

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, in his capacity as )  
Secretary for the Department of Community )  
and Economic Development, )

*Petitioner* )

v. )

CITY OF HARRISBURG, )

*Respondent* )

) Docket No. 569 MD 2011

**ORDER**

And Now, this \_\_\_\_ day of July, 2012, upon the filing of the Petition for Writ of Mandamus by the Receiver for the City of Harrisburg, in accordance with Section 709 of Act 47 as amended, a hearing on the said Petition is hereby scheduled before this Court on the \_\_\_\_ day of July, 2012 at \_\_\_\_:\_\_\_\_. \_\_\_\_ in Courtroom \_\_\_\_.

Any party in interest intending to oppose the relief requested in the Petition for Issuance of Writ of Mandamus is hereby directed to file any responsive pleading to the Petition no less than \_\_\_\_ days prior to the scheduled hearing. Any responsive pleading to the said Petition shall be served simultaneously with filing upon the Petitioner's counsel by hand-delivery or electronic transmission.

BY THE COURT:

\_\_\_\_\_  
BONNIE BRIGANCE LEADBETTER

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PETITION FOR ISSUANCE OF WRIT OF MANDAMUS

AND NOW, comes William B. Lynch, Receiver for the City of Harrisburg (the “Receiver”), by and through McKenna Long & Aldridge LLP, counsel to the Receiver, to Petition this Honorable Court, pursuant to Section 709 of the Municipalities Financial Recovery Act of July 10, 1987, P.L. 246, (*as amended*), 53 P.S. § 11701.101, *et seq.* (“Amended Act 47”), to issue a Writ of Mandamus upon each member of the Harrisburg City Council ordering them to implement two provisions of the previously Court-confirmed Recovery Plan as further described herein.

**I. Introduction**

1. The principal purpose of this Petition is to seek issuance of a writ of mandamus upon each member of the Harrisburg City Council directing each member to implement a provision of the previously Court-confirmed Recovery Plan requiring a 1% increase in the City’s Earned Income Tax, or EIT, imposed under the authority of the Local Tax Enabling Act and Amended Act 47, which is a critical component of the Court-confirmed Recovery Plan and critically needed to help ameliorate Harrisburg’s severe operating deficit and to effectuate a consensual Recovery Plan. This Honorable Court has already ordered City Council to

implement this provision by virtue of having confirmed the Recovery Plan that contains this provision. *See* Amended Act 47, Section 704(a)(1). In addition, the Receiver has ordered City Council to implement the provision pursuant to Section 708(a)(1). Yet, the EIT initiative has not been implemented. In addition, the Receiver seeks a writ of mandamus with regard to another provision in the Court-confirmed Recovery Plan, which will be explained briefly at the end of this Petition.

2. This Petition has been served upon each member of City Council -- Council President Wanda Williams, Brad Koplinski, Eugenia Smith, Susan Brown-Wilson, Sandra Reid, Patty Kim, and Kelly Summerford -- and upon counsel (hereinafter, "Opposition Counsel") who represents certain members of City Council and the City Treasurer and Controller. Opposition Counsel has indicated that his clients oppose implementing the EIT initiative contained in the Court-confirmed Recovery Plan and are thus potentially non-compliant parties.

## **II. PROCEDURAL BACKGROUND**

3. Petitioner is an adult individual having a professional address for service of process at Office of the Receiver for the City of Harrisburg, 401 Finance Building, Harrisburg, PA 17120.

4. On December 2, 2011, the receiver who preceded Petitioner, David Unkovic, was appointed to be the Receiver for the City of Harrisburg by Order of this Honorable Court pursuant to the applicable provisions of Amended Act 47.

5. Amended Act 47 provides that in the event that a consensual resolution of the fiscal distress of a financially-distressed city has not been achieved, the Governor may declare a fiscal emergency and may direct the Secretary of the Department of Community and Economic Development ("DCED") to file a petition with this Honorable Court to nominate a receiver. Amended Act 47 provides that the appointed receiver shall formulate and submit to this

Honorable Court for consideration and confirmation a proposed Recovery Plan that attempts to address the financial problems of a financially-distressed city for which a receiver has been appointed while maintaining and ensuring the provision of vital and necessary services for the city.

6. Pursuant to this direction of Amended Act 47, on February 6, 2012, Mr. Unkovic submitted a proposed Recovery Plan to this Honorable Court for its consideration and confirmation. A link to a complete copy of the proposed Recovery Plan is <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1053490&parentname=ObjMgr&parentid=24&mode=2>. Copies of the relevant pages of the proposed Recovery Plan cited in this Petition are attached hereto as Exhibit A. The proposed Recovery Plan was preliminary in some respects but in other respects proposed initiatives that were ripe for implementation and which the Court was being requested to approve expeditiously.

7. For example, the proposed Recovery Plan was preliminary in the sense that it contemplated the future monetization of certain assets of the City and the Harrisburg Authority. In this respect, the Recovery Plan was preliminary because, although it sought immediate Court approval for the Receiver to commence with processes to monetize certain assets, any monetization was months away from completion and thus there was no specific transaction contained in the proposed Recovery Plan for the Court to consider or confirm.

8. In other respects, the Recovery Plan was not at all preliminary but instead set forth concrete initiatives that were ripe for the Court to fully consider and confirm. One such initiative that was proposed in the Recovery Plan was a 1% increase in the EIT rate from .5% to 1.5% which was designed to raise revenue in order to help address the City's enormous operating deficit. In the narrative discussion of salient points of the Recovery Plan contained in its first 12

pages, the proposed Recovery Plan stated, “Closing this gap [between expenditures and revenues] requires . . . an increase in the resident earned income tax.” (Recovery Plan, at p.7). The initiative was detailed further in Schedule 2 and in the Operating Budget Structural Deficit provisions of the proposed Recovery Plan (at pp. 9-13), which reflects a 1% increase of the City’s EIT rate. *See* p. 9 (“The Revenue assumptions used in the baseline projections are as follows: . . . Earned Income Tax Revenue was increased by 1% per year.”); *see also* p. 13 (“the increase to Earned Income Tax, a one percent additional tax on City residents, is a temporary levy available under Act 47 that is necessary to balance the City’s operating budget.”). There was nothing preliminary about this proposal; it was at that time ripe for implementation and the Court was asked to consider and approve it as part of its confirmation of the proposed Recovery Plan.

9. Indeed, the proposal to increase the EIT rate was not a new idea first raised in the proposed Recovery Plan. Instead, it had been first proposed in the summer of 2011 by the Novak Consulting Group, the DCED appointed Act 47 Coordinator for the City of Harrisburg (“Coordinator”), as a part of the first recovery plan developed by the Coordinator but which was never implemented due to the failure of City Council to adopt it.

10. After the proposed Recovery Plan was filed with this Honorable Court, served as required by Amended Act 47 on the Mayor and every member City Council, including those opposing this Petition, and publicly-posted on the Receiver’s website on February 6, 2012, this Honorable Court announced that it would hold a hearing on March 1, 2012 to consider whether to confirm the proposed Recovery Plan.

11. The City, which is the Respondent in this captioned action, did not interpose any objection to the proposed Recovery Plan. Nor did any member of City Council, the Treasurer, or

the Controller file any objection to the EIT initiative in the proposed Recovery Plan prior to the March 1 hearing. Opposition Counsel certainly had the opportunity to file objections on behalf of his clients, as evidenced by the fact that Opposition Counsel did file a pleading objecting to the proposed Recovery Plan and the proceedings in some respects, but the pleading contained no objection to the proposed EIT initiative.

12. On March 1, this Honorable Court held an all day hearing to consider the proposed Recovery Plan. Opposition Counsel attended and actively participated in the hearing on behalf of at least City Council President Wanda Williams, the Treasurer and Controller. During the hearing, the Court heard extensive testimony from the former receiver regarding all aspects of the proposed Recovery Plan, including ample testimony and evidence regarding the EIT initiative. In particular, the Court heard testimony and received evidence regarding the City's severe operating deficit and the measures that would be required to help close the gap between expenditures and revenue. The former receiver explained that the EIT initiative, if confirmed, was expected to increase revenue for the City of Harrisburg in the 4<sup>th</sup> quarter of 2012 by \$1.7 million. Because the expenditure and revenue figures contained in the proposed Recovery Plan required some adjustment, the former receiver submitted to the Court and testified regarding amended schedules and disclosures that provided updated and specific details regarding the projected impact on revenue of the EIT initiative, if confirmed. A copy of the relevant schedules that were submitted during the March 1 hearing is attached hereto as Exhibit B. Despite all of the testimony and evidence the Court received regarding the proposed EIT initiative, no one, including Opposition Counsel and those he was ostensibly representing, voiced the slightest objection to the EIT initiative.

13. On March 9, 2012, this Honorable Court issued an order confirming the February 6, 2012 proposed Recovery Plan as that plan had been modified by the Receiver in certain respects not relevant here. Included in the confirmed plan was the requirement of increasing the EIT rate. *See* March 9 Order, a copy of which is attached hereto as Exhibit C (“[T]he Receiver proposes taking certain steps, in cooperation with City officials, to increase revenue and reduce expenses through increased management efficiencies, while maintaining necessary services. These interim proposals are reasonable and well within his authority under [Amended Act 47].”). Pursuant to Section 704(a)(1) of Amended Act 47, this Honorable Court’s March 9, 2012 Order confirming the Recovery Plan had the effect of imposing on City officials a mandatory duty to implement the provisions, including the EIT initiative, in the now confirmed Recovery Plan.

14. In the weeks following the March 9, 2012 confirmation of the Recovery Plan, City Council took no action to implement the required EIT initiative and in time several Council members began to indicate that City Council would not implement the initiative.

15. On March 30, 2012, Mr. Unkovic resigned his position as receiver. Recognizing the need to ensure the continued implementation of the Court-confirmed Recovery Plan following Mr. Unkovic’s resignation until such time as a new receiver could be appointed, on April 10, 2012, Governor Corbett directed that the DCED oversee the Office of the Receiver to provide for the continued implementation of the Court-confirmed Recovery Plan, and the DCED designated Mr. Fred Reddig as the acting administrator of the Office of the Receiver until a new receiver was appointed.

16. On May 24, 2012, pursuant to a prior directive by the Governor to notify this Honorable Court of non-compliance with the Court-confirmed Recovery Plan, the Office of the Receiver filed with this Honorable Court a Notice of Non-Compliance by Harrisburg City

Council and Harrisburg City Controller with Court-Confirmed Recovery Plan (“Notice of Non-Compliance”), a copy of which is attached hereto as Exhibit D. The Notice of Non-Compliance explained that City Council had taken no action to implement the required EIT initiative and that several Council members had indicated that City Council would not implement the initiative.

17. On the same day, this Honorable Court, having previously overruled Opposition Counsel’s attempt to stay the appointment proceeding, approved the appointment of William Lynch as the new Receiver. A copy of the Court’s May 24, 2012 Order is attached hereto as Exhibit E.

18. On June 1, 2012, the “Harrisburg City Council”<sup>1</sup> and City Controller, by and through Opposition Counsel, filed Objections of Harrisburg City Council and Harrisburg City Controller Dan Miller to Notice of Non-Compliance by Harrisburg City Council and Harrisburg City Controller with Court-Confirmed Recovery Plan (“Objections”), a copy of which is attached hereto as Exhibit F. The Objections raised substantive and technical objections to the Notice of Non-Compliance, including the fact that it had been filed by the Office of the Receiver during the time in which there had been a vacancy in the position of the Receiver.<sup>2</sup>

19. In light of the paramount importance of implementing the Recovery Plan’s EIT initiative, and in order to eliminate any potential technical argument that the Non-Compliance Notice was ineffective because it had been filed prior to General Lynch’s appointment, the Receiver determined it necessary to exercise his authority pursuant to Section 708(a)(1) of Amended Act 47 to order an elected official to “implement any provision of the recovery plan” and thus cure any argument that that the notice was not issued properly by the new Receiver.

