of the Reimbursement Project from the 2007D Account of the 2007 Clearing Fund, as set forth in Exhibit "C" attached hereto.

This Closing Order and Receipt may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument.

THE HARRISBURG AUTHORITY

By:   
Chairman

COMMERCE BANK, NATIONAL ASSOCIATION, as  
Trustee

By:   
Assistant Vice President

BEAR STEARNS & CO, INC., as Placement Agent

By: \_\_\_\_\_  
Vice President

CITY OF HARRISBURG

By: \_\_\_\_\_  
Mayor

COUNTY OF DAUPHIN

By: \_\_\_\_\_  
Commissioner

This Closing Order and Receipt may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument.

THE HARRISBURG AUTHORITY

By: \_\_\_\_\_  
Chairman

COMMERCE BANK, NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Vice President

BEAR STEARNS & CO, INC., as Placement Agent

By: Charles R. Ellerman  
Title: Senior Managing Director

CITY OF HARRISBURG

By: \_\_\_\_\_  
Mayor

COUNTY OF DAUPHIN

By: \_\_\_\_\_  
Commissioner

This Closing Order and Receipt may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument.

**THE HARRISBURG AUTHORITY**

By: \_\_\_\_\_  
Chairman

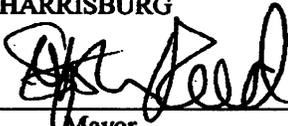
**COMMERCE BANK, NATIONAL ASSOCIATION, as  
Trustee**

By: \_\_\_\_\_  
Assistant Vice President

**BEAR STEARNS & CO, INC., as Placement Agent**

By: \_\_\_\_\_  
Vice President

**CITY OF HARRISBURG**

By:  \_\_\_\_\_  
Mayor

**COUNTY OF DAUPHIN**

By: \_\_\_\_\_  
Commissioner

This Closing Order and Receipt may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument.

THE HARRISBURG AUTHORITY

By: \_\_\_\_\_  
Chairman

COMMERCE BANK, NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Vice President

BEAR STEARNS & CO, INC., as Placement Agent

By: \_\_\_\_\_  
Vice President

CITY OF HARRISBURG

By: \_\_\_\_\_  
Mayor

COUNTY OF DAUPHIN

By:  \_\_\_\_\_  
Commissioner

THE HARRISBURG AUTHORITY  
\$20,961,574.40  
GUARANTEED RESOURCE RECOVERY FACILITY  
LIMITED OBLIGATION NOTES  
SERIES C OF 2007

EXHIBIT "A-1"

2007C NOTES

<u>Initial Stated Value</u>	<u>Maturity Value</u>	<u>Maturity Date</u>	<u>Yield to Maturity</u>
\$20,961,574.40	\$23,920,000	December 15, 2010	4.50%

THE HARRISBURG AUTHORITY

\$9,033,234.45  
GUARANTEED FEDERALLY TAXABLE RESOURCE RECOVERY FACILITY  
LIMITED OBLIGATION NOTES  
SERIES D OF 2007

EXHIBIT "A-2"

2007D NOTES

<u>Initial Stated Value</u>	<u>Maturity Value</u>	<u>Maturity Date</u>	<u>Yield to Maturity</u>
\$9,033,234.45	\$10,765,000	December 15, 2010	6.00%

THE HARRISBURG AUTHORITY

\$20,961,574.40  
GUARANTEED RESOURCE RECOVERY FACILITY  
LIMITED OBLIGATION NOTES  
SERIES C OF 2007

EXHIBIT "B-1"

2007C Notes

Maturity Amount	\$ 23,920,000.00
Less Original Issue Discount	<u>(2,958,425.60)</u>
Initial Stated Value	\$ 20,961,574.40

The Trustee is directed to deposit \$20,961,574.40 from proceeds of the 2007C Notes to the 2007C Account of the 2007 Clearing Fund.

The Trustee is directed to make the following transfers, deposits and payments from the 2007C Account, from proceeds of the 2007C Notes, to the Funds and Accounts established pursuant to the Indenture or to the parties listed below:

Costs of Issuance and Initial Working Capital Project Costs (As set forth on Exhibit "C")	\$ 20,292,336.36
Series C Project Account	\$ 669,238.04

(b) any amendment or waiver of or any consent to or departure from the terms and conditions of any Guaranty, the 2007 Notes, the Financing Document or any documents relating thereto; or (c) the existence of any claim, setoff, defense or other right which any party hereto may have at any time against any party hereto or any other person or entity, whether in connection with this Reimbursement Agreement, the transactions described herein or any unrelated transaction.

**5. Representations and Warranties.**

(a) The Authority hereby represents and warrants as follows:

(i) The Authority is a municipal authority duly organized and validly existing under the Act. Each of the individuals executing and delivering this Reimbursement Agreement, each Guaranty, the 2007 Notes, the Financing Document and all related documents and instruments possesses full power and authority to execute and deliver such documents and such execution and delivery does not contravene the terms or provisions of any document, agreement or instrument to which the Authority or any of its properties or assets is or may be bound;

(ii) The execution, delivery and performance by the Authority of this Reimbursement Agreement, each Guaranty, the 2007 Notes, the Financing Document and related documents and instruments have been duly authorized by all necessary action, do not contravene the provisions of the Articles of Incorporation or By-Laws of the Authority or of any other agreement or instrument binding on or affecting the Authority or any of its assets or properties, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant to this Reimbursement Agreement, each Guaranty, the 2007 Notes, the Financing Document, or any other collateral security document or instrument executed and delivered in connection with the same) upon or with respect to any of the Authority's assets or properties;

(iii) No authorization, approval or other consent or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Authority of this Reimbursement Agreement, each Guaranty, the 2007 Notes, the Financing Document or any related document or instrument, except such as have been obtained;

(iv) This Reimbursement Agreement, each Guaranty, the 2007 Notes, the Financing Document and any related document or instrument executed and delivered by or on behalf of the Authority constitute the legal, valid and binding obligations of the Authority enforceable against the Authority in accordance with their respective terms; and

(v) There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the Authority and, to the best of the knowledge of the Authority, there is no threatened action or proceeding against the Authority before any court, governmental agency or arbitrator which, in any case, may materially and adversely affect the financial condition or operations of the Authority or any other material contingent liability of any kind (which has not heretofore been disclosed to the City and the County).

(b) The City hereby represents and warrants as follows:

(i) The City is a municipal corporation of the Commonwealth. Each of the individuals executing and delivering this Reimbursement Agreement, the City Guaranty and all related documents and instruments possesses full power and authority to execute and deliver such documents and such execution and delivery does not contravene the terms or provisions of any document, agreement or instrument to which the City or any of its properties or assets is or may be bound;

(ii) The execution, delivery and performance by the City of this Reimbursement Agreement, the City Guaranty, and related documents and instruments have been duly authorized by all necessary action, do not contravene the provisions of its Charter or any ordinance of the City or of any other agreement or instrument binding on or affecting the City or any of its assets or properties, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant to this Reimbursement Agreement, the City Guaranty, or any other collateral security document or instrument executed and delivered in connection with the same) upon or with respect to any of the City's assets or properties;

(iii) No authorization, approval or other consent or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Reimbursement Agreement, the City Guaranty or any related document or instrument, except such as have been obtained;

(iv) This Reimbursement Agreement, the City Guaranty and any related document or instrument executed and delivered by or on behalf of the City constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms; and

(v) There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the City and, to the best of the knowledge of the City, there is no threatened action or proceeding against the City before any court, governmental agency or arbitrator which, in any case, may materially and adversely affect the financial condition or operations of the City or any other material contingent liability of any kind (which has not heretofore been disclosed to the Authority and the County).

(c) The County hereby represents and warrants as follows:

(i) The County is a municipal corporation of the Commonwealth. Each of the individuals executing and delivering this Reimbursement Agreement, the County Guaranty and all related documents and instruments possesses full power and authority to execute and deliver such documents and such execution and delivery does not contravene the terms or provisions of any document, agreement or instrument to which the County or any of its properties or assets is or may be bound;

(ii) The execution, delivery and performance by the County of this Reimbursement Agreement, the County Guaranty, and related documents and instruments have been duly authorized by all necessary action, do not contravene the provisions of the organizational documents of the County or of any other agreement or instrument binding on or affecting the County or any of its assets or properties, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant to this Reimbursement Agreement, the County Guaranty, or any other collateral security document or instrument executed and delivered in connection with the same) upon or with respect to any of the County's assets or properties;

(iii) No authorization, approval or other consent or action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the County of this Reimbursement Agreement, the County Guaranty, or any related document or instrument, except such as have been obtained;

(iv) This Reimbursement Agreement, the County Guaranty, and any related document or instrument executed and delivered by or on behalf of the County constitute the legal, valid

and binding obligations of the County enforceable against the County in accordance with their respective terms; and

(v) There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the County and, to the best of the knowledge of the County, there is no threatened action or proceeding against the County before any court, governmental agency or arbitrator which, in any case, may materially and adversely affect the financial condition or operations of the County or any other material contingent liability of any kind (which has not heretofore been disclosed to the Authority and the City).

