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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

IN RE:	:	
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CITY OF HARRISBURG	:	Request for Determination of Distress Under Act 47
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**RESPONSE OF APPLICANT, THE CITY OF HARRISBURG, TO MOTION OF
INTERVENORS, DEBT WATCH HARRISBURG AND NEIL GROVER, PRO SE,
TO DISMISS APPLICATION WITHOUT PREJUDICE
AND OTHER RELIEF IN THE ALTERNATIVE**

AND NOW COMES Applicant, City of Harrisburg (City or Applicant), by and through its Law Bureau, and files this Response to the Motion of Intervenors', Debt Watch Harrisburg and Neil Grover, Pro Se, to Dismiss Application Without Prejudice and Other Relief in the Alternative.

1. Admit.
2. Admit.
3. The allegations in this paragraph refer to a writing that speaks for itself, and the Applicant denies the allegations of this paragraph that are inconsistent therewith. Although the original Application was entered into and is part of the record created at the Administrative

Hearing held on October 20, 2010, for purposes of convenience, a true and correct copy of said Application is attached hereto and incorporated herein as is fully set forth as Exhibit "A".

4. Deny. The Application furnished by DCED requests in item number 4 why the municipality believes the **manifestation** of the criteria in Section 201 of the Municipalities Financial Recovery Act (Act 47 or Act) are "imminent and inevitable." (Emphasis supplied). See Exhibit "A." By way of further response, item number 2 of the Application asks the municipality to identify one or more criteria set forth in Section 201 that the municipality believes are **present**. (Emphasis supplied). See Exhibit "A." In order for DCED to exercise its powers under Section 121 (relating to powers and duties of DCED to assess data to make a determination of distressed status), it must find that at least one of the criteria of Section 201 is present. 53 P.S. § 17101.201. There is no requirement under Section 201 that the criteria used to determined Distressed Status are "immanent and inevitable." To the contrary, the clear language and verb tenses used in the enumeration of the criteria under Section 201 require that the criteria are currently present or have already occurred. *Id.* As regards the "imminent and inevitable" language referred to in the Application, that language derives from Section 203 relating to the application procedure for determination of distressed status. 53 P.S. § 17101.203. Section 203(a)(5) states "If the requesting party is a municipality, the request **may** include a statement indicating why the requesting party believes manifestation of section 201 criteria is imminent and inevitable. This statement **may be in lieu** of the statement **required** under paragraph (2)" (referring to why the municipality believes it is distressed under Section 201). 53 P.S. § 17101.203(a)(5) (Emphasis supplied). In accordance with the plain language of the Act, a municipality must indicate on the Application that at least one of the Section 201 criteria presently exist or have occurred. DCED may in its discretion inquire of the municipality as to

whether it believes the occurrence of one or more of the Section 201 criteria are immanent and inevitable in which case that immanency and inevitability may be used to make a distressed determination. Therefore, the requirement of immanency and inevitability is not the preeminent element under the Act to make a determination of distressed status for a municipality.

5. Deny. The allegations in this paragraph refer to writings that speak for themselves, and the Applicant denies the allegations of this paragraph that are inconsistent therewith. By way of further response, any proposed action on behalf of the Harrisburg Parking Authority is speculative and irrelevant. No such proposed, speculative actions should be taken into account when making a determination as to whether the City presently meets any of the criteria enumerated under Section 201 of the Act.

6. Deny. Subsequent to the City's Application, the City was able to receive early payments of amounts due from certain entities such as The Harrisburg Authority, the Harrisburg Parking Authority and the Harrisburg School District for services rendered by the City on behalf of those entities. The City did not receive "interim funding." The receipt of payments from these entities allowed the City to barely fund its last payroll due on the morning of October 13, 2010. The City remained unable to fund other payroll related expenses to include but which are not limited to employee health benefits. By way of further response, the testimony provided by Mr. Robert Kroboth, Acting Business Administrator/Interim Chief of Staff of the City, at the Administrative Hearing of October 20, 2010 indicated that the City is presently far short of the necessary funding to meet the upcoming payroll due to be funded on the morning of October 27, 2010.

7. Admit in part, deny in part. The Applicant admits only that the City Administration submitted draft legislation for approval of a TRAN which was later withdrawn.