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<sup>1</sup> The pleading states that it is filed on behalf of “City Council” and does not specify which particular members of City Council are represented by Opposition Counsel.

<sup>2</sup> This objection was puzzling, among other reasons, because this Honorable Court had confirmed the appointment of General Lynch as Receiver on May 24, 2012 – one week before the Objections were filed.

Accordingly, on June 11, 2012, the Receiver issued an Order to the Honorable Wanda Williams, as City Council President, directing that City Council comply with the provisions of the Court-confirmed Recovery Plan, including implementing the EIT initiative.<sup>3</sup> A copy of this order is attached hereto as Exhibit G.

20. In the days following issuance of his June 11, 2012 Order, the Receiver, as required by Section 711(e) of Amended Act 47, consulted with members of the Municipal Financial Recovery Advisory Committee (“MFRAC”) regarding a number of ongoing matters, including the City Council’s non-compliance with certain requirements contained in the Court-confirmed Recovery Plan, including implementation of the EIT initiative. During these consultations, the Receiver informed members of MFRAC that he intended to pursue mandamus relief if compliance with the Court-confirmed Recovery Plan was not forthcoming. Council President Williams is a member of the MFRAC and was specifically consulted regarding these matters, including City Council’s failure to implement the EIT initiative as required by the Court-confirmed Recovery Plan.

21. On June 22, 2012, the Receiver sent a letter to the MFRAC again advising of his concern over City Council’s non-compliance with the Court-confirmed Recovery Plan and his intention to seek mandamus relief to obtain compliance. A copy of this letter is attached hereto as Exhibit H. The letter constituted the Receiver’s final consultation with the MFRAC as required by Section 711(e) of Amended Act 47.

22. On June 27, 2012, Opposition Counsel, on behalf of his clients, Council President Williams, the City Treasurer, and the City Controller, sent a letter to counsel for the Receiver in

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<sup>3</sup> Also on June 11, 2012, the Receiver issued an Order to the Honorable Dan Miller, Controller for the City of Harrisburg, directing that he comply with the provisions of the Court-confirmed Recovery Plan, including, in particular, a provision pertaining to the sale of certain “wild west” artifacts. Compliance with Receiver’s Order directed to Mr. Miller is not at issue in this Petition.

response to the Receiver's June 22, 2012 letter. In his June 27, 2012 letter, a copy of which is attached hereto as Exhibit I, Opposition Counsel expressed displeasure that the Receiver was "threatening litigation so quickly into his tenure," but nonetheless stated that he was interested in a resolution other than mandamus.

23. On July 3, 2012, counsel for the Receiver responded to Opposition Counsel's June 27, 2012 letter. In its July 3, 2012 letter, a copy of which is attached hereto as Exhibit J, counsel for the Receiver asked to be notified "promptly" if City Council would commit to pass legislation to authorize the EIT rate increase and its immediate implementation at the forthcoming City Council meeting scheduled for July 11, 2012. Counsel stated that if such commitment were received, the Receiver would withhold filing a petition for mandamus.

24. As of this filing, the Receiver's counsel has received no indication that City Council intends to implement the EIT initiative in the Recovery Plan. Accordingly, since City Council has refused to comply with the Receiver's June 11, 2012 Order to implement the Court-confirmed Recovery Plan, this matter is ripe for issuance of a writ of mandamus to enforce the Receiver's June 11, 2012 Order and the provisions of the Court-confirmed Recovery Plan.

### **III. AMENDED ACT 47 AUTHORIZES THIS HONORABLE COURT TO ISSUE A WRIT OF MANDAMUS**

25. Amended Act 47 provides that this Honorable Court's March 9, 2012 Order confirming the Recovery Plan has the effect of an order mandating officials to implement the provisions in the Recovery Plan. Specifically, Section 704(a)(1) provides: "The confirmation of the recovery plan and any modification to the receiver's plan under section 703 shall have the effect of . . . imposing on the elected and appointed officials of the distressed city or authority a mandatory duty to undertake the acts set forth in the recovery plan."

26. Amended Act 47 gives the Receiver and this Honorable Court additional authority to enforce implementation of the Court-confirmed Recovery Plan. Specifically, Section 708(a) of Amended Act 47 provides, “The receiver may issue an order to an elected or appointed official of the distressed city or an authority to (1) implement any provision of the recovery plan; and (2) refrain from taking any action that would interfere with the powers granted to the receiver or the goals of the recovery plan.”

27. If an official does not comply with the Receiver’s order, the Receiver may “petition the Commonwealth Court to issue a writ of mandamus upon any elected or appointed official of the distressed city or authority to secure compliance with an order issued under section 708. . . . The court shall grant the relief if it determines that the order was issued in compliance with this chapter.” Section 709(a).

28. In this case, although the Receiver is authorized to issue an order to an official either to implement any provision of the recovery plan (Section 708(a)(1)) or to refrain from taking any action that interferes with the goals of the recovery plan (Section 708(a)(2)), on June 11, 2012, the Receiver issued an order only pursuant to Section 708(a)(1) because this Honorable Court has already issued an order confirming the Recovery Plan and the EIT initiative in it. The Receiver is simply seeking to compel City Council to comply with the EIT initiative provision of the previously Court-ordered Recovery Plan.

29. To date, City Council has not complied with the Court’s order confirming the Recovery Plan or the Receiver’s June 11, 2012 Order. Upon information and belief, certain members of City Council have indicated that they are not amenable to implementing the EIT initiative.

30. Accordingly, the Receiver is hereby petitioning this Honorable Court to issue a writ of mandamus pursuant to Section 709(a) of Amended Act 47 to secure compliance with the Receiver's June 11, 2012 Order insofar as it relates to the EIT initiative. Specifically, the Receiver seeks issuance of a writ of mandamus upon each member of City Council directing each member to take the steps necessary to introduce legislation to authorize the EIT rate increase and its immediate implementation, and to vote in favor of said legislation.

31. The Receiver understands that some members of City Council may not be opposed to implementation of the EIT initiative in the Recovery Plan but are unable to act in the face of those members who are opposed. The Receiver certainly does not wish to suggest that those Council members who are not opposed to the EIT initiative are willfully refraining from complying with the Court-ordered Recovery Plan or the Receiver's June 11, 2012 Order. Accordingly, the Receiver suggests that any members of City Council who wish it to be publicly known that they are not opposed to implementing the EIT initiative contained in the Recovery Plan contact the Receiver immediately and so-inform the Receiver. The Receiver will then make such Council members' positions known at the hearing in this Honorable Court prior to the Court's issuance of a writ of mandamus.

#### **IV. WHY MANDAMUS SHOULD ISSUE**

##### **A. Amended Act 47 Requires that Mandamus Issue**

32. Section 709(a) provides that "The court shall grant [mandamus] relief if it determines that the order [the Receiver seeks to enforce] was issued in compliance with this chapter." The Court need only conduct the limited review specified in Section 709(a) because the Court is simply determining whether to enforce the Receiver's order directing implementation of a provision of the Recovery Plan which was previously confirmed by this Court, after due consideration, by entry of a confirmation order on March 9, 2012. In other

words, the Court is simply being asked to issue mandamus to enforce an order directing compliance with a previously-entered order of this Court.

33. In this case, the Receiver's June 11, 2012 order was issued in compliance with Amended Act 47, as explained in paragraphs 13 through 24 above, which paragraphs are incorporated herein by reference. Therefore, mandamus should issue.

B. Equity Requires that Mandamus Issue

34. In addition, equitable considerations substantially weigh in favor of mandamus issuing. Specifically, it would be inequitable to refuse to enforce implementation of the Court-confirmed EIT initiative given that no one, including any of the parties now indicating opposition, objected to the initiative before this Court entered an order confirming the Recovery Plan containing the initiative.

35. City Council and Opposition Counsel had ample notice and detailed explanation regarding the EIT initiative prior to and during the March 1, 2012 hearing. Yet none of them voiced a single objection to the EIT initiative before or during the March 1 hearing.

36. Having had ample notice and opportunity to object to the EIT initiative and its inclusion in the Recovery Plan, and having failed to raise any objections to the EIT initiative prior to the Court's confirmation of the Recovery Plan so that the Court could consider them before confirming the plan, Opposition Counsel and his clients should be deemed to have waived any objections and be estopped at this late date from objecting to the EIT initiative or opposing the mandamus relief sought herein.

37. The delay occasioned by the opposing parties' failure to timely object has already materially prejudiced the City by rendering it impossible to collect \$1.7 million in previously anticipated new EIT related revenue in the 4<sup>th</sup> quarter of 2012. Had Council members expressed their opposition to the EIT initiative before, or even shortly after, confirmation of the Recovery

Plan, or otherwise made clear their intention to force a legal proceeding over the issue, this matter could have been brought to a head long before now and perhaps have been resolved long enough ago to have allowed the City to have collected the \$1.7 million this year as contemplated in the Recovery Plan.

C. Mandamus Should Issue Because Implementation of the EIT Initiative is a Matter of Necessity

38. In addition to the foregoing, mandamus should issue because the EIT initiative is a matter of necessity for two related reasons. First, the EIT initiative contained in the Court-confirmed Recovery Plan is critically important to the Recovery Plan and is a vitally needed revenue-producing measure designed to help address the City's severe operating deficit and help ensure sufficient revenue to permit the City to provide vital and necessary services to the citizens of Harrisburg. Second, implementation of the previously Court-confirmed EIT initiative is absolutely essential to advancing the overall objective of achieving a consensual Recovery Plan addressing Harrisburg's fiscal distress – a fundamental goal of Amended Act 47.

39. The critical need for implementation of the EIT initiative is underscored by the following: The Local Tax Enabling Act ("Act 511") permits municipalities of the third class, like Harrisburg, to enact an EIT and, pursuant to Section 141 (a) of Act 47, to increase the EIT rate, when such municipality is designated as financially distressed pursuant to Act 47. Here, there is no doubt that Harrisburg, regrettably, satisfies any understanding of "financially distressed." The February 6, 2012 proposed Recovery Plan contained a detailed explanation of the City's severe operating deficit and how the EIT initiative would help to address this in part. At the March 1, 2012 confirmation hearing on the Recovery Plan, the then-Receivier testified as to the necessity of the EIT initiative to the overall Recovery Plan and furnished the Court with updated figures regarding the EIT initiative's projected impact on City revenue. The then-

Receiver testified that prompt adoption of the EIT rate increase, which required subsequent approval by the Court of Common Pleas,<sup>4</sup> would nevertheless permit new tax bills to be sent out sufficiently promptly to permit the City to receive \$1.7 million in new revenue during the 4<sup>th</sup> quarter of 2012. Indeed, a fundamental assumption of the Recovery Plan was that new EIT revenue would be received during the 4<sup>th</sup> quarter of 2012. Unfortunately, City Council's inaction has rendered it impossible to collect any increased EIT revenue in 2012, making the operating deficit for 2012 \$1.7 million larger than anticipated.

40. Aside from the \$1.7 million, a fundamental aspect of the Recovery Plan required approximately \$25 million to be generated from new EIT revenue during the years of 2013 through 2016. Specifically, the EIT initiative is estimated to generate over \$5.1 million in revenue in 2013 and \$6.86 in each of 2014 through 2016 – constituting more than 10% of the City's total annual operating revenue budget. *See Exhibit B, p.1.* Even with this projected revenue, the City will still have an operating deficit even if concessions from labor are obtained. *See Exhibit B, p.2.* Without this revenue, the City will be faced with dire budget consequences.