6. **Covenants of the Authority.** So long as any Guaranty shall remain in full force and effect, or any amount is due and owing to the City or the County under the provisions of this Reimbursement Agreement, the Authority covenants and agrees that it shall, unless the City and the County has otherwise consented in writing:

(a) Preserve and maintain its due existence, and its right to do business and its good standing in the Commonwealth;

(b) Comply in all material respects with all applicable laws, rules, regulations and orders of any governmental authority, the non-compliance with which would materially and adversely affect its operations or condition;

(c) Keep or cause to be kept proper, accurate and complete books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Authority;

(d) Observe, in all respects, its obligations under each Guaranty, the 2007 Notes and the Financing Document;

(e) At any time after the County shall have paid such amount or amounts as at that time it shall be required to pay in accordance with the provisions of the County Guaranty or shall have paid any costs, fees or expenses required thereby, to repay to the County the amount or amounts actually advanced by the County, together with interest on such amounts, all in accordance with the terms of this Reimbursement Agreement; and

(f) At any time after the City shall have paid such amount or amounts as at that time shall be required to pay debt service on the 2007 Notes in accordance with the provisions of the City Guaranty, subject to prior satisfaction of (e) above, to repay to the City the amount or amounts actually advanced by the City, together with interest on such amounts, all in accordance with the terms of this Reimbursement Agreement, and specifically subject to the provisions of Paragraph 2(d) herein.

7. **Defaults and Remedies.** Each of the following shall constitute an event of default ("Event of Default") hereunder unless waived by the Affected Party hereunder. "Affected Party" may mean one or more parties, insofar as any party is directly affected by the Event of Default in question.

(a) Failure by a party to make any payment hereunder when due and payable;

(b) Failure by a party to perform or comply with any of the other terms, conditions or covenants contained in this Reimbursement Agreement, a Guaranty, the 2007 Notes or the Financing Document and continuance of such failure uncured for 30 days after such party has knowledge that such failure has occurred, or such longer period to which each Affected Party may agree in the case of a default

not curable by the exercise of due diligence within such 30-day period, provided that the party shall have commenced to cure such default within such 30-day period and shall complete such cure as quickly as reasonably possible with the exercise of due diligence;

(c) Any of the representations or warranties of the party set forth in this Reimbursement Agreement or a Guaranty or in any other certificate, document, statement, instrument or agreement furnished to the Affected Party pursuant to the terms hereof or a Guaranty proves to have been materially false when made;

(d) Any material provision of this Reimbursement Agreement, the 2007 Notes or the Financing Document shall at any time for any reason cease to be valid and binding on a party, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by a party or any governmental agency or authority, or a party shall deny that it has any or further liability or obligation under this Reimbursement Agreement, the 2007 Notes or the Financing Document; or

(e) A party shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like for its property, or (ii) admit in writing its inability to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code (or any successor to such code) or file a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against such corporation in any bankruptcy, reorganization or insolvency proceeding, or to take any action for the purpose of effecting any of the foregoing, or (vi) if without the application, approval or consent of a party, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like or of all or any substantial part of the assets of such party or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested in good faith, the same shall (A) result in the entry of an order for relief or any such adjudication or appointment or (B) remain undismissed and unstayed for a period of 60 days.

If an Event of Default has occurred and is continuing each Affected Party may exercise, or cause to be exercised, any and all such remedies as it may have at law or in equity.

**8. Cumulative Remedies; Waiver.** No failure on the part of the City or the County to exercise, and no delay in exercising, any right hereunder or elsewhere shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder or elsewhere preclude any other or further exercise thereof or the exercise of any other right.

**9. Entire Agreement; Multiple Counterparts.** This Reimbursement Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and this Reimbursement Agreement may be executed, simultaneously, in multiple counterparts, each of which counterparts, together, shall constitute but one and the same instrument.

**10. Severability.** The provisions of this Reimbursement Agreement shall be severable; and in the event of the invalidity or unenforceability of any one or more phrases, sentences, clauses, Articles, Sections or parts contained in this Reimbursement Agreement, such invalidity or unenforceability shall

not affect the validity or enforceability of remaining portions of this Reimbursement Agreement or any remaining parts thereof.

**11. Amendment.** No amendment, waiver or consent of any provision of this Reimbursement Agreement shall be effective unless the same shall be in writing and executed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**12. Choice of Law.** This Reimbursement Agreement shall be construed in accordance with and shall be governed by the laws of the Commonwealth.

**13. Headings.** Section headings in this Reimbursement Agreement are included herein for convenience of reference only and shall not constitute a part of this Reimbursement Agreement for any other purpose.

**14. Continuing Obligation.** This Reimbursement Agreement and each Guaranty are continuing obligations and shall: (a) be binding upon the parties thereto and their respective successors and assigns; and (b) inure to the benefit of and be enforced by the parties thereto and their respective successors and assigns; provided that the Authority may not assign all or part of this Reimbursement Agreement without the prior written consent of the City and the County.

**15. Indemnification.** The Authority hereby indemnifies and holds harmless the City and the County from and against any and all damages, losses, liabilities, costs or expenses whatsoever which the City or the County may incur (or which may be claimed against the City or the County by any person or entity whatsoever) by reason of or in connection with the execution and delivery of, or payment or failure to pay under, a Guaranty; provided the Authority shall not be required to indemnify the City or the County for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by: (a) the respective willful misconduct or gross negligence of the City or the County; or (b) the City's or the County's willful failure under a Guaranty. Nothing in this Paragraph is intended to limit the reimbursement obligations contained in Paragraph 2 hereof.

**16. No Recourse.** No recourse under or upon any obligation, covenant or agreement contained herein shall be had against any past, present or future member, officer or employee of the Authority, the County or the City or of any successor of the Authority, the County or the City under any rule of law, statute or constitutional provision, or by enforcement of any assessment, or by any legal or equitable proceeding or otherwise, it expressly being agreed and understood that the obligations of the Authority hereunder are solely corporate obligations of the Authority and that no personal liability whatsoever shall attach to or shall be incurred by such members, officers or employees of the Authority or of any successor of the Authority, or any of them, because of such indebtedness or by reason of any obligation, covenant or agreement contained herein, or elsewhere, or implied therefrom, unless as a result of willful misconduct.

**17. Conflicts.** Insofar as possible the provisions of this Reimbursement Agreement shall be deemed complementary to the terms of each Guaranty but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable law, provided, however, that nothing herein contained shall limit or alter the City's or the County's obligations under their respective Guaranty.

**18. Notice.** All notices or other communications provided for in this Reimbursement Agreement shall be in writing and shall be delivered personally, or sent by certified or registered mail or overnight delivery service providing receipt against delivery (such as Federal Express), to the respective parties as follows:

if to the Authority:

The Harrisburg Authority  
One Keystone Plaza, Suite 104  
Front and Market Streets  
Harrisburg, PA 17101  
Attention: Executive Director

with a copy to:

Office of the Mayor, City of Harrisburg  
The Rev. Dr. Martin Luther King, Jr.  
City Government Center  
Ten North Second Street, Suite 405  
Harrisburg, PA 17101

with another copy to the Authority Solicitor:

Foreman & Foreman, P.C.  
6<sup>th</sup> Floor, Veterans Building  
112 Market Street  
Harrisburg, PA 17105-2015

if to the County:

Board of County Commissioners  
County of Dauphin  
2nd & Market Streets  
Harrisburg, PA 17101  
Attention: Chairman

with a copy to the County Solicitor:

[insert notice address]

if to the City:

Office of the Mayor, City of Harrisburg  
The Rev. Dr. Martin Luther King, Jr.  
City Government Center  
Ten North Second Street, Suite 405  
Harrisburg, PA 17101

with a copy to the City Solicitor:

City of Harrisburg  
The Rev. Dr. Martin Luther King, Jr.  
City Government Center  
Ten North Second Street, Suite 405  
Harrisburg, PA 17101

Attention: City Solicitor

if to the City Council:

City Council, City of Harrisburg  
The Rev. Dr. Martin Luther King, Jr.  
City Government Center  
Ten North Second Street, Suite 405  
Harrisburg, PA 17101  
Attention: President

Any party may change the designated recipient or address by written notice delivered to the other parties as required by this Section.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound, pursuant to proper authorization of their respective governing bodies, each causes this Reimbursement Agreement to be executed by its respective duly authorized officer or officers and to be attested by its respective duly authorized officer and its respective official or corporate seal to be affixed to this Reimbursement Agreement, all as of the day and year first above written.

