

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

No. 569 M.D. 2011

ORDER

AND NOW, this 11th day of January 2013, following a conference call with the Receiver and counsel for all interested parties,¹ the attached Agreement is APPROVED and adopted as an order of the Court.


BONNIE BRIGANCE LEADBETTER,
Judge

Certified from the Record

JAN 11 2013

And Order Exit

¹ In addition to those counsel who executed the Agreement, Scott T. Wyland, Esquire, counsel for the Suburban Municipalities, participated in the conference call.

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

No. 569 M.D. 2011

APPLICATION OF RECEIVER WILLIAM B. LYNCH

COMES NOW William B. Lynch, Court-appointed Receiver for the City of Harrisburg and submits this Application as follows:

1.

Receiver William B. Lynch (hereinafter the "Receiver") seeks approval from this Honorable Court such that the City of Harrisburg may be entitled to temporarily use certain sums, some of which are currently earmarked and precluded from use by the City for its general operations pursuant to this Court's prior directive issued on March 9, 2012. The earmarked portion of the subject sums were obtained from payments made by utility ratepayers for rates charged to them for sewer services on the systems owned by The Harrisburg Authority and operated by the City of Harrisburg.

2.

The Receiver is advised by City of Harrisburg officials that currently the amount that has been earmarked per the Court's directive totals approximately \$4.2 Million. The earmarked sums are located in an account, denominated the "Sewer Fund". An additional amount that is not

earmarked and precluded from use by the City for its general operations per this Court's prior March 9 directive is located in a fund denominated the Sanitation Fund. The Sanitation Fund has a current approximate balance of \$542,000.(collectively "the Funds").

3.

At present, the City of Harrisburg lacks sufficient amounts in its General Fund account, i.e., excluding the Sanitation Fund and the Sewer Fund, with which to meet its short term anticipated operating expenses, including, but not limited to, the possibility that it cannot satisfy its payroll obligations for City employees, due as soon as the January 17, 2013 payroll run.

4.

Because real estate taxes, the principal source of the City's annual revenues, do not materially generate revenues for the City until the latter part of February of each year, the City anticipates that it will potentially need additional funds to meet ongoing operating expenses, including payroll, that are to come due at the end of January and during February of this year and, consequently, before tax revenues in sufficient amounts are received by the City to fund its operating expenses.

5.

The Receiver requests that the City be permitted and authorized to temporarily transfer up to \$4 million of the sums from one or more of the afore-referenced Funds, wherever they are currently deposited, to the City's General Fund, so that such sums can in turn be used to pay for the City's operating expenses, including payroll, through February of this year. Transfers needed from time to time would be made to permit the City to have sufficient sums in its General Fund to pay its essential operating expenses that the City deems necessary to pay. The transfers would occur in the manner similar to that of a line of credit, such that only such sums that are needed

from time to time will be drawn down. The aggregate cap on the amount that the Receiver agrees that the City would be permitted to draw from the subject Funds shall not exceed \$4 million. The transfer of needed amounts would be taken first from the Sanitation Fund, and if the sums in that Fund were fully depleted for use in the General Fund of the City, only then would the City access sums in the Sewer Fund.

6.

The Receiver represents that the City may need to draw as much as \$2 million on January 16, 2013 as the initial draw, and requests that up to that amount be hereby approved. The Receiver requests that he be permitted to seek and direct a subsequent advance or advances from the Funds if he determines that such advance or advances are necessary to satisfy payment of the City's current operating expenses. The Receiver's written determination of that necessity, directed to Robert Kroboth, Finance Director, City of Harrisburg, shall be a sufficient condition of any such additional transfer.

7.

Interest at the rate of 0.5% per annum, using a 365 day year for computation thereof, shall accrue on any amounts drawn and outstanding for the period until repayment is made.

8.

It is anticipated that starting in late February, 2013, real estate taxes will be begin to be paid by the taxpayers to the City, such that by the middle of March, the City will have collected sufficient tax revenues to allow it to operate without the need to seek additional transfers, and in a sufficient sum to permit the repayment of the first \$2 million transferred to the City's General Fund (or, if less than \$2 Million in the aggregate were to have been transferred to the General Fund, then the full amount thereof). Accordingly, the Receiver, the City and City Council agree

that the City shall be bound to repay \$2 million of the transferred sums (or any lesser sum if less than \$2 Million in the aggregate were to have been transferred to the General Fund), plus interest thereon, to the respective Fund(s) from which the sums were transferred no later than March 20, 2013.

9.