41. Even if it collects this additional EIT revenue beginning in 2013, Harrisburg will still need to enact other cost containment and revenue enhancement measures as described in the Court-confirmed Recovery Plan in order to address an otherwise significant operating deficit. But should Harrisburg fail to collect this revenue, the City's operating shortfall will be that much greater and will be so substantial that it will seriously jeopardize any ability of the City to achieve a consensual Recovery Plan resolution with its creditors and thereby fundamentally prejudice the City and its citizens.

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<sup>4</sup> After City Council authorizes the EIT rate increase, the Court of Common Pleas must take certain actions before the rate increase takes effect.

42. This Honorable Court has the power, pursuant to Section 709 of Amended Act 47, to compel City Council to implement provisions of the Court-confirmed Recovery Plan, including the 1% increase in the EIT rate. Though the Receiver may not unilaterally impose a tax, Amended Act 47 was specifically structured in a manner to require the Court to approve a Recovery Plan so that it would be the Court and not the Receiver that would be approving a tax and thus not potentially run afoul of the Pennsylvania Constitution. Indeed, mindful of constitutional concerns, the drafters of Amended Act 47 intentionally created a framework in which initiatives would be proposed by the Receiver but would be duly considered and specifically approved by the Court through the confirmation of a Recovery Plan so that it would be the Court's confirmation order, and not the unilateral edict of the Receiver, that was being implemented pursuant to a Court-approved Recovery Plan. Therefore, the tax rate increase that was proposed by the Receiver but approved by the Court in the Court-confirmed Recovery Plan should be implemented.

V. **THIS HONORABLE COURT SHOULD ALSO ISSUE A WRIT OF MANDAMUS TO COMPEL COMPLIANCE WITH ANOTHER PROVISION OF THE RECOVERY PLAN**

43. Separate from the EIT initiative, the Court should also issue a writ of mandamus to direct City Council to amend the adopted City budget for 2012 to provide for the hiring of a Director of Communications for the City of Harrisburg.

44. Schedule 2 of the Court-approved Recovery Plan requires budget amendments to provide funds for, among other provisions, the hiring of a Director of Communications for the City of Harrisburg at a salary \$75,500. The Mayor's administration developed and sent to City Council a 2012 Budget Reallocation Plan #1 Resolution providing for, among other action items, the addition of a Director of Communications (salary \$75,500 + FICA) position. This position was to be added to the 2012 Budget and funded from an increase in estimated EIT collections

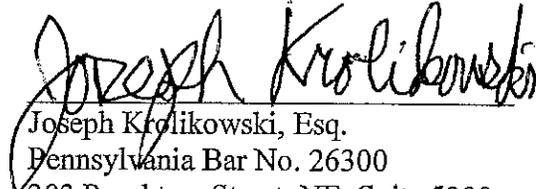
according to Schedule 2. City Council tabled a vote on this Resolution and has refused to enact the budget amendments required by Schedule 2 of the Court-confirmed Recovery Plan.

45. Paragraphs 6 through 24, *supra*, which are incorporated herein by reference, explain the notice, failure to object, Court confirmation, subsequent non-compliance, notice of non-compliance, and order by the Receiver directing compliance with respect to the EIT initiative. All of the same applies to the Director of Communications initiative. Accordingly, this Court should enforce implementation of the Director of Communication initiative contained in the Court-confirmed Recovery Plan through mandamus.

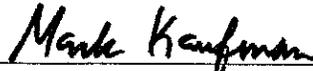
Respectfully submitted this 10th day of July, 2012.

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**Attorneys for the Receiver for the City of  
Harrisburg**

# **EXHIBIT A**

**RECOVERY PLAN FOR  
THE CITY OF HARRISBURG  
DATED FEBRUARY 6, 2012**

This is the Recovery Plan for the City of Harrisburg prepared by the Receiver appointed pursuant to the Municipalities Financial Recovery Act, as amended (Act 47).<sup>1</sup>

**1. Introduction.**

The City's financial distress is a very complicated problem. It cannot be solved easily or quickly, but it can and must be solved.

The solution requires a comprehensive recovery plan that really works. Ultimately, significant and difficult contributions will be required from many stakeholders.

This plan is a first step. Until the actual value of certain assets of the City is determined through a request for proposals process and until the exact extent of the structural deficit (the amount by which the City's operating expenses consistently exceed its revenues) are understood, it is not possible to determine exactly what contributions are required from various stakeholders. One of the main purposes of the plan is to set forth the process to be followed to realize the value of the City's assets through sale or leasing. It is important that the process be designed to maximize the value of the assets.

Once the value of the assets is known and the extent of the structural deficit is known, the Receiver can complete negotiations with the stakeholders. Upon successful completion of those negotiations, this recovery plan will be amended pursuant to the amendment procedure under Act 47. That amended plan will be the comprehensive plan which the Receiver can then implement with the cooperation of the stakeholders.

This will require a consensual process. For the most part, the stakeholders will need to voluntarily agree to contributions in order for the plan to work. This will ideally be accomplished through the approval by the Commonwealth Court of an amended comprehensive recovery plan. The Receiver desires to have a consensual plan outside of bankruptcy. That would be best for everyone. The

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<sup>1</sup> This recovery plan includes this forepart as well as Schedules 1 and 2 and Appendices A and B. The forepart, Schedules 1 and 2 and Appendices A and B all constitute the plan.

combined with insufficient revenue sources and significant labor costs, had a crippling effect on the ongoing ability of the City to perform its normal functions.

As with the incinerator debt, the solution to the structural deficit will take additional time to determine. But, to be candid, it is not clear to me at this stage in the plan development process that, without additional new revenue sources, the City can achieve a balanced operating budget even with further belt tightening and meaningful concessions from labor. In a very real sense, then, the City has two distinct problems, and even if there were no significant incinerator debt plaguing the City, it would nonetheless be facing serious annual operating budget challenges. In the long run, the City must focus on its core services and have other services handled through intergovernmental cooperation or third party arrangements.

The City faces an annual gap between expenditures and revenues in excess of \$11 million. The \$11 million includes a combination of the known structural deficit and other operating liabilities. Closing this gap requires a combination of concessions from the labor unions, an increase in the resident earned income tax, service efficiencies and additional revenues from fees and outside sources.

### **C. Management.**

#### **i. Chief Operating Officer.**

The City operated in 2011 without a chief of staff/business administrator. This position is referred to in this plan as the chief operating officer (COO). A top priority for the City is to fill the COO position. The City needs a strong professional to lead and manage the entire staff. The COO can also be a major contributor to long term planning efforts of the City.

The COO will be the chief operating officer of the City and is fully empowered to supervise and direct all employees in the Department of Administration, the Department of Building and Housing, the Department of Public Safety, the Department of Public Works and the Department of Parks and Recreation.

The elected officials of the City shall fully empower the COO to manage the day-to-day operations of the City and to make recommendations to the elected officials and the Receiver regarding priorities and policies.

A person may not be hired as the City's COO without the prior written consent of the Receiver. A person may not be dismissed or fired as the City's COO without the prior written consent of the Receiver.

### 3. Operating Budget Structural Deficit

The purpose of this chapter is to estimate the City's structural deficit (the amount by which the City's Operating expenses consistently exceed its revenues) looking forward from 2012 to 2015 assuming no changes as a result of this plan.

#### *2012 – 2016 General Fund Baseline Projections*

Baseline projections for the General Fund were developed for 2012 through 2016 using 2011 year-end estimates, the Mayor's 2012 proposed budget and the Council's 2012 adopted budget. These projections assume that *no plan interventions are made to change either the existing revenue or expenditure trends*. In developing these projections, a variety of assumptions were used.

The revenue assumptions used in the baseline projections are as follows.

- All tax and fee rates were held constant. The 2012 budgeted increase in real estate taxes is included.
- Revenue from real estate taxes has been held constant over the period as assessed valuation growth is assumed to be minimal.
- The sale of tax liens has not been included for years 2012 through 2016. Delinquent tax collections were included at historical levels.
- Other Taxes were reviewed on a line-by-line basis. Earned Income Tax Revenue was increased by 1% per year, the Business Privilege & Mercantile Tax Revenue by 1.75% per year and the Real Estate Transfer Tax revenue by 3% per year. All other revenues from taxes were held constant.
- The ARRA Police Grant is expected to end in 2014.
- Vehicle Maintenance Reimbursements were increased at the same rate as related expenditures.
- State aid for pension expenses was held constant over the period.
- The Commonwealth's payment to the City for fire protection is projected to remain at \$2.5 million throughout the period.
- Most other revenues are held constant over the period.
- Other fund administrative charges and transfer payments decrease throughout the period as expenditures in those funds increase.
- Parking authority payments through the coordinated parking fund are held constant through the period.

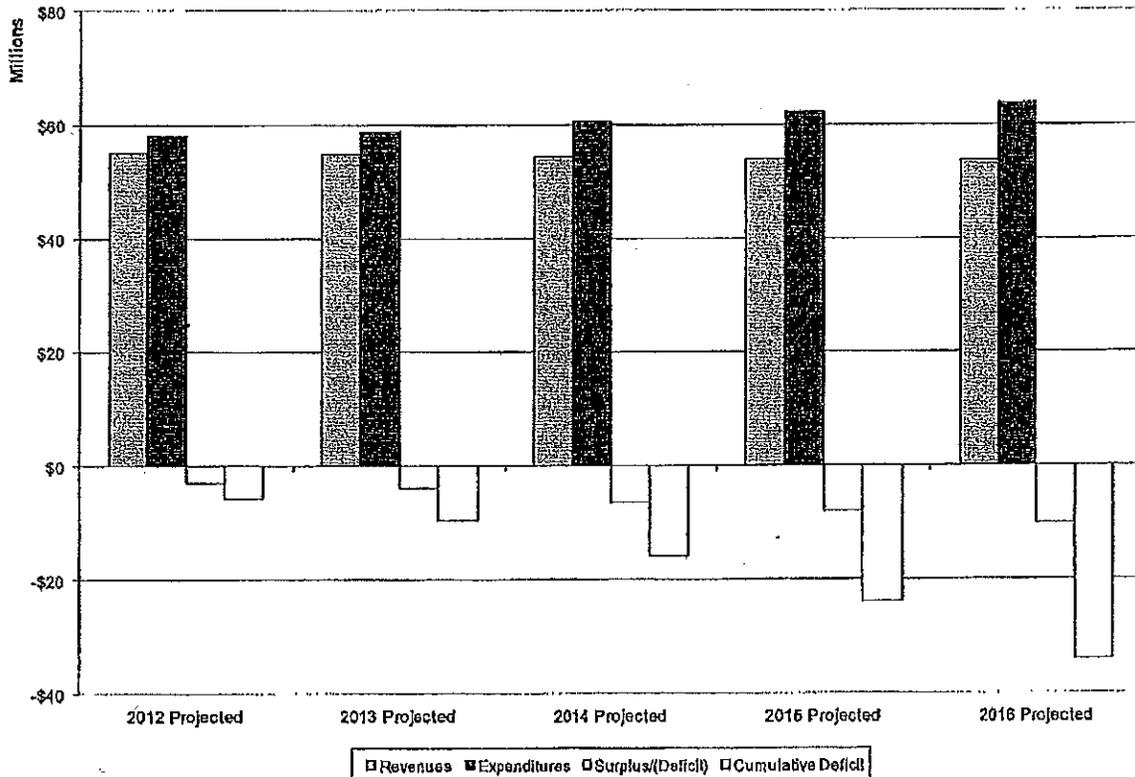
The expenditure assumptions used in the baseline projections are as follows.

- The number of personnel has been held constant.
- Wages have been increased as specified in the respective collective bargaining agreements. No wage increases are included for non bargaining employees or after the expiration of the current contracts.
- Medical insurance has been increased at 12% per year in 2013 and 2014 and 10% in 2015 and 2016 in conformance with the City's most recent experience and observed increases for government employees.
- Other major insurance costs have been projected on a case-by-case basis.
- No new debt is assumed.
- No new capital expenditures are included.
- Municipal pension obligations are held constant over the period.
- No payments on the RRF debt guarantee obligations are included.
- Other expenditures were increased at various levels.