**CITY OF HARRISBURG,  
Dauphin County, Pennsylvania**

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

(SEAL)

By: \_\_\_\_\_  
Controller

Approved as to Form and Legality

\_\_\_\_\_  
City Solicitor

**THE HARRISBURG AUTHORITY**

Attest:  
  
\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

(SEAL)

**COUNTY OF DAUPHIN, PENNSYLVANIA**

Attest:  
  
\_\_\_\_\_  
Chad Saylor  
Chief Clerk/Chief of Staff

\_\_\_\_\_  
Chairman, Board of Commissioners

\_\_\_\_\_  
Member, Board of Commissioners

(SEAL)

\_\_\_\_\_  
Member, Board of Commissioners

**EXHIBIT "C"**

**MAXIMUM LEASE RENTAL OBLIGATIONS**

Exhibit C

The Harrisburg Authority  
Guaranteed Resource Recovery Facility Limited Obligation Notes  
Series C and D of 2007

<u>Note Series</u>	<u>Maturity Date</u>	<u>Amount</u>	<u>Rate</u>	<u>Yield</u>	<u>Accreted Maximum Value at Maturity</u>
Series C of 2007	12/15/2010	\$20,964,000	5.000%	5.000%	24,310,000
Series D of 2007	12/15/2010	\$ 9,036,000	7.000%	7.000%	<u>11,105,000</u>
					35,415,000

**EXHIBIT "D"**

**USES OF THE PROCEEDS OF THE 2007 NOTES**

**The maximum aggregate amount of the lease rental debt shall be \$30,000,000, which proceeds of the 2007 Notes shall be allotted as follows:**

**The Harrisburg Authority: Resource Recovery Facility  
Working Capital Loan  
Tri Party Interim Funding Agreement Section 2.1**

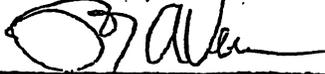
<b><u>(i) Immediate reimbursement to the County of the October 15, 2007 advancement of \$2,250,000</u></b>		
Reimbursement to County of advance to Covanta per Cooperation Agreement		\$2,250,000.00
<b><u>(ii) Immediate reimbursement to the City of the October 5, 2007 advancement of \$250,000</u></b>		
Reimbursement to City of advance to Covanta per Cooperation Agreement		250,000.00
<b><u>(iii) All operating expenses of the Resource Recovery Facility currently outstanding and through the calendar year 2008</u></b>		
Waste Management		782,982.69
Covanta Operating Deficit		6,500,000.00
2008 Covanta One-Month Prepayment per Long-term O&M Agreement (advance for 2/1/08 payment)		900,000.00
<b><u>Owed to THA:</u></b>		
2006 THA Wated/Sewer	1,117,096.07	
2007 THA Wated/Sewer (owed from 2007)	214,928.33	
2007 THA Wated/Sewer (remainder of 2007)	347,229.92	
2007 THA Trustee Fees (remainder of 2007)	87,000.00	
2007 Insurance Deductible (2 claims)	500,000.00	
<b>Sub-Total :</b>		<b>2,266,254.32</b>
<b><u>Owed to COH:</u></b>		
6/1/07 and 9/1/07 Debt Service Payments		3,456,097.99
<b><u>(iv) Debt service payments of the Resource Recovery Facility required on November 1 and December 1 of 2007 and for the calendar year 2008</u></b>		
Reimbursement to County for the net 12/1/07 (due 11-26) Debt Service Payment	3,100,000.00	
Reimbursement to City for portion of 11/1/07 Debt Service Payment	600,000.00	
2008 Debt Service (estimated net without Covanta construction loan pmts.)	11,449,338.00	
<b>Sub-Total :</b>		<b>15,149,338.00</b>
<b><u>(v) Payment in full of all outstanding County system fees (together with interest thereon), which fees have been collected by the Authority as agent for the County and which fees the Authority has failed to remit as required pursuant to its agreements with the County</u></b>		
County System Fees for 2006 & 2007		1,067,783.00
<b><u>(vi) Necessary costs and expenses of the Working Capital Facility including any reasonable fees of the leader, the Authority's financial advisor, Note Counsel and expenses of the professional advisors of the County</u></b>		
Professional Fees, Legal Fees, and Financing Costs (see attached page)		1,350,000.00
<b><u>(vii) Terms and conditions substantially consistent with the County's Resolution No. 24-2007</u></b>		0.00
<b><u>(viii) Such other terms and conditions consistent with discussions among counsel and acceptable to the Parties' advisors</u></b>		0.00
<b>SUB-TOTAL</b>		<b>33,972,456.00</b>
<b>LESS: 2008 Net Operating Income Available to Reduce Working Capital Loan per HDR 2008 Budget*</b>		<b>3,972,456.00</b>
<b>AMOUNT NEEDED FOR WORKING CAPITAL</b>		<b>\$30,000,000.00</b>

\*HDR 2008 Budget assumes operating revenues of \$26 million and operating expenses of \$22.1 million and assumes rate increases by the City (\$4.3 million) and County (\$1.3 million) become effective January 1, 2008.

OFFICE OF THE CITY CLERK  
Municipal Building  
Harrisburg, PA 17101

November 30 2007

I hereby certify that the foregoing Ordinance  
was passed by the City Council of the City of Harrisburg  
and signed by his Honor, the Mayor, on the 28<sup>th</sup> day  
of November, A.D., 2007.

  
Assistant City Clerk

The Patriot-News Co.  
812 Market St.  
Harrisburg, PA 17101  
Inquiries - 717-255-8237

The Patriot-News  
Now you know

ECKERT SEAMANS CHERIN & MELLOTT  
213 MARKET STREET  
8TH FLOOR

HARRISBURG

PA 17108

THE PATRIOT NEWS  
THE SUNDAY PATRIOT NEWS

Proof of Publication

Under Act No. 587, Approved May 16, 1929  
Commonwealth of Pennsylvania, County of Dauphin} ss

Joseph A. Dennison, being duly sworn according to law, deposes and says:

That he is the Assistant Controller of The Patriot News Co., a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office and place of business at 812 to 818 Market Street, in the City of Harrisburg, County of Dauphin, State of Pennsylvania, owner and publisher of The Patriot-News and The Sunday Patriot-News newspapers of general circulation, printed and published at 812 to 818 Market Street, in the City, County and State aforesaid; that The Patriot-News and The Sunday Patriot-News were established March 4th, 1854, and September 18th, 1949, respectively, and all have been continuously published ever since;

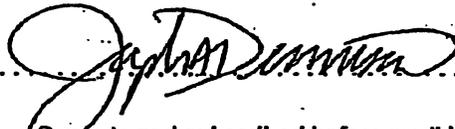
That the printed notice or publication which is securely attached hereto is exactly as printed and published in their regular daily and/or Sunday/ Metro editions which appeared on the date(s) indicated below. That neither he nor said Company is interested in the subject matter of said printed notice or advertising, and that all of the allegations of this statement as to the time, place and character of publication are true; and

That he has personal knowledge of the facts aforesaid and is duly authorized and empowered to verify this statement on behalf of The Patriot-News Co. aforesaid by virtue and pursuant to a resolution unanimously passed and adopted severally by the stockholders and board of directors of the said Company and subsequently duly recorded in the office for the Recording of Deeds in and for said County of Dauphin in Miscellaneous Book "M", Volume 14, Page 317.

PUBLICATION COPY

This ad # 0001780145 ran on the dates shown below:

November 17, 2007



Sworn to and subscribed before me this 20 day of November, 2007 A.D.

Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
James L. Clark, Notary Public  
City Of Harrisburg, Dauphin County  
My Commission Expires June 2, 2008

Member, Pennsylvania Association of Notaries

THA-ES001727

The Patriot-News Co.  
812 Market St.  
Harrisburg, PA 17101  
Inquiries - 717-255-8292

The Patriot-News  
Now you know

ECKERT SEAMANS CHERIN & MELLOTT, LLC  
CAROL P. COCHERES, ESQUIRE  
213 MARKET STREET

HARRISBURG PA 17101

THE PATRIOT NEWS  
THE SUNDAY PATRIOT NEWS

Proof of Publication

Under Act No. 587, Approved May 16, 1929  
Commonwealth of Pennsylvania, County of Dauphin} ss

Joseph A. Dennison, being duly sworn according to law, deposes and says:

That he is the Assistant Controller of The Patriot News Co., a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office and place of business at 812 to 818 Market Street, in the City of Harrisburg, County of Dauphin, State of Pennsylvania, owner and publisher of The Patriot-News and The Sunday Patriot-News newspapers of general circulation, printed and published at 812 to 818 Market Street, in the City, County and State aforesaid; that The Patriot-News and The Sunday Patriot-News were established March 4th, 1854, and September 18th, 1949, respectively, and all have been continuously published ever since;

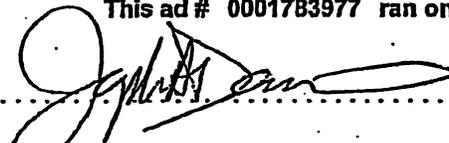
That the printed notice or publication which is securely attached hereto is exactly as printed and published in their regular daily and/or Sunday/ Metro editions which appeared on the date(s) indicated below. That neither he nor said Company is interested in the subject matter of said printed notice or advertising, and that all of the allegations of this statement as to the time, place and character of publication are true; and

That he has personal knowledge of the facts aforesaid and is duly authorized and empowered to verify this statement on behalf of The Patriot-News Co. aforesaid by virtue and pursuant to a resolution unanimously passed and adopted severally by the stockholders and board of directors of the said Company and subsequently duly recorded in the office for the Recording of Deeds in and for said County of Dauphin in Miscellaneous Book "M", Volume 14, Page 317.