Any remaining amount of funds in excess of \$2 Million that were to be transferred to the City's General Fund pursuant to the authorization granted by this Court shall be repaid, with interest thereon, to the respective Fund(s) from which such sums were transferred no later than June 20, 2013. The Receiver, the City and City Council agree that the City shall be bound to timely repay said sums.

10.

The City, Receiver and City Council acknowledge that they will be under an order of this Court to timely assure the City's repayment of the sums to the respective Funds from which the sums were advanced; and they hereby consent to the right of this Court to compel their compliance with this Court's order.

11.

City Council further acknowledges that it voted to approve its commitment to abide by the understandings and agreements set forth in the instant Application and consistent with the unanimously adopted Resolution #3 which Resolution was adopted at a properly called meeting of City Council on January 8, 2013. Resolution # 3 is attached hereto as Exhibit "1".

12.

It is acknowledged by the Receiver, the City and City Council that part of the sums being transferred are from the Sewer Fund, and that a material amount of the sums in that Sewer Fund

were generated from rates paid by suburban customers on the THA system. Accordingly, it is agreed that to the extent sums are transferred to the General Fund from the Sewer Fund, the repayments by the City shall first be to the Sewer Fund until fully repaid, and further that such repayments shall be deemed to first repay so much of that Fund as was generated through rates charged to and paid by suburban sewer customers.

13.

Counsel for the suburban sewer customers has been advised of the relief herein sought and are being served with the instant Application. They have also been advised through their counsel of the hearing scheduled before this Court to consider the instant Application, and that they will be given the opportunity to be heard on the relief requested.

WILLIAM B. LYNCH, RECEIVER DATE
OFFICE OF THE RECEIVER FOR
 THE CITY OF HARRISBURG
401 FINANCE BUILDING
HARRISBURG, PA 17110

MARK S. KAUFMAN, ESQUIRE DATE
MCKENNA LONG & ALDRIDGE LLP
303 PEACHTREE STREET, N.E., SUITE 5300
ATLANTA, GEORGIA 30308

*COUNSEL FOR WILLIAM B. LYNCH, RECEIVER FOR
THE CITY OF HARRISBURG*

WANDA R.D. WILLIAMS, PRESIDENT DATE
CITY COUNCIL FOR CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

NEIL A. GROVER, ESQUIRE DATE
LAW OFFICE OF NEIL A. GROVER
2201 NORTH SECOND STREET
HARRISBURG, PA 17110

*COUNSEL FOR HARRISBURG CITY COUNCIL
AND EACH MEMBER THEREOF*

LINDA D. THOMPSON, MAYOR DATE
CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

KENNETH W. LEE, ESQUIRE DATE
TUCKER ARENSBERG P.C.
2 LEMOYNE DRIVE, SUITE 200
LEMOYNE, PA 17043

COUNSEL FOR THE HONORABLE LINDA D.


THOMPSON, MAYOR, CITY OF HARRISBURG

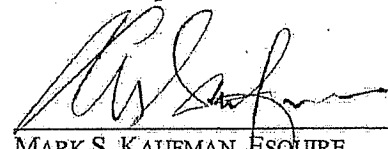
ATLANTA:5447045.1

were generated from rates paid by suburban customers on the THA system. Accordingly, it is agreed that to the extent sums are transferred to the General Fund from the Sewer Fund, the repayments by the City shall first be to the Sewer Fund until fully repaid, and further that such repayments shall be deemed to first repay so much of that Fund as was generated through rates charged to and paid by suburban sewer customers.

13.

Counsel for the suburban sewer customers has been advised of the relief herein sought and are being served with the instant Application. They have also been advised through their counsel of the hearing scheduled before this Court to consider the instant Application, and that they will be given the opportunity to be heard on the relief requested.


WILLIAM B. LYNCH, RECEIVER DATE
OFFICE OF THE RECEIVER FOR
THE CITY OF HARRISBURG
401 FINANCE BUILDING
HARRISBURG, PA 17110


MARK S. KAUFMAN, ESQUIRE DATE
MCKENNA LONG & ALDRIDGE LLP
303 PEACHTREE STREET, N.E., SUITE 5300
ATLANTA, GEORGIA 30308

*COUNSEL FOR WILLIAM B. LYNCH, RECEIVER FOR
THE CITY OF HARRISBURG*

WANDA R.D. WILLIAMS, PRESIDENT DATE
CITY COUNCIL FOR CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

NEIL A. GROVER, ESQUIRE DATE
LAW OFFICE OF NEIL A. GROVER
2201 NORTH SECOND STREET
HARRISBURG, PA 17110

*COUNSEL FOR HARRISBURG CITY COUNCIL
AND EACH MEMBER THEREOF*

LINDA D. THOMPSON, MAYOR DATE
CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