It is denied that the TRAN was withdrawn when the City received the payments described in paragraph 6 above. On the contrary, the City Administration withdrew the TRAN legislation because it was unable to secure secondary funding of a long term borrowing from a financial institution or the Commonwealth to guaranty the payoff of the TRAN by December 31, 2010. This is further evidence of the City's inability to acquire even short-term borrowing to meet its immediate financial needs.

8. Deny. The balance on the settled judgments cited in the Application were provided in response to DCED's request in item 3 of the Application and as a Section 201 criterion under item 2. The judgments are not alleged to be "immanent and inevitable" under item 4 of the Application. The information provided regarding these judgments is left to the discretion of DCED as to their relevance in making a Distressed Status determination.

9. Deny. The allegations of this paragraph are denied for the reasons state above, in particular, those reasons stated in paragraphs 4 and 6 herein. By way of further response, the City's inability to make its next payroll and subsequent payrolls remains "immanent and inevitable." Further, as stated in paragraph 4, whether a condition of the City is "immanent and inevitable" is not dispositive as to whether the City qualifies as a distressed municipality under Act 47.

10. Deny. To the extent the Intervenors are referring to pending litigation involving Dauphin County, Assured Guaranty Municipal Corp., TD Bank, National Association and Manufacturers and Traders Trust Company, the Applicant made no mention of those actions in its application and the allegations of this paragraph are denied as irrelevant and immaterial. To the extent the Intervenors are referring to an action mentioned in the Auditor's Letter submitted

with the Application, the allegations are likewise irrelevant and immaterial as the Applicant did not incorporate the Auditor's Letter into the Application but provided it at the request of DCED.

11. Deny. The allegations of this paragraph are denied for the reasons stated above, in particular, those reasons stated in paragraph 5 herein.

12. Deny. The allegations of this paragraph are denied for the reasons stated above, in particular, those reasons stated in paragraphs 4, 5, 6, 8 and 9 herein. By way of further response, there have been no manifest positive changes in the City's immediate financial state. On the contrary, the City's financial state continues to deteriorate rapidly as evidenced by the City's already realized \$4,500,000 budget deficit.

13. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied.

14. Deny. Dismissing the Application under any circumstance would severely prejudice the Applicant in that it would not afford the Applicant with the opportunity to take immediate advantage of any grants or loans or financial strategies provided under the Act which would improve the Applicant's current financial situation and help to protect the Applicant's employees and families from potential irreparable damage that would be realized if the Applicant would be unable to fund the next or subsequent payrolls and meet other health, safety and welfare requirements of the City and its citizens. On the contrary, DCED must act upon the Application due to the Applicant's current, real financial situation and cannot delay action based upon speculation. If, in fact, the City realizes a positive turn in its financial situation as a result of the actions of the Harrisburg Parking Authority or for any other reason, DCED may decide to terminate the City's distressed status in accordance with Section 253. 53 P.S. § 11701.253. In the meantime, the City may avail itself of whatever benefits are offered under the Act.

15. Deny. The allegations of this paragraph are denied for the reasons stated above, in particular, those reasons stated in paragraph 14 herein.

16. Deny. The allegations of this paragraph are denied for the reasons stated above, in particular, those reasons stated in paragraph 14 herein.

17. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

18. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

19. The allegations of this paragraph require no substantive response. To the extent a response is required the allegations are denied. Further, the allegations in the paragraph contain legal conclusions and accordingly are therefore deemed denied.

20. Deny. The motion of the Intervenors should be denied.

WHEREFORE, for the reasons stated, the Intervenors' Motion to Dismiss Application Without Prejudice and Other Relief in the Alternative, should be denied and the Agency should enter the alternative order proposed herewith.

Respectfully submitted,

By: 

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Date: October 22, 2010

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY and ECONOMIC DEVELOPMENT
GOVERNOR'S CENTER FOR LOCAL GOVERNMENT SERVICES

Request for a Determination of Municipal Financial Distress
Under the Municipalities Financial Recovery Act

Name of Municipality Harrisburg, County Dauphin
(City, Borough, Township)

1. Party Seeking Determination of Distress

Mayor Linda D. Thompson

2. Please identify below one or more of the criteria set forth in Section 201 of the Municipalities Financial Recovery Act that you believe are present and the reasons why you believe the municipality meets these criteria. Please include supporting data as required.