PUBLICATION COPY

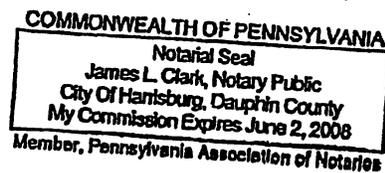
This ad # 0001783977 ran on the dates shown below:

November 30, 2007



Sworn to and subscribed before me this 30 day of November, 2007 A.D.

Notary Public



THA-ES001728

**CITY OF HARRISBURG, DAUPHIN COUNTY, PENNSYLVANIA  
DEBT STATEMENT PURSUANT TO SECTION 8110 OF  
THE LOCAL GOVERNMENT UNIT DEBT ACT**

STATEMENT AS OF NOVEMBER 20, 2007

<b>I.</b>	<b>Gross Incurred Debt</b>	
	A. Electoral	\$ _____ .00
	B. Nonelectoral	\$ 52,463,561.60
	C. Lease Rental	\$ 492,989,690.60 <sup>1</sup>

The \$52,463,561.60 of Nonelectoral Debt consists of the following:

Federally Taxable General Obligation Bonds, Series A of 1995	GOB-12582	\$ 4,826,485.90
Federally Taxable General Obligation Bonds, Series A1 of 1997	GOB-12946	\$ 2,880,000.00
General Obligation Refunding Bonds, Series D of 1997	GOB-13161	\$ 20,590,676.55
General Obligation Refunding Notes, Series F of 1997	GON-9838	\$ 23,774,835.30
General Obligation Note, Series A of 2003	GON-11337	\$ 83,004.50
General Obligation Note, Series B of 2003	GON-11337	\$ 225,012.21
General Obligation Note, Series C of 2003	GON-11337	\$ 83,547.14
<b>TOTAL</b>		<b>\$ 52,463,561.60</b>

The \$492,989,690.60 of Lease Rental Debt consists of the following:

Harrisburg Parking Authority Guaranteed Parking Revenue Note, Series K of 2000	LRA-3409, E-2766	\$ 11,800,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series J of 2001	LRA-3409, E-2766	\$ 28,565,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Bonds, Series of 2001	LRA-3690, E-3001	\$ 17,090,000.00 <sup>2</sup>
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series N of 2003	LRA-4071, E-3420	\$ 5,820,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series O of 2003	LRA-4078, E-3428	\$ 13,160,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Bonds, Series P-1 of 2005 and Guaranteed Parking Revenue Bonds, Series P-2 of 2005 (Federally Taxable)	LRA-4381, E-3795	\$ 16,630,000.00
Harrisburg Parking Authority Guaranteed Parking Variable Rate Revenue Refunding Notes, Series Q of 2011 <sup>3</sup>	LRA-4441	\$ 29,000,000.00

<sup>1</sup> Does not include \$30,000,000, maximum aggregate stated value at issuance, of lease rental debt proposed to be incurred by the City of Harrisburg, Dauphin County, Pennsylvania (the "City") pursuant to proceedings filed with the Department of Community and Economic Development (the "Department"), to which this Debt Statement is attached. The proposed lease rental debt to which this Debt Statement is attached consists of the guaranty by the City of the \$20,964,000, maximum aggregate stated value at issuance, Guaranteed Resource Recovery Facility Limited Obligation Notes, Series C of 2007 (the "2007C Notes"), and \$9,036,000, maximum aggregate stated value at issuance, Guaranteed Federally Taxable Resource Recovery Facility Limited Obligation Notes, Series D of 2007 (the "2007D Notes"), to be issued by The Harrisburg Authority (the "Authority").

<sup>2</sup> Reflects actual amount of outstanding Bonds, as reflected in the debt service schedule sent to the Department on June 30, 2003. The schedule of actual debt service varies from the schedule of debt service included in the proceedings approved by the Department, and on file in the Department's records.

<sup>3</sup> Proceeds of the Series Q Notes, upon their expected issuance by the Harrisburg Parking Authority (the "Parking Authority") in 2011, will be applied on or about September 1, 2011 to refund and redeem all Series J Bonds then outstanding which are scheduled to mature after September 1, 2011. The principal amount of Series J Bonds scheduled to be so refunded and redeemed on September 1, 2011 is \$26,660,000. The City is taking as a credit in Section II hereof the amount of Series J Bonds (\$26,660,000) expected to be so refunded and redeemed on September 1, 2011.

Harrisburg Parking Authority Guaranteed Parking Revenue Bonds, Series R of 2007 LRA-4592, E-4063	\$ 16,965,000.00
Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series S of 2007 <sup>4</sup> LRA-4642, E-4131	\$ 15,000,000.00
Harristown Development Corporation Lease Revenue Bonds (Taxable), Series of 1992 LRA-2074, E-1399	\$ 7,355,863.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Revenue Bonds, Series A of 1998 LRA-3334, E-2587	\$ 6,920,525.00
Redevelopment Authority of the City of Harrisburg Guaranteed Revenue Bonds, Series B of 1998 LRA-3335, E-2588	\$ 16,716,758.20
Redevelopment Authority of the City of Harrisburg Taxable Guaranteed Revenue Bonds, Series of 2001 LRA-3688, E-3000	\$ 18,750,000.00
Redevelopment Authority of the City of Harrisburg Taxable Guaranteed Revenue Bond, Series of 2004 LRA-4148, E-3507	\$ 1,950,000.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Variable Rate Revenue Bonds (Stadium Project), Series A-1 of 2005 LRA-4281, E-3675	\$ 8,620,000.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Revenue Bonds (Stadium Project), Series A-2 of 2005 LRA-4281, E-3675	\$ 8,790,000.00
Redevelopment Authority of the City of Harrisburg Federally Taxable Guaranteed Revenue Note, Series of 2006 LRA-4591	\$ 7,200,000.00
The Harrisburg Authority Guaranteed Sewer Revenue Note, Series A of 1998, Federally Taxable Guaranteed Sewer Revenue Note, Series B of 1998 LRA-3106, E-2382	\$ 2,131,544.40
The Harrisburg Authority Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A of 1998 LRA-3238, E-2492	\$ 11,270,000.00
The Harrisburg Authority Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002 LRA-3820	\$ 16,330,000.00
The Harrisburg Authority Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A of 2003, Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes, Series B of 2003, Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003 LRA-3954, E-3295	\$ 75,925,000.00
The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 LRA-4089, E-3444	\$ 125,000,000.00
The Harrisburg Authority Obligation to Reimburse Covanta Harrisburg, Inc. for Amounts Advanced under a Management and Professional Services Agreement LRA-4687	\$ 25,500,000.00
The Harrisburg Authority Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue Note, Series A of 2007 LRA-4691	<u>\$ 6,500,000.00</u>
<b>TOTAL</b>	<b>\$ 492,989,690.60</b>

<sup>4</sup> The Parking Authority's Series S of 2007 Bonds have been authorized for issuance, to refund the Parking Authority's Series P-I of 2005 Bonds. However, because of the market conditions, the Series S of 2007 Bonds have not yet been issued.

II. Credits and Exclusions \$ 439,946,176.50

	<u>Gross Indebtedness</u>	<u>Electoral</u>	<u>Nonelectoral</u>	<u>Lease Rental</u>
Less:				
1. Sinking funds, reserve funds or accounts, bond proceeds	\$ _____	.00	\$ _____	.00
2. Current appropriation	\$ _____	.00	\$ _____	.00
3. Uncollected special assessments	\$ _____	.00	\$ _____	.00
4. Delinquent taxes and liens	\$ _____	.00	\$ _____	.00
5. Self-liquidating and subsidized debt	\$ _____	.00	\$ _____	.00
6. Surplus cash	\$ _____	.00	\$ _____	.00
7. Solvent debts due	\$ _____	.00	\$ _____	.00
8. Indemnifying insurance	\$ _____	.00	\$ _____	.00
9. Credits	\$ _____	.00	\$ 4,826,485.90 <sup>5</sup>	\$ 26,660,000.00 <sup>6</sup>
<b>Total Net Indebtedness</b>	<b>\$ _____</b>	<b>.00</b>	<b>\$47,637,075.70</b>	<b>\$ 57,870,000.00</b>

III. Net Debt Outstanding

A. Net Electoral Debt	\$ 0.00
B. Net Nonelectoral Debt	\$ 47,637,075.70
C. Net Lease Rental Debt	\$ 57,870,000.00
D. Combined Net Nonelectoral Debt and Net Lease Rental Debt	\$ 105,507,075.70

IV. The maximum aggregate stated value at issuance of lease rental debt being incurred, evidenced by the City's guaranty of the Authority's 2007C Notes and 2007D Notes \$ 30,000,000.00

V. The borrowing base as shown by appended borrowing base certificate \$ 55,659,263.00

VI. Applicable debt limitations

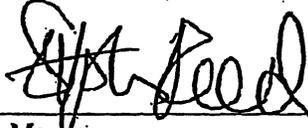
(a) nonelectoral - 250% of the borrowing base	\$ 139,148,157.50
(b) nonelectoral plus lease rental - 350% of the borrowing base	\$ 194,807,420.50

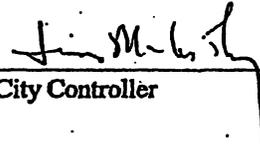
<sup>5</sup> Pursuant to Section 8022(c) of the Act, the principal amount of bonds issued to fund unfunded actuarial accrued liability, after deducting therefrom the principal amount of such bonds attributable to costs of issuance, underwriter's discount and original issue discount, is not subject to debt limitations. Applying such deductions to the principal amount of the City's Federally Taxable General Obligation Bonds, Series A of 1995, the debt incurred to fund unfunded actuarial accrued liability is \$4,826,485.90 and is not subject to "regular debt limits" under the Act.

