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

In Re: City of Harrisburg :
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**APPLICANT’S RESPONSE TO MOTION TO ISSUE SUBPOENA TO COMPEL
TESTIMONY OF AGENCY DESIGNEES OF THE
HARRISBURG PARKING AUTHORITY**

Applicant City of Harrisburg (hereinafter, the “City”) by and through its attorneys, the City of Harrisburg Law Bureau, files this Response to the Motion of Intervenor, Debt Watch Harrisburg (hereinafter, “Intervenor”). to Issue Subpoena to Compel Testimony of Agency Designees of the Harrisburg Parking Authority (HPA). In support whereof, the City avers as follows:

1. Admitted.
2. Denied as stated. The Application form referenced is provided by the Department of Community and Economic Development (hereinafter, “Agency”):

however, the Application consists of the form as supplemented by the statements and allegations required by the requesting party pursuant to 53 P.S. § 11701.203.

3. Denied as stated. The Agency's Application, pursuant to Act 47, requires that an applicant identify one or more of the criteria for distressed status, or if the requesting party is the municipality, the applicant may state why the manifestation of the criteria for distressed status is imminent and inevitable. 53 P.S. § 11701.203

4. Admitted in part. Denied in part. It is admitted that on October, 20, 2010, an Act 47 administrative hearing was commenced. It is denied the hearing is not yet concluded. The Act 47 hearing has concluded, although the record remains open.

5. Denied. Without reference to the transcripts, the City is not able to confirm or deny the contents of Paragraph 5 regarding the substance of Councilman Koplinsky's testimony. To the extent a response is required, the same are denied.

6. Denied. The allegations in Paragraph 6 refer to a writing, the contents of which speak for themselves. Applicant is unable to confirm or deny whether Mr. Koplinsky's testimony is consistent with the contents of those writings.

7. Denied. The allegations in Paragraph 7 state a conclusion of law to which no response is required. To the extent a response is necessary, the same are denied. By way of further response, Applicant denies that a copy of HPA's action must be made available to the presiding officer. Any proposed action taken by HPA 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. Furthermore, to the extent that any of HPA's actions result in a future cash infusion to the City, that fact could be considered at such time by the Agency

to terminate the City's Distressed City status if it results in the City no longer meeting the criteria for Distressed City pursuant to 53 P.S. § 11701.253.

8. Denied. The allegations in Paragraph 8 state a conclusion of law to which no response is required. To the extent a response is necessary, the same are denied. By way of further response, it is denied that any party or interested person was denied due process.

9. Denied. The contents of Paragraph 9 do not contain any factual allegations to which a substantive response is required. To the extent that a response is required, the same are denied.

10. Denied. The allegations in Paragraph 10 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied. By way of further response, the City denies that any party was deprived of the right to be heard.

11. Admitted in part. Denied in part. It is admitted that no representative of HPA offered oral testimony at the hearing. The City is not able to confirm or deny whether any HPA representative appeared at the hearing or whether any written testimony by a HPA representative has been entered into the record.

12. Denied. The contents of Paragraph 12 do not require a substantive response. To the extent a response is required, the same are denied. By way of further response, representatives of HPA were given the same notice and afforded the same opportunity as other interested persons to appear and offer oral testimony.

13. Denied. The allegations in Paragraph 13 refer to a writing, the contents of which speak for themselves, and Applicant denies the allegations to the extent they are inconsistent therewith.

14. Admitted in part. Denied in part. It is admitted that whether an imminent and inevitable manifestation of statutory criteria exists is a factual issue for Agency officials at an Act 47 hearing. The remaining allegations in Paragraph 14 are denied. By way of further response, it is denied that HPA representatives could offer material, relevant or greatly probative testimony regarding whether the City meets the criteria under 53 P.S. § 11701.201 or whether manifestation of section 201 criteria is imminent and inevitable under 53 P.S. § 11701.203. Robert Kroboth, Interim Business Administrator/Interim Chief of Staff testified as to the City's eligibility under the criteria set forth in 53 P.S. § 11701.201 and the imminence and inevitability of the manifestation of certain of those criteria pursuant to 53 P.S. § 11701.203. Specifically, Mr. Kroboth testified that the City has already defaulted on guaranty obligations and that it is well short of the amount of cash necessary to fund payroll for the week of October 25, 2010. Any testimony from HPA about speculative actions to offer cash infusion to the City should not be taken into consideration in determining whether the City presently meets the criteria for distressed city status. Furthermore, the Agency will not be precluded from considering HPA's plan, if it is ever realized, as it would be relevant as to whether the Agency should terminate the City's distressed status pursuant to 53 P.S. § 11701.253.

15. Denied. Mr. Kroboth's testimony is a matter of record, and the Applicant denies the allegations of Paragraph 15 to the extent they are inconsistent with Mr. Kroboth's testimony.

16. The contents of Paragraph 16 do not contain factual allegations to which a response is required. To the extent a response is required, the same are denied.