**General Fund Carryover Fund/Cash Balance/Deficit**

In January 2012, City Administration estimated a year end 2011 cash deficit of approximately \$2.8 million. (Cash on hand less 2011 Accounts Payable.) Combining the 2011 \$2.8 million carryover deficit with the 2012 \$2.9 million projected General Fund deficit results in a total estimated 2012 operating budget deficit of \$5.8 million.

	2012 Projected	2013 Projected	2014 Projected	2015 Projected	2016 Projected
<b>2011 Carryover</b>	<b>(\$2,831,344)</b>				
Revenues	\$55,158,737	\$54,898,465	\$54,309,655	\$54,032,782	\$53,766,445
Expenditures	\$58,082,746	\$58,721,910	\$60,592,284	\$62,108,593	\$63,713,455
Surplus/(Deficit)	(\$2,924,009)	(\$3,823,446)	(\$6,282,629)	(\$8,075,811)	(\$9,947,010)
<b>Total Surplus/(Deficit)</b>	<b>(\$5,755,353)</b>	<b>(\$3,823,446)</b>	<b>(\$6,282,629)</b>	<b>(\$8,075,811)</b>	<b>(\$9,947,010)</b>
<b>Cumulative</b>	<b>(\$5,755,353)</b>	<b>(\$9,578,798)</b>	<b>(\$15,861,428)</b>	<b>(\$23,937,238)</b>	<b>(\$33,884,248)</b>



### General Fund Revenue Projections, 2012-2016

Revenue Group	2012 Projected	2013 Projected	2014 Projected	2015 Projected	2016 Projected	% Change
Property Taxes	\$17,074,783	\$17,074,783	\$17,074,783	\$17,074,783	\$17,074,783	0.0%
PILOTS	\$501,522	\$501,522	\$501,522	\$501,522	\$501,522	0.0%
Earned Income Taxes	\$3,430,000	\$3,464,300	\$3,498,943	\$3,533,932	\$3,569,272	4.1%
Mercantile Business Privilege	\$2,838,883	\$2,882,633	\$2,927,149	\$2,972,443	\$3,018,531	6.3%
Parking Taxes	\$1,574,532	\$1,574,532	\$1,574,532	\$1,574,532	\$1,574,532	0.0%
Other Taxes	\$3,698,342	\$3,710,042	\$3,722,093	\$3,734,506	\$3,747,290	1.3%
Licenses, Permits and Fines	\$6,303,422	\$6,303,422	\$6,351,738	\$6,411,899	\$6,420,231	1.9%
Intergovernmental	\$5,890,251	\$5,890,251	\$5,538,346	\$5,538,346	\$5,538,346	(6.0%)
Transfers	\$13,258,732	\$12,860,392	\$12,472,116	\$12,094,216	\$11,725,170	(11.6%)
Other Revenues	\$588,271	\$636,588	\$648,432	\$596,602	\$596,769	1.4%
<b>Total</b>	<b>\$55,158,737</b>	<b>\$54,898,465</b>	<b>\$54,309,655</b>	<b>\$54,032,782</b>	<b>\$53,766,445</b>	<b>(2.5%)</b>

Expenditures are projected to grow from \$58.1 million in 2012 to \$63.8 million in 2016. The principal factor for the increase in expenditures is personnel costs, primarily employee medical insurance and wages.

Medical insurance increases from \$8.9 million in 2012 to \$13.5 million in 2016, an increase of 51.5%. Wages increase from \$23.7 million in 2012 to \$25.0 million in 2016, an increase of 5.4%.

## General Fund Expenditure Projections, 2012-2016

Expenditure Type	2012 Projected	2013 Projected	2014 Projected	2015 Projected	2016 Projected	% Change
<b>Employee Expenditures</b>						
Salaries/Wages	\$23,744,985	\$24,058,775	\$24,681,960	\$24,848,432	\$25,019,897	5.4%
Temporary Wages	\$165,000	\$165,000	\$165,000	\$165,000	\$165,000	0.0%
Overtime	\$1,666,100	\$1,666,100	\$1,666,100	\$1,666,100	\$1,666,100	0.0%
Sick Time Buyback	\$168,000	\$168,000	\$168,000	\$168,000	\$168,000	0.0%
Medical & Life Insurance	\$8,900,343	\$9,962,144	\$11,151,361	\$12,261,298	\$13,482,227	51.5%
Fringe Benefits	\$5,185,789	\$5,064,300	\$5,083,067	\$5,085,967	\$5,088,986	(1.9%)
<b>Total Employee Expenditures</b>	<b>\$39,330,217</b>	<b>\$41,084,319</b>	<b>\$42,915,488</b>	<b>\$44,194,796</b>	<b>\$45,590,211</b>	<b>14.5%</b>
<b>Non Employee Expenditures</b>						
Communications	\$368,195	\$370,044	\$372,448	\$375,270	\$378,361	2.8%
Professional Fees	\$646,190	\$657,772	\$672,865	\$690,641	\$710,187	9.9%
Utilities & Services	\$714,050	\$733,686	\$761,986	\$796,807	\$837,077	17.2%
Insurances	\$1,275,591	\$1,285,057	\$1,297,196	\$1,311,206	\$1,326,257	4.0%
Rentals	\$9,800	\$9,957	\$10,136	\$10,339	\$10,566	7.8%
Maintenance & Repairs	\$562,427	\$568,486	\$575,317	\$583,049	\$591,812	5.2%
Contracted Services	\$279,771	\$282,828	\$286,503	\$290,716	\$295,384	5.6%
Supplies And Expenses	\$1,961,674	\$2,068,102	\$2,144,571	\$2,299,556	\$2,416,560	23.2%
Minor Capital	\$500	\$504	\$509	\$514	\$520	4.0%
Lease Purchase	\$266,806	\$266,313	\$265,899	\$265,732	\$265,910	(0.3%)
Mains And Accessories	\$300,000	\$300,413	\$300,938	\$301,540	\$302,181	0.7%
Grants	\$272,510	\$272,510	\$272,510	\$272,510	\$272,510	0.0%
Transfer to Debt Service Fund	\$11,485,014	\$10,711,921	\$10,605,917	\$10,605,917	\$10,605,917	(7.7%)
Fines & Settlements	\$110,000	\$110,000	\$110,000	\$110,000	\$110,000	0.0%
<b>Total Non Employee Expenditures</b>	<b>\$18,252,529</b>	<b>\$17,637,591</b>	<b>\$17,676,796</b>	<b>\$17,913,797</b>	<b>\$18,123,244</b>	<b>(0.7%)</b>
<b>Total Expenditures</b>	<b>\$58,082,746</b>	<b>\$58,721,910</b>	<b>\$60,592,284</b>	<b>\$62,108,593</b>	<b>\$63,713,455</b>	<b>9.7%</b>

### Other Funds

The financial status of the City depends upon a number of operational funds in addition to the General Fund. The principal additional operational funds which must be considered are:

- Debt Service Fund – Accounts for transactions relating to City debt excluding any guaranteed debt;
- Sanitation Fund – Accounts for transactions dealing with the City's collection of refuse. Does not include RRF activities;
- Sewer Fund – Accounts for transactions dealing with City's operation in the collection and treatment of sewage;
- Liquid Fuels (Highway Aid) Funds – Accounts for Commonwealth funds to maintain streets and roads; and
- Water Fund – Accounts for transactions relating to the City's agreement with the Harrisburg Authority to operate the water system for Harrisburg and other contracting adjacent municipalities.

The Receiver reviewed the historical revenue and expenditure trends for each of these funds over the period 2006 through 2011 as well as the City's budget for each for 2012.

Based on similar assumptions used for the City's General Fund, revenue and expenditure projections for each fund were developed. It is noteworthy that no new capital expenditures or new debt were included.

Expenditures within the individual funds over the period generally increase because of the increase in contractual wage costs (personnel are City employees) and estimated increases in employee medical insurance for 2015-2016. Transfers to the City's General Fund were reduced as individual fund expenditures increased resulting in balanced revenue and expenditure projections in the Other Funds.

**Balanced Budget**

The following table demonstrates the Receiver's Plan to eliminate the City's operating budget deficits and produce balanced operating projections. The City's ultimate goal should be a 5% General Fund balance.

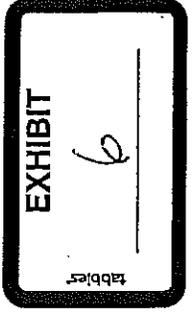
The initiative total in the table below represents items outlined in the following chapters as well as estimates for items currently under negotiation. The increase to Earned Income Tax, a one percent additional tax on City residents, is a temporary levy available under Act 47 that is necessary to balance the City's operating budget. The additional Act 47 levy can and should be reduced as additional revenues and expenditure reductions are achieved.

	2012 Projected	2013 Projected	2014 Projected	2015 Projected	2016 Projected
Operating Deficit	(\$5,755,353)	(\$3,823,446)	(\$6,282,629)	(\$8,075,811)	(\$9,947,010)
Initiatives	\$2,357,435	\$3,621,622	\$3,657,622	\$3,717,622	\$3,767,622
Increase to EIT	\$1,715,000	\$5,145,000	\$6,860,000	\$6,860,000	\$6,860,000
<b>Net Operating Surplus/(Deficit)</b>	<b>(\$1,682,918)</b>	<b>\$4,943,176</b>	<b>\$4,234,993</b>	<b>\$2,501,811</b>	<b>\$680,612</b>
OPEB	\$0	(\$2,000,000)	(\$2,500,000)	(\$1,500,000)	(\$500,000)
Capital Improvement Program	\$0	(\$1,000,000)	(\$1,000,000)	(\$500,000)	\$0
<b>Remaining Surplus/(Deficits)</b>	<b>(\$1,682,918)</b>	<b>\$1,943,176</b>	<b>\$734,993</b>	<b>\$501,811</b>	<b>\$180,612</b>
<b>Cumulative Balance</b>	<b>(\$1,682,918)</b>	<b>\$260,259</b>	<b>\$995,251</b>	<b>\$1,497,063</b>	<b>\$1,677,675</b>

# **EXHIBIT B**

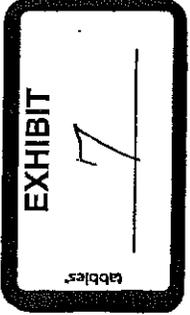
Schedule 1  
City of Harrisburg  
Receiver's Revised General Fund Revenues  
2012 - 2016

Line	2012		2013		2014		2015		2016	
	Projected									
1	55,158,737	54,898,465	54,898,465	54,309,655	54,032,782	54,032,782	54,032,782	53,766,445	53,766,445	53,766,445
2	-2,831,344	0	0	0	0	0	0	0	0	0
3	52,327,393	54,898,465	54,898,465	54,309,655	54,032,782	54,032,782	54,032,782	53,766,445	53,766,445	53,766,445
4	1,715,000	5,145,000	5,145,000	6,860,000	6,860,000	6,860,000	6,860,000	6,860,000	6,860,000	6,860,000
5	1,107,435	1,121,622	1,121,622	1,157,622	1,217,622	1,217,622	1,217,622	1,267,622	1,267,622	1,267,622
6	55,149,828	61,165,087	61,165,087	62,327,277	62,110,404	62,110,404	62,110,404	61,894,067	61,894,067	61,894,067
7	-667,137	-618,518	-618,518	-570,689	-523,626	-523,626	-523,626	-477,303	-477,303	-477,303
8	-5,930,320	-5,580,244	-5,580,244	-5,246,959	-4,929,617	-4,929,617	-4,929,617	-4,627,410	-4,627,410	-4,627,410
9	-6,597,457	-6,198,762	-6,198,762	-5,817,649	-5,453,243	-5,453,243	-5,453,243	-5,104,714	-5,104,714	-5,104,714
10	48,552,371	54,966,325	54,966,325	56,509,628	56,657,161	56,657,161	56,657,161	56,789,353	56,789,353	56,789,353