<sup>6</sup> Reflects the principal amount of the Parking Authority's Series J Bonds expected to be refunded and redeemed on September 1, 2011 with proceeds of the Parking Authority's Series Q Notes.

IN WITNESS WHEREOF, we, the undersigned, Mayor and City Controller, respectively, of the City of Harrisburg, Dauphin County, Pennsylvania, affix our signatures to this Debt Statement of the City, as of the 20<sup>th</sup> day of November, 2007.

CITY OF HARRISBURG,  
DAUPHIN COUNTY, PENNSYLVANIA

By:   
Mayer

By:   
City Controller

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF DAUPHIN

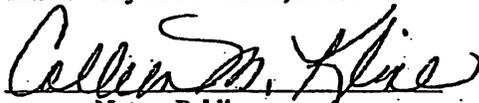
We, the undersigned, first being duly sworn individually according to law, verify, depose and say that: we are the Mayor and City Controller, respectively, of the City of Harrisburg, Dauphin County, Pennsylvania (the "Local Government Unit"); we prepared and executed the foregoing Debt Statement of the Local Government Unit; and the facts contained in the foregoing Debt Statement of the Local Government Unit are true and correct.

CITY OF HARRISBURG,  
DAUPHIN COUNTY, PENNSYLVANIA

By:   
Mayor

By:   
City Controller

SWORN TO AND SUBSCRIBED  
before me, a Notary Public,  
this 29<sup>th</sup> day of November, 2007.

  
Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Colleen M. Kline, Notary Public  
City Of Harrisburg, Dauphin County  
My Commission Expires July 4, 2010  
Member, Pennsylvania Association of Notaries

**BORROWING BASE FOR  
CITY OF HARRISBURG**

1. We, the undersigned, certify that:

(a) We are presently the duly elected Mayor and City Controller of the CITY OF HARRISBURG, Dauphin County, Pennsylvania (the "City"), the City being a "Local Government Unit", as such phrase is defined in the "Local Government Unit Debt Act", 53 Pa.C.S. § 8001 et seq. (the "Act"), of the Commonwealth of Pennsylvania.

(b) We are the officials of the City legally responsible for auditing the financial affairs of the City.

(c) We are familiar with applicable provisions of the Act.

2. We, the undersigned, further certify, in accordance with provisions of Section 8002(c)(3) of the Act, as follows:

(a) All money received by the City, from whatever source derived, for each of the three (3) full fiscal years ended next preceding the date of the Borrowing Base Certificate, were as follows:

<u>Fiscal Year Ended 12/31/04</u>	<u>Fiscal Year Ended 12/31/05</u>	<u>Fiscal Year Ended 12/31/06</u>
\$62,058,748	\$57,142,795	\$62,676,953

(b) The deductions or exceptions of the City from the amounts set forth in Paragraph 2(a), for each of three (3) full fiscal years ended next preceding the date of this Borrowing Base Certificate, were as follows:

<u>Deduction or Exception</u>	<u>Fiscal Year Ended 12/31/04</u>	<u>Fiscal Year Ended 12/31/05</u>	<u>Fiscal Year Ended 12/31/06</u>
(1) Required by Section 8002(c)(16)(i) of the Act	\$ -0-	\$ -0-	\$ -0-
(2) Required by Section 8002(c)(16)(ii) of the Act	\$ -0-	\$ -0-	\$ -0-
(3) Required by Section 8002(c)(16)(iii) of the Act	\$ -0-	\$ -0-	\$ -0-
(4) Required by Section 8002(c)(16)(iv) of the Act	\$ -0-	\$ -0-	\$ -0-
(5) Required by Section 8002(c)(16)(v) of the Act	<u>\$ 9,912,097</u>	<u>\$ 2,433,888</u>	<u>\$ 2,554,721</u>
<b>SUBTOTAL</b>	<b>\$ 9,912,097</b>	<b>\$ 2,433,888</b>	<b>\$ 2,554,721</b>

(c) The "Total Revenues", as such phrase is defined in the Act, of the City, for each of the three (3) full fiscal years ended next preceding the date of this Borrowing Base Certificate being, for each such fiscal year, the total amount set forth in Paragraph 2(b) deducted from the amount set forth in Paragraph 2(a), were as follows:

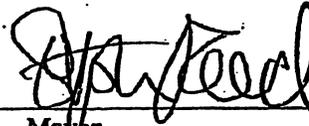
<u>Fiscal Year Ended 12/31/04</u>	<u>Fiscal Year Ended 12/31/05</u>	<u>Fiscal Year Ended 12/31/06</u>
\$52,146,651	\$54,708,907	\$60,122,232

the total of which is \$166,977,790.

(d) The annual arithmetic average of such Total Revenues for the full three (3) years ended next preceding the date of this Borrowing Base Certificate, as such Total Revenues are set forth in Paragraph 2(c), is \$55,659,263.

We, the undersigned, further certify that we have made due and proper investigation of and with respect to matters and things involved in this Borrowing Base Certificate.

IN WITNESS WHEREOF, we affix our hands, as of this 20<sup>th</sup> day of November, 2007.



Mayor



City Controller

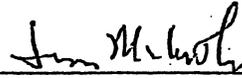
CITY OF HARRISBURG  
DAUPHIN COUNTY, PENNSYLVANIA

SECTION 8110(b) CERTIFICATE

In compliance with Section 8110(b) of the Local Government Unit Debt Act, it is hereby certified that with regard to debt of the City of Harrisburg, Dauphin County, Pennsylvania, previously excluded as self-liquidating, credited or as subsidized, no decrease in the amount to be excluded is required by any change in circumstance other than decreases resulting from the payment of bonds or notes.



\_\_\_\_\_  
Mayor



\_\_\_\_\_  
City Controller

Dated as of November 20, 2007



Eckert Seamans Cherin & Mellott, LLC  
213 Market Street - 8th Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Richard D. Michael  
717.237.6036  
rmichael@eckertseamans.com

Via Hand Delivery

CSC

NOV 30 2007

November 30, 2007

CUSTOMER SERVICE CENTER

Bernadette Barattini, Esquire  
Commonwealth of Pennsylvania  
Department of Community and Economic Development  
Office of Chief Counsel  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Re: The Harrisburg Authority - \$20,964,000, maximum aggregate stated value at issuance, Guaranteed Resource Recovery Facility Limited Obligation Notes, Series C of 2007 and \$9,036,000, maximum aggregate stated value at issuance, Guaranteed Federally Taxable Resource Recovery Facility Limited Obligation Notes, Series D of 2007

Dear Ms. Barattini:

Enclosed for review and approval are two (2) sets of proceedings submitted on behalf of the City of Harrisburg, Dauphin County, Pennsylvania (the "City") in connection with its proposed incurrence of lease rental debt, in an amount not to exceed \$30,000,000, to be evidenced by its guaranty of a \$20,964,000, maximum aggregate stated value at issuance, Guaranteed Resource Recovery Facility Limited Obligation Notes, Series C of 2007 and \$9,036,000, maximum aggregate stated value at issuance, Guaranteed Federally Taxable Resource Recovery Facility Limited Obligation Notes, Series D of 2007, to be issued by The Harrisburg Authority. In addition, enclosed is the filing fee in the amount of \$987.50.

Please note that closing on the issuance of these Notes has been scheduled for the week of December 17, 2007.

If you have any questions concerning the enclosed proceedings, please contact me. When the proceedings are approved by the Department, please contact me at (717) 237-6036 so that arrangements can be made to pick up the proceedings.