17. Denied. The allegations in Paragraph 17 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied. By way of further response, it is denied that any party is denied the due process of law by the Agency's carrying out of the mandates of Act 47 concerning the scheduling of a hearing. On the contrary, the mandates of Act 47 serve to ensure, protect and preserve the fundamental due process rights of all parties while allowing the purpose of the Act to be carried out in response to the petition seeking a Determination of Distress.

18. Denied. The allegations in Paragraph 14 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied. By way of further response, it is denied that Act 47 is silent as to when a hearing must be concluded or that "held" is synonymous with "commenced." The requirement that a hearing be "held" implies a beginning and an end to the hearing. By way of further response, it is denied that the principles that underlie the requirement to commence a criminal trial within 180 days are the same principles that form the basis of the 30 day hearing requirement under Act 47. The right to a speedy trial exists primarily to protect a criminal defendant's right to be free from prolonged pretrial incarceration while preserving the state's ability to detain dangerous individuals and prosecute cases in an orderly fashion. See Commonwealth v. Dixon, 907 A.2d 468, 473 (Pa. 2006). The 30 day hearing requirement under Act 47 seems to have the purpose of allowing a distressed municipality facing imminent danger of adverse financial consequences the ability to

have a speedy determination of their status, not merely a speedy commencement of proceedings.

19. Denied. Mr. Kroboth testified that the City is currently far short of the amount of cash necessary to meet its payroll obligations for the week of October 25, 2010. The City must have sufficient cash to meet payroll by the morning of Wednesday October 27, 2010 or the City's employees will go unpaid. Additional testimony indicated that the City is behind in its payments for health services to its employees, which services could be jeopardized with the City making at least a partial payment of the overdue amounts in the near future. A grant of distressed status could result in immediate financial assistance to help the City meet its payroll obligations and pay for health services, both of which are critical to its employees' health and wellbeing. Therefore, in order to prevent immediate and irreparable harm to City employees and their families, an immediate determination by the Agency is imperative.

20. Denied. HPA had the opportunity to appear and present testimony at the Act 47 Hearing relative to the matters referenced by Intervenor in Paragraph 20, and failed to do so. By way of further response, the City avers that any of the testimony referenced in Paragraph 20 would be speculative as to its impact on the City and would be irrelevant to a determination of whether the City presently meets the criteria for distressed status. In addition, the City incorporates its responses to Paragraphs 7 and 14 above.

21. Denied. The contents of Paragraph 21 contain a request for relief, which the City opposes for the reasons stated in the preceding paragraphs.

22. Denied. The contents of Paragraph 22 do not contain factual allegations to which a response is required. To the extent a response is required, the same are denied.

By way of further response, the only party compelled to give testimony according to the statute is the requesting party. 53 P.S. § 11701.203(e).

23. Denied. The contents of Paragraph 23 are a request for relief, which the City opposes. By way of further response, the City avers that the prejudice it will suffer by delaying the proceedings substantially outweighs the benefit of any testimony that can be provided by HPA representatives, which as earlier stated would have only a speculative impact on the City, and is irrelevant to the determination of whether the City meets the criteria for a distressed status.

24. Denied. The allegations in Paragraph 24 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied.

25. Denied. For the foregoing reasons, the requested relief should be denied.

WHEREFORE. Applicant, City of Harrisburg, respectfully requests that the Agency enter an Order denying Plaintiffs' Motion to Issue Subpoenas to Compel Testimony of Agency Designee(s) of the Harrisburg Parking Authority.

Respectfully submitted,

CITY OF HARRISBURG

By: 

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Attorneys for Applicant,

City of Harrisburg

Date: October 22, 2010

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

IN RE: :
: Request for Determination of
CITY OF HARRISBURG : Distress Under Act 47
:

CERTIFICATE OF SERVICE

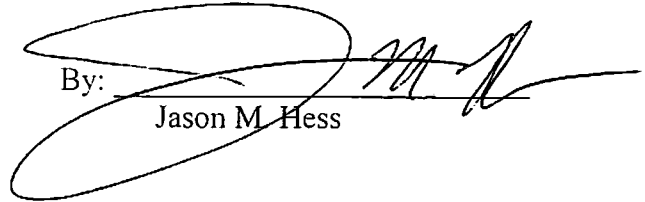
I hereby certify that I have this 22nd day of October, 2010, served a true and correct copy of the foregoing motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

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

Neil A. Grover, Esquire
Pro Se and Attorney for Intervenors
2201 North 2nd Street
Harrisburg, PA 17110
717-233-2342 (fax)

By: _____

Jason M. Hess



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

In Re: City of Harrisburg

:
: Agency No. _____
:
: 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 Compel Testimony of Agency Designee(s) of the Harrisburg Parking Authority*, the Intervenors' Motion is HEREBY DENIED. The Act 47 Administrative Hearing record 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: _____
Fred Reddig, Presiding Officer