Criterion (3) – the City defaulted on certain of its guaranty obligations on The Harrisburg Authority's Resource Recovery Facility (RRF) Revenue Bonds and Notes and other related RRF debt since November 2009. See Appendix A. However, the City did meet all of its direct General Obligation Bonded Debt and Lease/Rental payments.

Criterion (5) – the City did fail to make required payments to two (2) judgment creditors after said judgments were recorded in favor of the creditors. The City and creditors subsequently negotiated payment plans in settlement of the judgments.

Criterion (9) – the City has been seeking forbearance from its guaranteed Harrisburg Authority RRF Revenue Bonds and Notes debt service payment obligations and other related RRF debt obligations, the total of which exceeds 100% of the General Fund Budget.

3. List below all judgements recorded against the municipality.

The City has various pending actions that may result in judgments against the City which are outlined in the most recent Legal Representation Letter provided to the City's independent auditor December 17, 2009. Confirmed judgments against the City include Conrail v. City of Harrisburg in which the City must pay \$300,000 in three annual installments of \$100,000, the first of which was made this year. The next includes Eichelberger v. City of Harrisburg in which the City must pay \$660,000 in two (2) annual installments of \$330,000, the first of which was paid this year.

Exhibit "A"

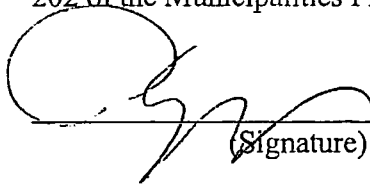
4. State below other material allegations justifying the relief afforded by this Act, or if the requesting party is a municipality, state why you believe the manifestation of the criteria in Section 201 of the Act is imminent and inevitable.
- A) Criterion (3) – defaults on future bond and note guaranty obligation payments with due dates of October 1, 2010, November 1, 2010, December 1, 2010 and December 15, 2010 in the approximate aggregate amount of \$43,561,696 are imminent and inevitable. See Appendix A.
 - B) Criterion (4) – while the City has not missed a payroll yet, such occurrence is imminent if a funding of unfunded debt or some other financing arrangement (TRAN) does not occur within the next twelve (12) to twenty-six (26) days.
 - C) Criterion (8) – without funding as described in 4.B. above, the City will likely default on making its 2010 Minimal Municipal Obligation on the Police Pension Plan due on or before December 31, 2010.
 - D) Criterion (10) – while the Thompson Administration considers bankruptcy the option of last resort to restructure the City's debt, if no other option is pursued it is likely that the filing of a municipal debt readjustment plan pursuant to Chapter 9 of the Bankruptcy Code will be inevitable.

4. State below other material allegations justifying the relief afforded by this Act, or if the requesting party is a municipality, state why you believe the manifestation of the criteria in Section 201 of the Act is imminent and inevitable..

Certification of Requesting Party.

Original signatures must be provided and the request must be duly notarized.

I (We) hereby certify that the requesting party is a party that has standing under Section 202 of the Municipalities Financial Recovery Act to seek a determination of distress.



(Signature)

10/1/2010
(Date)

Philip J. Harper
(Name - Please Print)

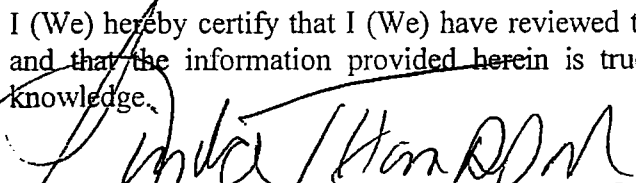
Acting City Solicitor
(Title)

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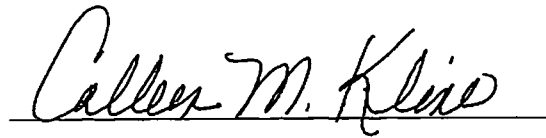
I (We) hereby certify that I (We) have reviewed the information contained in this request and that the information provided herein is true and correct to the best of my (our) knowledge.



(Signature of Requesting Party)

Taken, Sworn and subscribed before me, this 1st day of October, 2010.