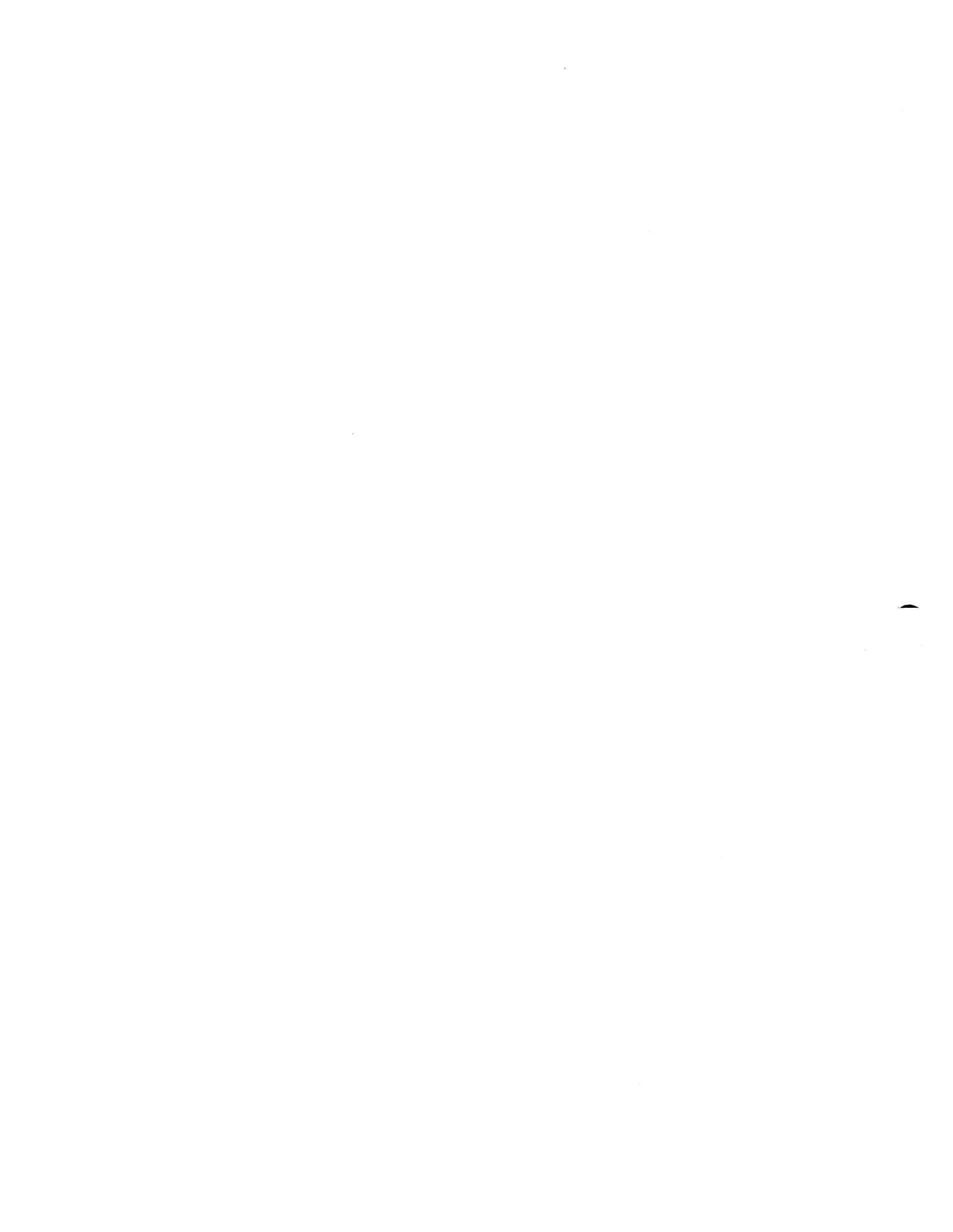
Very truly yours,

Richard D. Michael

RDM:pgh  
Enclosures

4:00

James Ellison, Esq. (Rhoads & Sinon)



**RHOADS & SINON LLP**

ATTORNEYS AT LAW  
TWELFTH FLOOR

ONE SOUTH MARKET SQUARE  
P.O. BOX 1146  
HARRISBURG, PA 17108-1146

TELEPHONE (717) 233-5731

FAX (717) 231-6600

EMAIL [jwalter@rhoads-sinon.com](mailto:jwalter@rhoads-sinon.com)

WEBSITE: [www.rhoads-sinon.com](http://www.rhoads-sinon.com)

OF COUNSEL  
HENRY W. RHOADS

RETIREE  
JOHN C. DOWLING

PAUL H. RHOADS  
1987-1989  
FRANK A. SINON  
1910-2000

JOHN M. MUSSELMAN  
1919-1980  
CLYDE R. HENDERSHOT  
1922-1980

DIRECT DIAL NO.  
(717) 233-5731

FILE NO.

6661/01

ROBERT H. LONG, JR.<sup>1</sup>  
SHERILL T. MOYER  
JAN P. PADEN  
RICHARD B. WOOD  
LAWRENCE B. ABRAMS III<sup>2</sup>  
J. BRUCE WALTER  
JOHN P. MARBECK  
FRANK J. LESER  
PAUL A. LUNDEEN  
JACK F. HURLEY, JR.  
DAVID B. DOWLING  
DAVID F. O'LEARY  
DAVID O. TWADDELL  
CHARLES J. PERRY  
STANLEY A. SMITH  
JENS H. DANGAARD<sup>3</sup>  
DRAKE D. NICHOLAS  
THOMAS A. FRINCH  
DEAN H. DUSINBERRE  
DONNA M.J. CLARK  
CHARLES E. GUTSHALL  
PAUL F. WESSELL  
SHAWN D. LOCHINGER  
JAMES H. CAWLEY

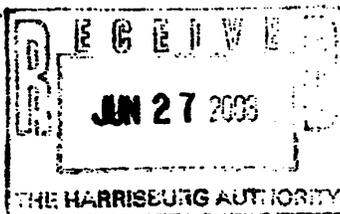
DEAN F. PIERMATTIE  
KENNETH L. JOEL  
DEBRA M. KRIETE  
TODD J. SHILL  
DAVID M. BARASCH  
THOMAS J. NEHILLA  
ROBERT J. TRUBICK  
TIMOTHY J. NIEMAN  
LORI J. McELROY  
KEVIN M. GOLD  
CARL D. LUNDBLAD  
JAMES E. ELLISON  
RICHARD E. ARTYELL  
PAUL J. BRUDER, JR.<sup>4</sup>  
JOANNE BOOK CHRISTINE  
MICHAEL W. WINFIELD  
KATHRYN G. SOPHY  
STEPHANIE E. DIVITTORR  
KATHLEEN D. BRUDER  
CHRISTY L. PECK  
JOHN M. COLES  
HEATHER Z. KELLY  
JAMES J. MARCO  
JENNIFER ZIMMERMAN

<sup>1</sup> ALSO ADMITTED TO THE DISTRICT OF COLUMBIA BAR  
<sup>2</sup> ALSO ADMITTED TO THE FLORIDA BAR  
<sup>3</sup> ALSO ADMITTED TO THE MARYLAND BAR  
<sup>4</sup> ALSO ADMITTED TO THE NEW JERSEY BAR  
<sup>5</sup> ALSO ADMITTED TO THE NEW YORK BAR

June 26, 2003

Re: The Harrisburg Authority - Conflict of Interest

The Harrisburg Authority  
Attn: Thomas J. Mealy, Executive Director  
One Keystone Plaza, Suite 104  
Front & Market Streets  
Harrisburg, PA 17101



Dear Tom:

A question has arisen concerning members of the Authority and conflicts of interest in business where they may be involved.

There are essentially two pieces of legislation to be concerned with, the Public Official and Employee Ethics Law, 65 P.S. 401 et seq., and the Municipality Authorities Act, 53 P.S. 301 et seq., repealed, now at 53 Pa. C.S. 5601, et seq. The Public Official and Employee Ethics Law excuses from the definition of "Conflict of Interest" a diminutive economic impact situation. This would exclude any transaction in which the financial interest of the member does not comprise more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness. Given that definition, the Ethics Act does not appear to be a difficulty for the facts as presented.

The provisions of the Municipality Authorities Act is more problematical. At Section 5614(e), the term "conflict of interest" is defined in the following fashion:

"No member of the Authority or officer or employee of the Authority may directly or indirectly be a party to or be interested in any contract or agreement with the Authority if the contract or agreement establishes liability against or indebtedness of the Authority."

Under this definition, any member of the Authority who indirectly is interested in any contract or agreement with the Authority would violate the conflict of interest provisions. Similarly, any contract with the City which requires the Authority to pay or otherwise establish an Authority liability would violate this provision.

477794.1

YORK:

TELEPHONE (717) 843-1718, FAX (717) 232-1459

AFFILIATED OFFICE:

STE. 203, 1780 S. DIXIE HWY, BOCA RATON, FL 33432  
TELEPHONE (561) 395-5595, FAX (561) 395-9497

LANCASTER:

TELEPHONE (717) 397-4431, FAX (717) 232-1459

✓ COPY: BOARD MEMBER

---

**RHOADS & SINON LLP**

June 26, 2003

Page 2

It is of note that the Municipality Authorities Section is self-executing and any contract or agreement made in violation of the Section is void. This provision would need to be kept in mind in any future dealings of the Authority. The two Acts are to be construed separately. A violation of either one is a problem.

Very truly yours,

RHOADS & SINON LLP

By:   
J. Bruce Walter

4:30

David Unkovic, Esq. (former Receiver, City of Harrisburg)



**STATEMENT OF DAVID UNKOVIC**

**PRESENTED TO THE PENNSYLVANIA SENATE LOCAL GOVERNMENT COMMITTEE**

**IN CONNECTION WITH ITS HEARING ON THE HARRISBURG INCINERATOR DEBT**

**ON NOVEMBER 13, 2012**

Thank you for the opportunity to testify on this important issue. I salute Senators Eichelberger and Blake and the other members of the committee and Senator Folmer for holding these hearings.