Schedule 2  
 City of Harrisburg  
 Receiver's Projected Operating Deficits Net of Labor Concessions

Line		2012		2013		2014		2015		2016	
		Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
1	Net Revenues from Schedule	48,552,371	54,966,325	56,509,628	56,657,161	56,789,353					
2	Expenditures per February 6 Plan	58,082,746	58,721,910	60,592,284	62,108,593	63,713,455					
3	Deficit Before Labor Concessions	-9,530,375	-3,755,585	-4,082,656	-5,451,432	-6,924,101					
4	Labor Concession at 5% of Current (Half year 2012)	808,292	1,657,072	1,723,749	1,764,491	1,808,717					
5	Deficit After 5% Labor Concession	-8,722,083	-2,098,513	-2,358,907	-3,686,941	-5,115,385					
6	Labor Concession 7.5% of Current (Half year 2012)	1,212,437	2,485,608	2,585,623	2,646,737	2,713,075					
7	Deficit After 7.5% Labor Concession	-8,317,937	-1,269,977	-1,497,032	-2,804,695	-4,211,027					
8	Labor Concession 10% of Current (Half year 2012)	1,616,583	3,314,145	3,447,498	3,528,982	3,617,433					
9	Deficit After 10% Labor Concession	-7,913,791	-441,441	-635,158	-1,922,450	-3,306,668					



# **EXHIBIT C**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. Alan Walker, in his capacity as :  
 Secretary for the Department of :  
 Community and Economic :  
 Development, :  
 Petitioner :  
 v. : No. 569 M.D. 2011  
 City of Harrisburg, :  
 Respondent :

ORDER

And now this 9th day of March, 2012, following review of the Recovery Plan for the City of Harrisburg [Plan] filed with this Court on February 6, 2012, as well as consideration of various applications filed with the Court or asserted by persons permitted to participate at the hearing on March 1, 2012, the Court finds that:

1. The Plan submitted February 6, 2012, is by its terms preliminary. The Receiver acknowledges that further investigation is necessary to determine the value of assets owned by the City, and the full extent of its structural deficit. Further, negotiations with creditors and other entities will be necessary to determine the City's ability to compromise its debt and stabilize its fiscal health going forward. Only thereafter can the Receiver bring to the Court a modified plan setting forth more specifically the particular actions proposed to alleviate the City's current fiscal emergency.

2. While undertaking these investigations and negotiations, the Receiver proposes taking certain steps, in cooperation with City officials, to increase revenue and reduce expenses through increased management efficiencies, while maintaining necessary services. These interim proposals are reasonable and well within his authority under Act 79 of 2011.<sup>1</sup>

3. The Receiver has committed to return to this Court for approval before contracting to sell or lease assets of the City, and to submit periodic reports to the Court on the status of his ongoing efforts.

4. The Plan submitted February 6, 2012, is neither arbitrary nor capricious, and I do not find it to be wholly inadequate to alleviate the fiscal emergency of the City of Harrisburg.

Now, therefore, it is hereby ORDERED:

1. The Plan, as modified in open court on March 1, 2012, [regarding water and sewer transfer funds; see Exhibit 6] is hereby CONFIRMED.

2. A ruling on the Application for Leave to Intervene by the Suburban Municipalities<sup>2</sup> is held in abeyance pending the receipt of a Response. Objections attached as an exhibit thereto were withdrawn without prejudice, with the Court's permission, during the hearing.

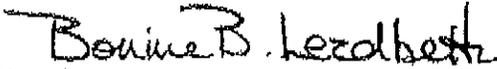
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<sup>1</sup> The Act of October 20, 2011, P.L. 318. Act 79 amended the Municipalities Financial Recovery Act, the Act of July 10, 1987, P.L. 246, *as amended*, 53 P.S. §§ 11701.101 – 11701.712.

<sup>2</sup> Susquehanna Township, Susquehanna Township Authority, Lower Paxton Township, Lower Paxton Township Authority, Steelton Borough, Steelton Borough Authority, Swatara Township, Swatara Township Authority, Paxtang Borough, and the Borough of Penbrook.

3. A ruling on the Application for Leave to Intervene by Debt Watch Harrisburg and Neil A. Grover, Esquire [Debt Watch] is held in abeyance pending receipt of a Response thereto. Objections asserted by Debt Watch during participation at the hearing, to the extent they challenge the constitutionality of Act 79 of 2011, are DISMISSED WITHOUT PREJUDICE as not cognizable in the context of objections to a recovery plan filed by a Receiver duly confirmed by the Court under Act 79. The remaining Objections asserted by Debt Watch are DISMISSED WITHOUT PREJUDICE as premature.

4. The "Request to Enjoin the Receiver from Further Action Pending Submission and Court Approval of a Comprehensive Recovery Plan" filed by the Honorable Wanda Williams, the Honorable Dan Miller and the Honorable John R. Campbell is DENIED. The objections to the Plan stated within that application are DISMISSED WITHOUT PREJUDICE as premature.

  
BONNIE BRIGANCE LEADBETTER,  
Judge

Certified from the Record

MAR 09 2012

And Order Exit

# **EXHIBIT D**



the ongoing implementation of the Recovery Plan, Governor Corbett mandated that the DCED be strictly guided by the Recovery Plan approved by this Court on March 9, 2012 and prohibited any action that was not consistent with the Court-confirmed Plan. The Governor's action included the following directive: **"In the event that DCED should become aware of noncompliance with the Court-confirmed Recovery Plan, it should notify the Commonwealth Court immediately through the legal counsel of record representing the Office of the Receiver."** See Exhibit "A" attached to the Status Report filed on behalf of the Office of the Receiver on April 11, 2012 (emphasis added).

2. Following the Governor's action to stabilize the Office of the Receiver and ensure the ongoing implementation of the Recovery Plan for the benefit of the citizens of Harrisburg, the Secretary of Community and Economic Development, C. Alan Walker, designated Frederick Reddig, Executive Director of the Governor's Center for Local Government Services, to fulfill the temporary assignment of administering the Office of the Receiver, pending the appointment of a new Receiver. See Exhibit "B" attached to the Status Report filed on behalf of the Office of the Receiver on April 11, 2012.

3. In fulfillment of his temporary assignment with respect to the Office of the Receiver, Mr. Reddig has monitored ongoing implementation of the Recovery Plan. In this role, Mr. Reddig has observed general compliance with implementation of the Court-confirmed initiatives contained within the Recovery Plan, however, several instances of non-compliance with the Recovery Plan, both actual and threatened, by the Harrisburg City Council and the Harrisburg City Controller have been observed and are reported herein in accordance with Governor Corbett's directive contained in his April 10, 2012 letter.

**HARRISBURG CITY COUNCIL'S NON-COMPLIANCE  
WITH COURT-CONFIRMED RECOVERY PLAN**

4. Recovery Plan Provision: Schedule 2 of the Recovery Plan requires budget amendments providing for Director of Communications – salary \$75,500, and Assistant City Solicitor – salary \$55,000.

City Council's Non-Compliance: The Administration developed and sent to City Council a 2012 Budget Reallocation Plan #1 Resolution providing for, amongst other action items, the addition of Director of Communications (salary \$75,500 + FICA) and Assistant City Solicitor (salary \$55,000 + FICA) positions. These two positions were to be added to the 2012 Budget and funded from an increase in estimated Earned Income Tax collections according to Schedule 2 of the Recovery Plan as determined by the Office of the Receiver. City Council tabled a vote on this Resolution and has refused to enact the budget amendments required by Schedule 2 of the Court-confirmed Recovery Plan.

5. Recovery Plan Provision: Schedule 2 and the Operating Budget Structural Deficit provisions of the Recovery Plan (see pp. 9-13) require an increase of the City's Earned Income Tax (EIT) Rate from .5% to 1.5%. Annual estimated revenues to be generated from this initiative are approximately \$6.8 million.

City Council's Non-Compliance: City Council has failed to move this initiative out of Committee, or even schedule a Committee meeting to advance this vital revenue-generating initiative. City Council President, Wanda Williams, has indicated that City Council is “not comfortable” with the increase of the EIT, forecasting the Council's continued refusal to advance this Court-confirmed initiative. In addition, despite indicating that Committee sessions have been scheduled concerning the increased EIT and other initiatives, Mayor Thompson and the City Clerk have confirmed that they have received no notice of any such scheduling.

6. Recovery Plan Provision: Schedule 1 of the Recovery Plan requires an increase in the number of staff attorneys to add a Deputy Solicitor and Assistant City Solicitor. Mayor Thompson's Proposed 2012 Budget included funding requests for a total of three staff attorneys, including the City Solicitor and the additional Deputy City Solicitor and Assistant City Solicitor as called for by the Recovery Plan.

City Council's Non-Compliance: City Council eliminated the Assistant City Solicitor position and has refused to initiate the increased EIT, the proceeds of which were calculated to fund the additional attorney positions, including the position eliminated by City Council.

7. The failure of City Council to advance the initiatives outlined above and set forth in the Court-confirmed Recovery Plan compromises the overall fiscal Recovery Plan and process initiated by the Office of the Receiver, particularly refusal or inaction on those initiatives that are desperately needed revenue-producing measures designed to maintain the City's cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg.

8. Members of the City Council have expressed an intention, or otherwise forecasted their intention, to refuse compliance with the Court-confirmed Recovery Plan and have signaled their mistaken belief that initiatives within the Plan are merely proposals or requests with which they can refuse compliance, notwithstanding this Honorable Court's confirmation of the Recovery Plan on March 9, 2012. For example:

(a) In a May 16, 2012 report authored by reporter Jack Sherzer and published on the website of the Harrisburg Patriot News, pennlive.com (PennLive), a verbatim statement issued by Councilman Brad Koplinski was quoted in which Mr. Koplinski criticized the Mayor's support for the Court-confirmed Recovery Plan, referring to the Recovery Plan as "ill-conceived" and merely a "**proposed remedy**" (emphasis added) to the City's fiscal distress. Mr.

Koplinski further stated: "The state's **proposal** is less of a plan than it is a plot to force the city to divest assets while at the same time protecting the guilty." (emphasis added).

(b) In further criticizing the Mayor's compliance with the provisions of the Court-confirmed Recovery Plan, Mr. Koplinski's statement referenced above further provided: "[The Mayor's] support of the recovery plan as written ignores former receiver David Unkovic's appeal for more concessions as well as his admonition about political pressure to accept it as is.... I and most of my colleagues continue to believe that many questions remain unanswered and that any **proposed** remedy must follow a satisfactory conclusion to an investigation." (emphasis added).

(c) Mr. Koplinski's statements recited above were preceded by an April 30, 2012 PennLive article authored by Eric Veronikis in which it was reported that Mr. Koplinski "suggested the council not vote on any matters pertaining to the receiver's recovery plan for Harrisburg until a state or federal investigation of the incinerator retrofit project...takes place."

(d) A May 16, 2012 article authored by Nick Malawskey, posted on PennLive following a meeting of the Municipal Financial Recovery Advisory Committee held the same day, addressed Council President Williams' reaction to the increase to the Earned Income Tax required by the Court-confirmed Recovery Plan as follows: "Williams said the council was **not prepared to approve the increase because it is not in the best interest of city residents**. She also said the council wasn't being kept informed about what was happening with the city's recovery plan." (emphasis added). The report quoted Ms. Williams as follows: "**At this point, we are not comfortable doing what the commonwealth requests we do...**" (emphasis added).