Seal



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Colleen M. Kline, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires July 4, 2014
*Member, Pennsylvania Association of Notaries

APPENDIX A

THA - RRF 2010 - Estimated Payment Summary - For Discussion Purposes

Advance to Trustee	Debt Series	Guarantor(s)	Payment to Bondholder	Estimated Payment	Payment Made By:	Approx. DSRF Balance Available PRIOR to Payment?	Approx. DSRF Balance AFTER Payment?
1/1/2010	Covanta	City	1/1/2010	\$637,500	City	No DSRF	No DSRF
End of February	1998A	City	3/1/2010	\$280,085	DSRF	\$3,891,469	\$3,611,384
	2003ABC	City	3/1/2010	\$1,792,460	DSRF	\$5,408,240	\$3,615,780
4/1/2010	Covanta	City	4/1/2010	\$637,500	Unpaid	No DSRF	No DSRF
End of April	2002A	City	5/1/2010	\$425,194	AGM	\$0	\$0
End of April	2003D	City & County	6/1/2010	\$2,687,445	DSRF	\$3,151,276	\$463,831
	2003E	City & County	6/1/2010	\$322,102	County	\$0	\$0
	2003F	City	6/1/2010	\$314,743	AGM Surety Policy	\$369,526	\$54,783
Assured Guaranty Surety Policy							
6/1/2010	Swap Cap Fee	City & County	6/1/2010	\$284,616	County	No DSRF	No DSRF
	Swaps	City & County	6/1/2010	\$519,536	County	No DSRF	No DSRF
7/1/2010	Covanta	City	7/1/2010	\$637,500	Unpaid	No DSRF	No DSRF
End of August	1998A	City	9/1/2010	\$320,085		\$3,611,384	\$3,291,299
End of August	2003ABC	City	9/1/2010	\$1,659,154		\$3,615,780	\$1,956,626
2003B (\$29,085MM) is variable rate after 6/15/2010 - Assumed at 1.5%							
10/1/2010	Covanta	City	10/1/2010	\$637,500		No DSRF	No DSRF
End of October	2002A	City	11/1/2010	\$1,215,282		\$0	\$0
End of October	2003D	City & County	12/1/2010	\$2,687,450		\$463,831	(\$2,223,619)
	2003E	City & County	12/1/2010	\$1,777,103		\$0	\$0
	2003F	City	12/1/2010	\$1,714,745		\$54,783	(\$1,659,962)
12/1/2010	Swap Cap Fee	City & County	12/1/2010	\$284,616		No DSRF	No DSRF
	Swaps	City & County	12/1/2010	\$560,000		No DSRF	No DSRF
Variable-Estimate only							
12/1/2010	2003 D-1 Bonds: \$31,048 Million needs remarketed on the 12/1/2010 Mandatory Tender Date. If not remarketed, bond rate will become 10%.						
12/15/2010	2007 Working Capital Notes: \$34,685 Million matures and is due on 12/15/2010.						
TOTAL ESTIMATED PAYMENTS				\$19,394,615	(Not including maturity of Wkg. Capital Notes)		

*Trustee reports that the County is making monthly payments to fund the DSRF deficiencies.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

IN RE:

CITY OF HARRISBURG

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Request for Determination of
Distress Under Act 47

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of October, 2010, served a true and correct copy of the foregoing motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

Steven J. Fishman, Esquire
Charles Brown, Esquire
Department of Community and
Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
717-783-1402 (fax)

Neil A. Grover, Esquire
Pro Se and Attorney for Intervenors
2201 North 2nd Street
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717-233-2342 (fax)

By: 

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

IN RE:

CITY OF HARRISBURG

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Request for Determination of
Distress Under Act 47

ORDER

NOW, this _____ day of October, 2010, upon consideration of the *Response of Applicant, City of Harrisburg, to Motion of Intervenors, Debt Watch Harrisburg and Neil Grover, Pro Se, to Dismiss Application Without Prejudice and Other Relief in the Alternative*, the Intervenors' Motion is HEREBY DENIED. The Act 47 Application shall be acted upon by DCED and the Administrative Hearing will be closed so that the Secretary may proceed to issue an administrative determination of whether the Applicant, City of Harrisburg, is financially distressed.

By: _____
Austin Burke, Secretary,
PA Department of Community and
Economic Development