Based on my experience as the first receiver for the City of Harrisburg and as a bond lawyer for over thirty years in Pennsylvania, I would like to make the following recommendations for consideration by your committee:

**1. Amend the Local Government Unit Debt Act to improve the DCED debt approval process including the review of proposed self-liquidating debt.**

In a typical issuance of debt by a local government in Pennsylvania, there is a basically a two step process. First, the debt is priced in the market and the local government signs a bond purchase agreement with the underwriter locking in the terms of the debt – this is called “the bond sale”. Second, about 30 days later the bond issue closes and the debt is issued. This is similar to entering into an agreement of sale when you buy or sell a house and then you close on the sale about 30 days later. During this 30 day window in a debt issuance, the local government files certain documents with the Department of Community and Economic Development (DCED), and DCED has 20 days to approve or disapprove the debt. The review at DCED is done by one lawyer in DCED’s Office of Chief Counsel. The lawyer reviews the filing to see if the debt structure complies with the requirements of the Local Government Unit Debt Act (the Debt Act) and to see if the amount of debt outstanding is within the local government’s debt limit. If these requirements are satisfied, DCED approves the debt and then the local government can proceed to closing on the debt.

As part of this DCED approval process, the local government may request that the debt be treated as self-liquidating and not counted against its normal debt limit on the basis that the project being financed, such as a water system, will generate sufficient revenues to pay for its ongoing operating costs and the payments on its debt. The local government files an expert’s report with DCED which is reviewed by the same DCED lawyer. If the report meets the requirements of the Debt Act, then DCED approves the treatment of the debt as self-liquidating and it is not counted against the local government’s debt limit.

Each time the local government files with DCED for approval of new debt, the local government, if it has self-liquidating debt outstanding, must also certify “that no decrease in the amounts [of debt] to be excluded [as self-liquidating] is required by any change in circumstances or, if there has been a change ... that less debt is to be excluded.” This requirement is in Section 8110(b) of the Debt Act, and the

certification is commonly referred to as an “8110(b) certificate”. In other words, the local government must certify that its existing self-liquidating debt continues to in fact be self-liquidating, or if it is not, how much of that debt, if any, should be considered to still be self-liquidating. This is simply a certificate filed with DCED; it is not required to be accompanied by a new expert’s report. The DCED lawyer reviews this certificate in connection with the debt approval process for the new debt.

As representatives from DCED testified to you on October 4, this is essentially a “check the box” approval process to make sure the technical requirements of the Debt Act are being met, but it is not a substantive financial review of whether the debt makes sense for the local government. Other states, such as North Carolina and New Jersey, do undertake a substantive financial review at the state level of proposed debt issuances by local governments.

I would suggest the following changes to the Debt Act with respect to the DCED approval process:

There should be a two step review and approval process by DCED. Under the current approval process, in a typical situation, DCED does not even know that the local government is intending to issue debt until the “bond sale” has already occurred. Buyers of the debt are already lined up by the time the filing is made with DCED. This puts tremendous pressure on DCED to approve the debt, because if the debt is disapproved by DCED, the local government will not be able to meet its commitment under the bond sale. The buyers who expected to buy the debt are angry, and this could likely negatively affect the terms the local government will get when it goes into the market again.

The Debt Act should be amended to require a new, first filing with DCED before any bond sale takes place. The local government should have to notify DCED that it intends to issue debt and should have to present evidence to DCED of the following items:

- (1) Proof that the local government is up to date on its audited financial statements. The lack of financial statements is a very large red flag that there may be serious financial problems. If the local government does not have up-to-date audited financial statements, DCED should be empowered to prevent the local government from issuing debt until it does have such statements.
- (2) Proof that the local government is up to date on its secondary market disclosures for its existing debt. Under Securities and Exchange Commission (SEC) Rule 15c2-12, if a local government issues debt that is publicly sold, the local government must make filings with the Municipal Securities Rulemaking Board’s electronic EMMA System (<http://emma.msrb.org>), including annual updates of basic financial information and notice of any extraordinary events such as payment defaults. This enables owners of existing debt in the market to understand the current financial condition of the local government. The failure of a local government to meet its disclosure obligations under Rule 15c2-12 is another very large red flag that there may be serious financial problems. If the local government is not up to date in its disclosure obligations under Rule 15c2-12, DCED should be empowered to prevent the local government from issuing debt until it is in compliance.

- (3) If the local government intends the proposed debt to be self-liquidating, proof that the debt will be self-liquidating. DCED should have an employee with a financial background review the self-liquidating analysis and also review the general financial condition of the local government as reflected in its audited financial statements. If DCED does not accept the self-liquidating analysis of the local government, DCED should be empowered to deny the treatment of the debt as self-liquidating. The local government could then only issue the debt if it fits within its normal debt limit under the Debt Act.
- (4) If the local government has existing debt which was previously approved by DCED as self-liquidating, proof that the debt continues to be in fact self-liquidating. The DCED employee with a financial background would also review this self-liquidating analysis. If DCED does not accept the analysis of continued self-liquidating status, DCED should be empowered to withdraw the self-liquidating treatment of that debt.
- (5) If the local government wishes to issue refunding debt which does not have net present value savings, proof that the refunding is a sound financial transaction and is in the best long term financial interest of the local government. The DCED employee with a financial background should review the refunding proposal. If DCED does not agree that the refunding is a sound financial transaction or is not in the best long term financial interest of the local government, DCED should be empowered to prevent the local government from issuing the debt.
- (6) If the local government wishes to issue debt over 10% of the proceeds of which will be used for working capital, proof that the financing is a sound financial transaction and is in the best long term financial interest of the local government. If DCED does not agree that the proposed debt is a sound financial transaction or is not in the best long term financial interest of the local government, DCED should be empowered to prevent the local government from issuing the debt.

Once DCED is satisfied on these six points, it could issue a "preliminary approval" of the debt and allow the local government to proceed with the bond sale process. Once the debt is priced, the local government would then come back to DCED for the regular approval of the debt as contemplated under current law.

I believe this two step process, which includes a substantive review by DCED of some basic financial requirements, would flush out any serious problem situations and avoid the sort of irrational piling on of inappropriate debt of the type which took place in Harrisburg.

The Debt Act should also be amended to require DCED to retain its approval records for a bond issue until five years after the bond issue has been paid off.

The Debt Act should additionally be amended to prohibit any local government from collecting a "guaranty fee". If a local government chooses to guaranty the debt of an authority, it should do so solely to help the marketing of the authority's debt, not to make money for the local government's own purposes.

**2. Amend the Debt Act and the Municipality Authorities Act to prohibit local governments and authorities from entering into any new interest rate swap agreements.**

Pages 80 to 98 of "The Harrisburg Authority Resource Recovery Facility Forensic Investigation Report" dated January 12, 2012 (the Forensic Report) contain a very disturbing description of the swaps entered into in connection with the Harrisburg incinerator debt:

<http://www.hbgauthority.com/news/Forensic%20Investigation/Harrisburg%20Report.pdf>.

Auditor General Jack Wagner issued a report in 2009 on swaps entitled "A Special Investigation of the Bethlehem Area School District, Lehigh/Northampton Counties: A Case Study of the Use of Qualified Interest Rate Management Agreements ("Swaps") By Local Government Units in Pennsylvania, With Recommendations" (<http://www.auditor.gen.state.pa.us/Reports/Investigations/invBASD111809.pdf>). This report contains a fairly detailed description of the swaps which have been entered into by local governments, including school districts, in Pennsylvania. The Auditor General recommended eliminating swaps for local governments in Pennsylvania.

The Pennsylvania Budget and Policy Center published a report in January 2012 analyzing the swaps entered into by the City of Philadelphia and the Philadelphia School District: <http://pennbpc.org/too-big-to-trust>. The Center estimated that the combined losses of the City and School District through last year on their swap transactions were \$331 million, and they have the potential of \$240 million more of losses in the future. Philadelphia City Council held a hearing on October 23, 2012 to look into the City's swaps.

The Debt Act was amended by Act 23 of 2003 to permit local governments to enter into interest rate swaps and similar derivative instruments (I refer to them here simply as "swaps"). The broad contractual powers of authorities under the Municipality Authorities Act have been interpreted by bond lawyers to allow authorities to enter into swaps.

In simple terms, a swap is an agreement between two parties to trade payment obligations. For example, a local government agrees to pay a financial institution payments based on a fixed interest rate of 4% and the financial institution agrees to pay the local government payments based on a variable rate formula such as 67% of One Month LIBOR. The parties basically graft the swap onto a bond issue. The local government might issue bonds with a variable rate. When you add the swap on top, the financial institution pays the local government a variable rate which is "expected" to equal the variable rate due on the bonds, and the local government pays the financial institution the fixed rate of 4%. The net effect, when it works properly, is that the local government ends up with a 4% fixed rate obligation even though the local government originally issued variable rate bonds. If a party to a swap wants to get out of it early, the party may have to pay a "termination payment" or "termination fee" which could be in the many millions of dollars.