(e) In the same article authored by Mr. Malawskey, and in response to a reference to the statutory authorization under Act 47 for the Office of the Receiver to compel City Council's compliance with the Court-confirmed Recovery Plan through a mandamus action brought before

this Honorable Court, Ms. Williams reportedly goaded such action by saying “So be it.” In addition, at the meeting held on the same day as the media report referenced herein, Ms. Williams commented that the Commonwealth would “have to do what it has to do” with respect to fostering litigation to compel the City Council’s compliance with certain initiatives included in the Court-confirmed Recovery Plan that City Council is refusing to advance.

**HARRISBURG CITY CONTROLLER’S NON-COMPLIANCE  
WITH COURT-CONFIRMED RECOVERY PLAN**

9. Recovery Plan Provision: Revenue initiative 13 (see p. 162) of the Recovery Plan requires the sale of certain historical artifacts, also commonly referred to as “wild west artifacts”, purchased as potential display items for the planned City museums contemplated by the prior mayoral administration.

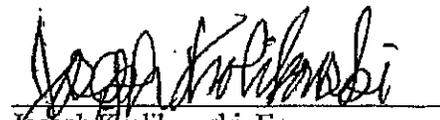
City Controller’s Non-Compliance: City Council approved a Resolution submitted by the Administration authorizing the auction of the said historical artifacts in 2011. A public bid process was subsequently undertaken and a successful bidder ultimately was chosen. However, the City Controller failed, and has continued to refuse, to approve the auctioneer contract. As a result, the auction cannot proceed as otherwise required by the Court-confirmed Recovery Plan.

10. Like City Council’s failures to advance certain initiatives required by the Court-confirmed Recovery Plan, the City Controller’s obstruction of the sale/auction of the historical artifacts owned by the City compromises the overall fiscal Recovery Plan and process initiated by the Office of the Receiver, depriving the City of revenue-producing initiatives designed to maintain the City’s cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg.

Respectfully submitted this 7<sup>th</sup> day of May, 2012.

**MCKENNA LONG & ALDRIDGE LLP**

By:

  
Joseph Krolikowski, Esq.  
Pennsylvania Bar No. 26300  
303 Peachtree Street, NE, Suite 5300  
Atlanta, Georgia 30308  
Tel: (404) 527-4000  
Fax: (404) 527-4198  
[jkrolikowski@mckennalong.com](mailto:jkrolikowski@mckennalong.com)

**OF COUNSEL:**

Thurbert Baker, Esq.  
Georgia Bar No. 033887  
Mark Kaufman, Esq.  
Georgia Bar No. 409194  
Gregory Brow, Esq.  
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[mkaufman@mckennalong.com](mailto:mkaufman@mckennalong.com)  
[gbrow@mckennalong.com](mailto:gbrow@mckennalong.com)

**Attorneys for the Office of the Receiver for the  
City of Harrisburg**

VERIFICATION

The undersigned, Frederick Reddig, in his official capacity as Acting Administrator of the Office of the Receiver for the City of Harrisburg, hereby verifies that the facts set forth in the foregoing Notice are true and correct to the best of his knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 5/23/12

Frederick A Reddig

FREDERICK REDDIG, in his official capacity as Acting Administrator of the Office of the Receiver for the City of Harrisburg

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, in his capacity as  
Secretary for the Department of Community  
and Economic Development,

*Petitioner*

v.

CITY OF HARRISBURG,

*Respondent*

)  
)  
)  
)  
) Docket No. 569 MD 2011  
)  
)  
)  
)

CERTIFICATE OF SERVICE

I, Joseph Krolikowski, Esq., do hereby certify that I served a true and correct copy of the foregoing Notice Of Non-Compliance By Harrisburg City Council And Harrisburg City Controller With Court-Confirmed Recovery Plan upon the following below-named individual(s) by depositing the same in the U.S. Mail, postage pre-paid this 24th day of May, 2012 and by e-mail to the addresses indicated below.

SERVED UPON:

Kenneth W. Lee, Esq.  
2 Lemoyne Drive, Suite 200  
Lemoyne, PA 17043  
E-mail: [KLee@tuckerlaw.com](mailto:KLee@tuckerlaw.com)  
(Atty. for Mayor Linda Thompson, City of  
Harrisburg)

Mark D. Schwartz, Esq.  
P.O. Box 330  
Bryn Mawr, PA 19010  
[mschwa6814@aol.com](mailto:mschwa6814@aol.com)

Jeffrey G. Weil, Esquire  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103  
E-mail: [jweil@cozen.com](mailto:jweil@cozen.com)  
(Atty. for Secretary Walker,  
DCED/Commonwealth of Pennsylvania)

MCKENNA LONG & ALDRIDGE LLP

Date: May 24, 2012

By:

  
\_\_\_\_\_  
Joseph Krolikowski, Esq.  
Pennsylvania Bar No. 26300  
303 Peachtree Street, NE, Suite 5300  
Atlanta, Georgia 30308

# **EXHIBIT E**



3. On May 11, 2012, the Secretary of Community and Economic Development filed the pending Petition for Appointment of Receiver to fill the vacancy in the Office of the Receiver, nominating Major General William B. Lynch, USAF, Ret. for appointment as Receiver for the City of Harrisburg.

4. Following hearing, the Court finds Major General William B. Lynch, USAF, Ret. to be qualified to serve as the Receiver for the City of Harrisburg and hereby appoints him to be the Receiver for the City of Harrisburg for a period not to exceed two years, until no longer than December 1, 2013, subject to extension under 710(b) of Act 47, 53 P.S. § 11701.710(b).

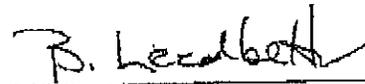
5. The Receiver is ordered to submit a Status Report within 30 days of the date of this Order to this Court, the Secretary of Community and Economic Development, and the City of Harrisburg.

6. During the Receivership, the Mayor shall continue to carry out her duties, including duties relating to the City of Harrisburg's budget, subject to and consistent with the provisions of the Emergency Action Plan, the Recovery Plan confirmed by this Court and any subsequent amendments or modifications to the Plan approved by this Court, and Chapter 7 of Act 47 as amended.

7. The Receiver is required and empowered to implement the Recovery Plan approved this Court on March 9, 2012.

Jurisdiction retained.

BY THE COURT:



BONNIE BRIGANCE LEADBETTER

**Certified from the Record**

**MAY 25 2012**

**And Order Exit**

# **EXHIBIT F**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. Alan Walker, in his capacity as : Case No. 569 MD 2011  
Secretary for the Department of :  
Community and Economic Development, :  
 :  
Petitioner :  
v. : Oral Argument Requested  
 :  
City of Harrisburg, :  
 :  
Respondent :

**OBJECTIONS OF HARRISBURG CITY COUNCIL AND HARRISBURG CITY  
CONTROLLER DAN MILLER TO NOTICE OF NON-COMPLIANCE BY  
HARRISBURG CITY COUNCIL AND HARRISBURG CITY CONTROLLER WITH  
COURT- CONFIRMED RECOVERY PLAN**

Harrisburg City Council and Harrisburg City Controller Dan Miller, by their attorney, Mark D. Schwartz, Esquire file these Preliminary Objections to a document captioned "Notice of Non- Compliance by Harrisburg City Council and Harrisburg City Controller with Court-Confirmed Recovery Plan" (the "Notice") filed by the law firm of McKenna Long & Aldridge LLP (the "McKenna firm") as attorneys for a purported "Office of the Receiver for the City of Harrisburg" and represent as follows:

1. This Court has original jurisdiction of this matter pursuant to Sections 608, 702, 703, 705, 709 and 710 of the Receivership Act, Act of October 20, 2011, P.L. 318, No. 79 (the "Receivership Act."). Accordingly, Pennsylvania Rule of Appellate Procedure 106 applies. RAP 106 specifically provides that "Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied."

2. In turn, Pennsylvania Rule of Civil Procedure 1028 provides that Preliminary Objections may be filed by "any party to any pleading" Applicable grounds for the City Council's and City Controller's Preliminary Objections include the following provisions of RCP 1028 :

- (1) lack of jurisdiction over the subject matter....
- (2) failure of a pleading to conform to law or rule of court ....
- (3) Insufficient specificity in a pleading
- (4) Legal insufficiency of a pleading
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior action
- (7) Failure to exercise or exhaust a statutory remedy, and
- (8) Full, complete and adequate non-statutory remedy at law.

These objections are filed notwithstanding the fact that Council and the City Controller reserve the right to contest the constitutionality of the Receivership Act. In no way do such Preliminary Objections constitute a waiver of claims with respect to the constitutionality of the Receivership Act.

3. A summary of the Notice is that the McKenna firm in representing a purported "office of the Receiver", consisting of an employee of the executive branch's Department of Community and Economic Development, is notifying this Court of purported facts pursuant to directive of the Governor; a totally separate party. The Notification claims that Harrisburg City Council is in non-compliance with a purported Recovery Plan with respect to budgeting and funding two positions and increasing the City's Earned Income Tax (EIT )Rate from .5% to

1.5%, maintaining that these are all “desperately needed revenue-producing measures designed to maintain the City’s cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg.” Paragraph 8 of the Notice contains a recitation of purported facts purportedly published in the news media. Consistent with this Court’s rulings of May 24, 2012, these purported publications are not susceptible of authentication or admission to these proceedings. Next follows notification of purported non-compliance by the City Controller with respect to the sale of certain Wild West artifacts. Reference is made in the Notice to various exhibits which were not part of this Notice.

#### OBJECTIONS

4. This “Notification” is of no legal force or effect as it is contrary to the provisions of the Receivership Act which clearly recognizes the independence of a Receiver from the Executive Branch of Government. Here one has the former Receiver’s law firm acting at the behest of the Executive Branch of Government, which is separately represented by Cozen O’Connor. While, as stated in the Notice’s paragraph 1, the Commonwealth may be “resolute” in pursuit of fiscal recovery, however, it and the McKenna Firm are in violation of a plain reading of the terms of applicable law. Rather than expeditiously appointing a successor receiver to David Unkovic, the Governor without authority of any sort “temporarily assigned DCED the responsibility of administering the Office of the Receiver and implementing the Recovery Plan of March 9, 2012 , which by all admissions was sold as being preliminary in all respects and hardly confirmed by the court. The Governor may well have told DCED that it should notify this Court immediately through the legal counsel of record representing the Office of the Receiver. However , the Governor and the Receiver have had different law firms representing clearly different parties and interests. Mischaracterizing an ultra vires and illegal act as “stabilize”(ing)

the Office of Receiver, the Governor's designation of Frederick Reddig of DCED to administer an "Office of the Receiver" was an empty gesture without statutory basis. The problem is that this is all contrary to the express words of the Receivership Act which says nothing about an "Office of the Receiver" or about any powers of the Governor once a receiver is initially appointed. In fact, Section 608 of the Receivership Act provides specifically at (b) "Governor's powers.—The emergency powers of the Governor under this chapter shall be suspended upon the enactment and continued implementation of an ordinance under section 607 or entry of a judicial order appointing a receiver under section 702." The only thing for a Governor or his Secretary of DCED to do after the appointment of a Receiver confirmed by the Court is to revoke the appointment pursuant to application by this Court pursuant to Section 705 (d) and to name another to be confirmed by the Court. Section 705 speaks in terms of filling a vacancy in the office in the same manner. It says nothing about enabling the Governor to take the kind of actions described in the Notice. To the contrary, the Receiver is clearly to be independent, separate and apart from DCED and the Executive.

Case law pertaining to statutory construction clearly supports City Council and the Controller's Objections. Pennsylvania's Statutory Construction Act of 1972, 1972, Dec 6. No. 290 at Section 1901 specifically states that where a statute is unambiguous and does not produce a manifestly absurd result, the court may not disregard the letter of it. *In re Estate of Leitham*, 726 A.2d 1116, Cmwlth. 1999, reargument denied, appeal denied, 743 A.2d 924, 560 Pa. 713. Moreover, the language of the Receivership Act is clearly mandatory when it comes to reference to only a Receiver as a person, not an "Office of the Receiver", and providing no further role than revocation and reappointment of a new receiver subject to Court confirmation. Where, as is the case here, mandatory statutory language is involved, a court will declare a

transaction void for failure to comply strictly with provisions thereof. *Sargo, II, Inc. v. City of Philadelphia*, E.D. Pa. 1980, 488 F. Supp. 1045. When it comes to legislative intent, Section 1921(b) provides “when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” This is exactly what the Governor and those behind the “Notice” are feebly attempting.

For the above referenced reasons the Notification is Objected to as being violative of Rule 1028 (1)(2)(4)(5) and (7).

5. The Notice’s provisions with respect to alleged Non- Compliance by Harrisburg City Council with the Court Confirmed Recovery Plan are objected to pursuant to paragraph 4 hereof and further as follows. Council is accused of non compliance with respect to budgeting for and funding a communications position and assistant City Solicitor position as well as increasing the City’s Earned Income Tax rate. It is claimed that funding these two positions is “designed to maintain the City’s cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg.” Paragraph 8 contains a recitation of purported facts purportedly published in the news media. Consistent with this Court’s rulings of May 24, 2012 these purported publications are not susceptible of authentication or admission to these proceedings.

The former Receiver, who resigned over ethical concerns over an environment of corruption and called for an investigation by criminal authorities, made it clear to this Court that his “Report” was preliminary. Proceedings held by this Court on March 1, 2012 repeatedly emphasized the preliminary nature of the Plan which was modified in open Court, as reflected in the Court’s Order of March 9, 2012. The Court emphasized the need for the Receiver to come back to the Court for final approval. Specific objections that were filed by the undersigned on

behalf of City Council President Wanda Williams, City Controller Dan Miller and City Treasurer John R. Campbell were specifically "DISMISSED WITHOUT PREJUDICE as premature." Accordingly, it is now premature for the Notice to claim non-compliance.

Moreover, the Receivership Act provides repeatedly and specifically at Section 703 (c) that the "Recovery plan may not.... (1) unilaterally levy taxes." This is a power clearly retained by elected officials.

Again, principles of statutory construction uphold this clear prohibition with respect to the levying of taxes. Moreover, Section 1928(b)(3) of the Statutory Construction Act provides for strict construction of provisions with respect to the imposition of taxes.

For the above referenced reasons, the Notice is objected to as being violative of Rule of Civil Procedure 1028 (1)(2)(4) (5) and (7).

6. The Notice's provisions with respect to alleged Non- Compliance by the City Controller with the Court Confirmed Recovery Plan are objected to pursuant to paragraphs 4 and 5 hereof and further as follows.

The Notification neglected to reference the fact that prior litigation is pending on this issue in the Court of Common Pleas of Dauphin County, Pennsylvania in the matter of *Linda D. Thompson, Mayor of Harrisburg vs. Daniel C. Miller, City Controller* at 2012 CV 2763. This litigation is in the nature of a mandamus action specifically with respect to the sale by auction of "the remaining City-owned western artifacts purchased by former Mayor Reed." (Complaint, Par 19) Activities with respect to purported authorization go back to 2006. The action alleges that the City Controller has refused to sign a contract with an Auctioneer. The action references the preliminary Recovery Plan tentatively approved by this Court on March 9, 2012 omitting this Court's insistence that the Receiver return to this Court prior to any sale of assets.

In an Answer containing New Matter City Controller Dan Miller maintains that he could not approve the contract as the requisite budgetary amendment was not made as to cost and revenue and that he is "only authorized to execute contracts that have been properly budgeted pursuant to Section 2-307.4(a) of the Harrisburg City Ordinances." (Answer, Par 31). Moreover, the Controller maintained that estimated sales commissions to be paid from gross proceeds of the sale pursuant to the contract had not been properly budgeted or approved by City Council, as is required by Section 2-307.4(a)(1) of the City Ordinances. (Answer, Par 32) Further, he found the contract lacking as it was not competitively bid, but instead selected by the Mayor. Accordingly it was something that must be approved by City Council. In terms of the specifics of the Recovery Plan, there is no timeline for the sale of these assets. Rather, the goal is the maximization of proceeds as the Controller states that "To the contrary, the portion of the recovery plan attached to the Complaint.....explicitly states that "[t]he City shall consider the current market conditions for items of historical interest prior to committing to a sale and may consider several sales over an extended time period to avoid the unnecessary loss of value due to adverse market conditions." (Answer, Par 42.) Moreover, the Controller quotes from this Court's Order entered March 9, 2012 stating that " The Receiver has committed to return to this court for approval before contracting to sell or lease assets of the City...".

Finally, there is the matter of the disposition of proceeds from any sale. While the Receivership Act contains language as to the disposition of assets, it also clearly states at Section 707(b) that " Nothing under this section shall be construed to authorize the receiver to unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is : (1) held by a holder of a debt obligation of a distressed city; and (2) granted by the contract, law, rule or regulation governing the debt obligation." What controls is the earlier

pledge of the western artifacts assets pursuant to a 2006 Harrisburg Redevelopment Authority Note issued in 2006 and Ordinance No. 24 of 2006 passed by Council on December 11, 2006 and approved by the Mayor on December 19, 2006. Paragraph 12 thereof states that the City will sell certain assets, including but not limited to, artifacts..... with net proceeds from such sales going towards repayment of the Note.

At the last hearing in this matter, this Court repeatedly emphasized the importance of the Receiver having independence and adequate resources. At the same time questions were raised and left unanswered as to whether or not the McKenna firm had exhausted its seven figure budgetary authorization. In order to address these concerns, this Court needs to have an understanding as to whether or not the McKenna firm has entered into a contingent fee agreement, which by its nature, would not only detract from the maximization and definition of "proceeds" but raise questions and new elements as to other pressures on the Receiver's independence with respect the timing and nature of asset sales.

WHEREFORE Harrisburg City Council and the Harrisburg City Controller request that this Honorable Court sustain their Preliminary Objections and strike the "Notice of Non-Compliance" filed May 24, 2012.

Dated: June 1, 2012

Respectfully submitted,



Mark D. Schwartz, Esquire

PO Box 330

Bryn Mawr, PA 19010

610 525-5534

Attorney Pa.I.D. 30527

Counsel for Objectors Harrisburg City Council and  
the Harrisburg City Controller

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of June, 2012 emailed a copy of this Notice of

Appearance to:

Jeffrey G. Weill, Esquire  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, Pa 19103

Joseph Krolkowski, Esquire  
McKenna Long & Aldridge, LLP  
303 Peachtree Street, NE  
Suite 5300  
Atlanta, Georgia 30308

Kenneth Lee, Esquire  
Tucker Arensberg, P.C.  
111 North Front St  
P.O. Box 889  
Harrisburg, Pa 17108-0889

Scott Wyland, Esquire  
Salzmann Hughes, PC  
343 Alexander Spring Road  
Suite 1  
Carlisle, PA 17105

Neil Anthony Grover, Esquire  
2201 N. 2<sup>nd</sup> Street  
Harrisburg, PA 17110

  
Mark D. Schwartz, Esquire

# **EXHIBIT G**



VIA EMAIL

June 11, 2012

The Honorable Wanda Williams  
President of Council  
City of Harrisburg  
Office of the City Clerk/City Council  
10 North Second Street, Suite 1  
Harrisburg, PA 17101

Dear Council President Williams:

As you are aware, on May 24, 2012, a Notice of Non-Compliance By Harrisburg City Council and Harrisburg City Controller With Court-Confirmed Recovery Plan was filed in the Commonwealth Court on behalf of the former Acting Administrator of the Office of the Receiver, Frederick Reddig. Please be advised that Section 708(a) of Act 47 as amended authorizes me to issue an order to any elected official of the City of Harrisburg to implement any provision of the Recovery Plan. Sections 708(b) and 709 of Act 47 as amended further authorizes me to petition the Commonwealth Court to issue a writ of mandamus upon any elected official of the City of Harrisburg to secure compliance with any order I issue pursuant to Section 708(a).

I have included a copy of the Notice of Non-Compliance previously filed with the Commonwealth Court herein for your reference. Your failure to advance the initiatives of the Court-confirmed Recovery Plan as outlined in paragraphs four (4) through six (6) of the Notice of Non-Compliance compromises the overall fiscal Recovery Plan and process initiated by the Office of the Receiver, particularly your refusal or inaction on those initiatives that are desperately needed revenue-producing measures designed to maintain the City's cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg. Your compliance with the provisions of the Court-confirmed Recovery Plan is mandatory.

Accordingly, please accept this correspondence as my order, issued pursuant to Section 708(a)(1) of Act 47 as amended, directing you to implement each and every provision of the Court-confirmed Recovery Plan as outlined in the enclosed Notice of Non-Compliance, specifically those initiatives and actions identified in paragraphs four (4) through six (6) of the Notice. Your compliance with this order is required **on or before Monday, June 18, 2012**. Should you fail to take action to implement the provisions of the Recovery Plan on or before the aforesaid date, I will immediately thereafter petition the Commonwealth Court pursuant to Sections 708(b) and 709 of Act 47 as amended to compel your compliance with my order. I would prefer to avoid

the initiation of such litigation, however, your continued refusal to comply with the provisions of the Court-confirmed Recovery Plan will leave me no other alternative. Thank you.

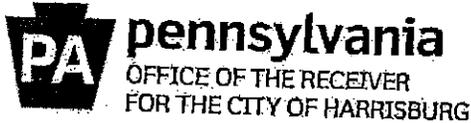
Sincerely,

William B. Lynch  
Receiver for the City of Harrisburg

Cc: Mayor Linda Thompson  
Dan Miller, Controller  
Kirk Petroski, City Clerk  
Mark Schwartz, Attorney

WBL:amm

# **EXHIBIT H**



VIA EMAIL

June 22, 2012

The Honorable Linda Thompson  
City of Harrisburg  
Rev. Dr. Martin Luther King, Jr.  
City Government Center  
10 North Second Street, Suite 202  
Harrisburg, PA 17101

The Honorable Wanda Williams  
President of Council  
City of Harrisburg  
Office of the City Clerk/City Council  
10 North Second Street, Suite 1  
Harrisburg, PA 17101

The Honorable Jeffrey T. Haste  
Dauphin County Commissioner, Chairman  
Mr. Frederick W. Lighty  
Assistant County Solicitor (Alternate)  
Dauphin County Board of Commissioners  
P.O. Box 1295  
Harrisburg, PA 17108

Mr. David E. Black  
President & CEO  
Harrisburg Regional Chamber & CREDC  
3211 North Front Street, Suite 201  
Harrisburg, PA 17110

Dear Members of the Municipal Financial Recovery Advisory Committee:

As you know, on Monday, June 11, 2012, I issued an Order pursuant to Section 708(a)(1) of Act 47 as amended directing the City Council and the City Controller to implement certain provisions of the court-confirmed Recovery Plan, specifically those provisions outlined in the Notice of Non-Compliance filed with the Commonwealth Court prior to my appointment. In my Order, I forecasted my intention to compel compliance with the court-confirmed Recovery Plan by instituting a mandamus action pursuant to Section 709 of Act 47 as amended if compliance were not forthcoming by the close of business, Monday, June 18, 2012.