As confusing as the last paragraph is, that is about as simple a description of a swap as one can give. Swap transactions can have an unlimited number of complexities that can make them extremely difficult to understand.

Add to this the reports that LIBOR, the variable rate commonly used in swaps, may have been manipulated by large financial institutions (<http://www.economist.com/node/21558281>).

There no doubt have been “good” and “fair” swap transactions entered into by local governments and authorities since 2003, and swaps are not inherently “evil”. However, there have also without doubt been some very bad swap transactions entered into by local governments and authorities.

The bottom line for me is, if you view the nine years of swaps under the Debt Act as an experiment, it has been a failed experiment, and it should be discontinued. Swaps are simply too volatile for local governments. All the risks in swaps that seemed so theoretical up to 2007 became real and active once the Great Recession hit. The plunging interest rates put local government officials in the difficult position of trying to decide when to get out of swaps which had gone bad.

One financially strong county in Pennsylvania agonized for years over when to get out of a swaption (which is a particular type of swap). Five years ago they could have gotten out by paying a termination fee of \$4 million. It is extremely difficult politically for public officials to vote to send \$4 million to a financial institution to get out of a swap. So those county officials waited and waited. Meanwhile interest rates kept going down and the termination fee kept going up. Finally, under the terms of the swaption, the officials needed to terminate the swaption this year. They paid over \$24 million to terminate the swaption. I do not relate this to criticize those officials, but to point out that the types of decisions required when an entity enters into or gets out of a swap are simply incompatible with the environment in which public officials have to operate. That means that local governments and authorities should be prohibited from entering into swaps. The county council in the situation I described above adopted a resolution in July of this year setting a policy to never enter into a swap transaction again; they described swaps as a “financial nightmare and predatory gimmick”.

The Debt Act and the Municipality Authorities Act should be amended to prohibit local governments and authorities from entering into new swaps. There are also other statutes governing other types of authorities (for example, parking, housing and redevelopment) which could also be amended to prohibit the future use of swaps.

Let me just say one more thing about swaps. If a bill is introduced to eliminate swaps, the financial industry will no doubt heavily lobby the General Assembly not to eliminate swaps but to add additional “protections” for the local governments. You should not accept these arguments. If you continue to allow the use of swaps, even with additional protections, I believe it is inevitable that there will be more multi-million dollar fiascos that result for local governments and authorities. This is one of those situations in which you really do need to protect Main Street (your local communities) from Wall Street.

- 3. Amend the Debt Act to include criminal penalties for knowingly participating in an ultra vires act of a local government or for filing a materially false certification with DCED or for aiding and abetting any such act or filing.**

One thing that came out of the Great Depression of the 1930’s was the realization that the securities markets cannot operate under the principle of *caveat emptor* (buyer beware). The securities industry needs to be regulated, and those professionals and financial institutions which are part of the securities industry need to deal honestly and in good faith with the issuers and the investors. The approval process under the Debt Act, with its minimal review by DCED, has also relied on the honesty and good

faith of the professionals and financial institutions who are involved in the issuance of debt by Pennsylvania's local governments.

It seems to be an inescapable conclusion from reading the Harrisburg Forensic Report that the debt issuance process went horribly wrong on the many incinerator financings. The number one policy goal of the Debt Act is to prevent a local government from issuing more debt than can be supported by its taxpayers. All the detailed provisions of the Debt Act are geared to fulfilling that policy goal. The parties involved in the incinerator financings should have known very well that preventing the over issuance of debt is the main goal of the Debt Act – certainly for the bond lawyers there can be no question that they understood that policy. And yet, as described in the Forensic Report, the self-liquidating provisions were stretched or twisted or distorted or ignored or violated, and the City incurred over \$300 million of debt in incinerator financings that its taxpayers simply are incapable of paying.

Although the overwhelming majority of Debt Act financings are undertaken in compliance with the letter and spirit of the law, I believe it is necessary to have specific criminal penalties in the Debt Act to put the fear of the law into participants in financings that are highly questionable or illegal. It is particularly important that public officials who are filing certifications with DCED, and professionals and others who assist those public officials, are not knowingly filing materially false or misleading certifications. There is a statute in Pennsylvania which makes it a second degree misdemeanor to make “a false statement under oath or equivalent affirmation .... intended to mislead a public servant in performing his official function.” (18 Pa.S.A. 4209.) A violation of this statute is punishable by up to two years in prison and a fine of \$5,000. This statute could be the basis for an investigation over what happened on the Harrisburg incinerator debt. But it will be even more effective in future situations if there is a specific criminal provision included in the Debt Act itself.

The inappropriateness of false certifications is already contemplated by the Debt Act. Section 8209(b) provides as follows: “Liability for willful violations or fraud. – This section does not relieve any person participating in the proceedings from liability for knowingly participating in an ultra vires [*means - beyond the power*] act of a local government unit or from any civil or criminal liability for false statements in any certificates filed or delivered in the proceedings.” The Debt Act should be amended to include specific criminal violations and penalties for knowingly participating in an ultra vires act of the local government or for the knowing filing of materially false or misleading certifications or for aiding and abetting any such act or filing.

#### **4. The General Assembly should pass no further extensions of the bankruptcy prohibition.**

As you know, the City of Harrisburg is a distressed municipality under the Municipalities Financial Recovery Act, known as Act 47. Because it is under Act 47, Harrisburg cannot file for federal bankruptcy without the consent of the Secretary of DCED. Because Harrisburg has a receiver under Chapter 7 of Act 47, only the receiver may file for federal bankruptcy on behalf of the City. Therefore, in order for Harrisburg to file for federal bankruptcy, the filing must be made by the receiver with the consent of the Secretary of DCED.

In addition, the General Assembly passed statutes in June 2011 and June 2012 which prohibited any third class city (including Harrisburg) from filing for federal bankruptcy first before June 30, 2012 and now before November 30, 2012. This total prohibition on filing for bankruptcy is not needed. The General Assembly should have complete confidence that no frivolous bankruptcy will be filed by Harrisburg, because under Act 47 that decision is within the total control of the receiver and the DCED Secretary.

I have no inside information on what is currently going on in the recovery plan negotiations, but based on the public information I have seen, I believe that the receiver, Major General William Lynch, is doing a very good job, and he needs to be supported in his efforts. As contemplated by the recovery plan approved in February 2012 by the Commonwealth Court, the receiver must conduct serious and difficult negotiations with the various creditors of the City. Some of these negotiations will be impossible to accomplish outside of bankruptcy unless there is the threat of bankruptcy if those parties do not agree to significant concessions. General Lynch asked that the bankruptcy prohibition not be extended in June 2012, but the General Assembly extended the prohibition to November 30, 2012. The General Assembly should not extend or reimpose the prohibition again.

- 5. The General Assembly should ask the State Attorney General and United States Attorney to conduct a criminal investigation of the Harrisburg incinerator financings, or the General Assembly should pass an act for the creation of a special prosecutor to conduct such an investigation.**

When I served as receiver, I got to see first hand the financial devastation caused by the incinerator financings. Every aspect of daily life in Harrisburg – water service, sewer service, police protection, fire protection, trash collection, economic development, parks and recreation – has been negatively affected by the incinerator financings. The City's relationships with the County, the suburban residents, the state government, the federal government and the credit markets, and the City's reputation in the state, in the nation and internationally, have been poisoned by the incinerator financings. The reputation of the state has also been negatively affected by the problems of its capital city.

There is a small group of probably 25 to 50 people and institutions who collectively caused this devastation because of what was done in the incinerator financings. Their individual responsibilities probably vary widely, but as a group, they did this terrible thing. I believe that the incinerator debt was clearly not self-liquidating, and much of that debt should never have been able to be issued under the law as set forth in the Debt Act. I believe that certain parties within that group of 25 to 50 showed a fundamental disdain for the law.

The current members of the board of The Harrisburg Authority should be saluted for having the courage to commission and issue the Forensic Report. This Local Government Committee of the Senate should also be applauded for searching for the truth in these hearings. There are also many regular citizens and members of the media who have worked hard to bring to light what happened in the incinerator financings.

But in spite of all of these efforts, the only way to really find out, for the good of our democracy and our Commonwealth, whether there was criminal activity involved in these financings is to have an experienced prosecutor conduct a thorough investigation. I would recommend that the General Assembly encourage the State Attorney General and the United States Attorney to undertake such an investigation, or to continue the investigation if one has already been commenced. But if the State Attorney General and United States Attorney have not and will not conduct an investigation, I would recommend that the General Assembly enact a statute providing for the appointment of a special prosecutor.

Some parties who may be subject to such an investigation may argue that an investigation should not be commenced because the five year statute of limitations has run. But the law of statute of limitations is quite complex, and when the five years actually runs and when it is paused and does not run may depend on the exact facts uncovered by the prosecutor. In addition, other acts may have occurred since the financings closed which could have their own statutes of limitations. Statute of limitations arguments should not prevent the investigation from commencing.

Thank you very much for the opportunity to provide this testimony.