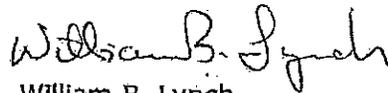
My Order relative to the City Controller has been mooted by legal action fostered recently by Mayor Thompson in the Dauphin County Court of Common Pleas. To the extent the issue pertaining to Controller Miller is the subject of county court action being pursued by the Mayor, I do not intend to request mandamus relief pertaining to the artifacts issue. However, I remain resolute in my intention to pursue mandamus relief against the City Council for continued non-compliance with the provisions of the court-confirmed Recovery Plan that I have outlined in my Order by reference to the Notice of Non-Compliance. Unfortunately, I have not been informed of Council's compliance with my directive at this point.

Accordingly, although I have already met with and/or discussed the issues of City Council's non-compliance and my intention to pursue mandamus relief with several of you, please accept this correspondence as my final consultation with you as required by Section 711(e) of Act 47 as amended concerning my Order to the City Council and my intention to pursue mandamus relief in the Commonwealth Court should City Council's compliance not be forthcoming. I request any additional

consultation you may wish for me to consider be provided to me either via telephone or in a written response to this email. If I do not receive any response from you, I will presume you have elected not to consult with me as you are permitted by the provisions of Section 711 of the Act. If you do provide me your thoughts, I will consider them prior to seeking mandamus relief in the Commonwealth Court.

Thank you for your attention. I look forward to receiving any and all thoughts or remarks that you wish for me to consider. It remains my hope that legal action to compel compliance with the court-confirmed Recovery Plan will not be required.

Sincerely,



William B. Lynch  
Receiver for the City of Harrisburg

WBL:amm

# **EXHIBIT I**

**MARK D. SCHWARTZ**  
**Attorney at Law**  
**Post Office Box 330**  
**Bryn Mawr, Pennsylvania 19010-0330**  
**[www.markschwartzesq.com](http://www.markschwartzesq.com)**  
Telephone & Fax- 610 525-5534 \

June 27, 2012

Joseph Krolkowski, Esquire  
McKenna Long & Aldridge LLP  
Suite 5300  
303 Peachtree Street, NE  
Atlanta, GA 30308

Re: Receiver's Letter of June 22, 2012 to the Municipal Financial Recovery  
Advisory Committee

Dear Mr. Krolkowski:

My client, the Honorable Wanda Williams, has forwarded to me the Receiver's letter of June 22, 2012 to her and others on the Municipal Financial Recovery Advisory Committee. A copy is attached.

As you know, she is represented by counsel. Accordingly I would appreciate your client providing me with all correspondence that he send to her attention, as well as correspondence he may be addressing to the City Treasurer and Controller whom I also represent in the Commonwealth Court proceedings.

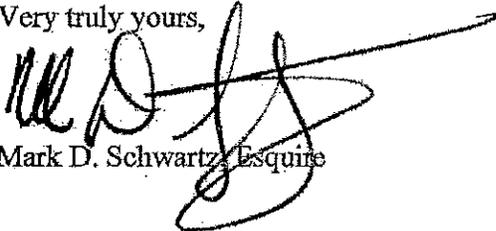
I am troubled that General Lynch is threatening litigation so quickly into his tenure. There has been no indication from your firm or the Receiver as to what has been done to resolve the corrupt atmosphere that his predecessor described that taints the decisions of your office.

I have filed objections to the previous notice of non-compliance filed with the Court and would ask that you and the Receiver consider them and respond to the issues raised therein as well as what progress has been made in making for improvement in the environment surrounding the Receiver's office.

Joseph Krolikowski, Esquire  
(Continued-2)

I too am interested in a resolution other than mandamus relief and the issues that litigation promise. Accordingly, I trust that I will hear from you to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark D. Schwartz', with a long horizontal flourish extending to the right.

Mark D. Schwartz, Esquire

CC: Honorable Wanda Williams  
Honorable Dan Miller  
Honorable John Campbell

# **EXHIBIT J**

Albany  
Atlanta  
Brussels  
Denver  
Los Angeles

McKenna Long  
& Aldridge<sup>LLP</sup>  
Attorneys at Law

303 Peachtree Street, NE • Suite 5300 • Atlanta, GA 30308  
Tel: 404.527.4000 • Fax: 404.527.4198  
www.mckennalong.com

New York  
Philadelphia  
San Diego  
San Francisco  
Washington, D.C.

MARK S. KAUFMAN  
404.527.4120

EMAIL ADDRESS  
mkaufman@mckennalong.com

July 3, 2012

VIA U.S. MAIL AND  
VIA EMAIL: MARKSCHWARTZ6814@GMAIL.COM

Mark D. Schwartz  
Attorney at Law  
Post Office Box 330  
Bryn Mawr, Pennsylvania 19010-0330

Re: Compliance With March 9, 2012 Commonwealth Court's Order Confirming Receiver for City of Harrisburg's Recovery Plan; Response to Your Letter of June 27, 2012

Dear Mr. Schwartz:

As counsel to the Receiver for the City of Harrisburg, William B. Lynch, I write in response to your letter of June 27 addressed to my colleague, Joe Krolkowski. Initially, let me please request that, henceforth, should you desire to communicate with counsel to the Receiver, you direct your communications to me, copying Mr. Krolkowski. Thank you.

Regarding the communication with City Council Member Wanda Williams, who we understand to be your client, please be advised that in the referenced and attached letter of June 22, 2012, the Receiver, acting as such, was communicating with Ms. Williams in her capacity as a member of the Municipal Finance Recovery Advisory Committee, as he was required to do under Act 47. The notice was not from counsel, and it was not part of a legal proceeding. If in the future it is necessary or appropriate for the Receiver's counsel to serve pleadings or other papers in a judicial proceeding on Ms. Williams or any of the other clients you have indicated you represent, we will, of course, either serve them with process under applicable law, or, in existing proceedings, serve papers on you as their counsel.

Furthermore, as the Receiver, Mr. Lynch believes that to properly fulfill his role and his duties under Act 47, he needs to engage in dialogue from time to time with members of City

Mark D. Schwartz  
July 3, 2012  
Page 2

Council and other elected officials who are involved in the financial affairs of the City, and this would include the City Controller and Treasurer, who we understand you to also represent. Accordingly, he intends to communicate with such officials as he deems appropriate, unless you were to specifically instruct your clients not to discuss financial or related matters regarding the City with him. I certainly hope that you will not take such an approach.

Your letter states that you are "troubled" by the fact that the Receiver is threatening litigation "so quickly" into his tenure, referring, I assume to his June 22nd letter where he expressed the likely need to commence proceedings seeking to mandamus the City Council to comply with previously court-ordered aspects of the Recovery Plan. As you are aware, the Recovery Plan was first submitted to the Court on February 6, and after a March 1, 2012 hearing, that Plan was confirmed by Judge Leadbetter of the Commonwealth Court by her Order of March 9, 2012. If the Receiver proceeds with mandamus relief, it will be to request that Judge Leadbetter compel the City Council to take action in furtherance of provisions of the Plan that were judicially confirmed and approved almost four months ago. While the Receiver, it is true, has only been at his post for somewhat more than a month, certain key provisions of the Recovery Plan, which were confirmed and directed to be implemented by the Court's March 9 Order, were not acted upon in any fashion by City Council from March 9 and for almost four months since then.

Notably, as you know, and as was made clear at the March 1 hearing to consider the prudence of the Plan, City Council's passage of the EIT, as well as the prompt commencement of judicial proceedings in the Court of Common Pleas to approve the EIT were both necessary preconditions to sending bills to collect the tax; and as reflected in the Recovery Plan presented on March 1, the ability of the City to garner over \$1.7 Million in operating revenues this year from the EIT, [as was iterated in Schedule I (marked as Exhibit 6) to the March 1 hearing] to address the City growing operating deficit, required that the EIT approval process proceed promptly. As you also are aware, the approval and implementation of the EIT is critical to Harrisburg's financial future, as it is estimated to generate over \$5.1 Million in revenues in 2013 and \$6.86 Million in each of 2014 through 2016 – constituting more than 10% of the City's total annual operating revenue budget.

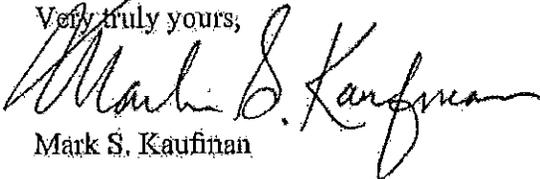
After Mr. Lynch was appointed Receiver, he made inquiry of the City Council members and the Controller about the failure to enact legislation to implement the EIT, only to be definitively advised that the members of City Council, who you represent, were not going to approve the court-ordered EIT. Since then, many of them have talked to the press and in other public settings, expressing their intention to disregard or defy the court-confirmed Recovery Plan that required the passage of legislation to implement the EIT, and to vigorously seek to oppose any mandamus effort to compel their compliance with that aspect of the Plan. In this setting, at a minimum, it is disingenuous for you to be troubled about the Receiver purportedly acting "so quickly" to redress the situation.

Mark D. Schwartz  
July 3, 2012  
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Your letter also notes that you filed prior objections to the notice of non-compliance that had been submitted to the Commonwealth Court by the Office of the Receiver prior to Mr. Lynch's appointment. In addition to the fact that such notice made your clients clearly aware that they were in non-compliance with the Recovery Plan and the Court's Confirmation Order well more than a month ago, I want you to know that the Receiver reviewed and considered your objections and finds them lacking in merit. In the Receiver's recent discussions with most of your clients since learning of their opposition to adopting the EIT, he referenced the legal and equitable bases for seeking mandamus relief as well as the practical considerations, given the seriously challenging fiscal condition of the City, that underscore the need to adopt the EIT and to do so promptly. Moreover, the Order of the Receiver dated June 11, 2012 was issued after considering your objections, and that Order, as modified by the Receiver's comments in his June 22, 2012 letter (attached to your letter of June 27th), reflects the Receiver's intentions to proceed with a petition seeking mandamus relief. Furthermore, and in any event, this letter is not the place to debate any of the many issues that will arise in an enforcement proceeding, as both the merits of the requested mandamus relief, as well as your clients' grounds to disregard the Commonwealth's Order, should appropriately be left to the Commonwealth Court to consider and decide based on an appropriate record.

In the final paragraph of your letter, you indicate that your clients are interested in a resolution other than the Receiver finding it necessary to proceed with a petition for mandamus relief. If your City Council member clients, supported by the Controller and Treasurer, were to advise you that they are now prepared to take up and unconditionally vote to pass legislation to authorize the EIT and its immediate implementation at the forthcoming Council meeting scheduled for July 11th---the last meeting, I understand, before the Council takes its summer break---I would ask that you promptly inform me of that commitment; and if so, the Receiver will withhold filing a petition for mandamus pending the outcome of the July 11th Council vote.

Very truly yours,



Mark S. Kaufman

MSK/lam

cc: William B. Lynch, Receiver

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, in his capacity as )  
Secretary for the Department of Community )  
and Economic Development, )  
 )  
 ) *Petitioner* )  
 ) Docket No. 569 MD 2011  
v. )  
 )  
CITY OF HARRISBURG, )  
 )  
 )  
 ) *Respondent* )

CERTIFICATE OF SERVICE

I, Joseph Krolikowski, Esq., do hereby certify that I served a true and correct copy of the foregoing **Petition for Issuance of Writ of Mandamus** upon the following below-named individual(s) by depositing the same in the U.S. Mail, postage pre-paid this 10th day of July, 2012 and by e-mail to the addresses indicated below.

SERVED UPON:

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(Atty. for Mayor Linda Thompson, City of Harrisburg)

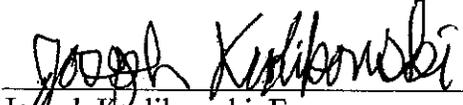
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**MCKENNA LONG & ALDRIDGE LLP**

Date: July 10, 2012

By:

  
\_\_\_\_\_  
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