KENNETH W. LEE, ESQUIRE DATE
TUCKER ARENSBERG P.C.
2 LEMOYNE DRIVE, SUITE 200
LEMOYNE, PA 17043

COUNSEL FOR THE HONORABLE LINDA D.

counsel, on information and belief, will represent to this Court that to the extent the temporary use of any sums in the respective Funds constitute amounts paid by suburban ratepayers, said suburban ratepayers are not opposed to that temporary use provided that the terms of the repayment of the transferred sums are approved by this Court in the manner described in this Application.

WILLIAM B. LYNCH, RECEIVER DATE
OFFICE OF THE RECEIVER FOR
THE CITY OF HARRISBURG
401 FINANCE BUILDING
HARRISBURG, PA 17110

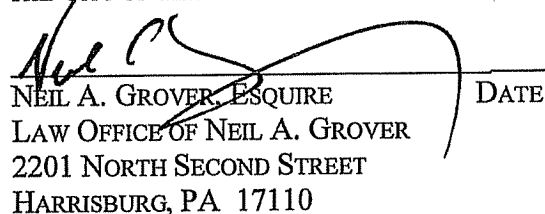


WANDA R.D. WILLIAMS, PRESIDENT DATE
CITY COUNCIL FOR CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

LINDA D. THOMPSON, MAYOR DATE
CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

MARK S. KAUFMAN, ESQUIRE DATE
MCKENNA LONG & ALDRIDGE LLP
303 PEACHTREE STREET, N.E., SUITE 5300
ATLANTA, GEORGIA 30308

*COUNSEL FOR WILLIAM B. LYNCH, RECEIVER FOR
THE CITY OF HARRISBURG*



NEIL A. GROVER, ESQUIRE DATE
LAW OFFICE OF NEIL A. GROVER
2201 NORTH SECOND STREET
HARRISBURG, PA 17110

*COUNSEL FOR HARRISBURG CITY COUNCIL
AND EACH MEMBER THEREOF*

KENNETH W. LEE, ESQUIRE DATE
TUCKER ARENSBERG P.C.
2 LEMOYNE DRIVE, SUITE 200
LEMOYNE, PA 17043

*COUNSEL FOR THE HONORABLE LINDA D.
THOMPSON, MAYOR, CITY OF HARRISBURG*

ATLANTA:5447045.1

were generated from rates paid by suburban customers on the THA system. Accordingly, it is agreed that to the extent sums are transferred to the General Fund from the Sewer Fund, the repayments by the City shall first be to the Sewer Fund until fully repaid, and further that such repayments shall be deemed to first repay so much of that Fund as was generated through rates charged to and paid by suburban sewer customers.

13.

Counsel for the suburban sewer customers has been advised of the relief herein sought and are being served with the instant Application. They have also been advised through their counsel of the hearing scheduled before this Court to consider the instant Application, and that they will be given the opportunity to be heard on the relief requested.

WILLIAM B. LYNCH, RECEIVER DATE
OFFICE OF THE RECEIVER FOR
THE CITY OF HARRISBURG
401 FINANCE BUILDING
HARRISBURG, PA 17110

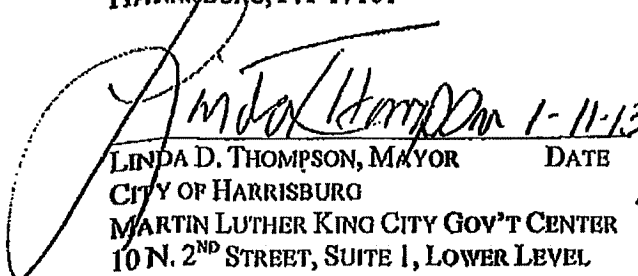
MARK S. KAUFMAN, ESQUIRE DATE
MCKENNA LONG & ALDRIDGE LLP
303 PEACHTREE STREET, N.E., SUITE 5300
ATLANTA, GEORGIA 30308

*COUNSEL FOR WILLIAM B. LYNCH, RECEIVER FOR
THE CITY OF HARRISBURG*

WANDA R.D. WILLIAMS, PRESIDENT DATE
CITY COUNCIL FOR CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

NEIL A. GROVER, ESQUIRE DATE
LAW OFFICE OF NEIL A. GROVER
2201 NORTH SECOND STREET
HARRISBURG, PA 17110

*COUNSEL FOR HARRISBURG CITY COUNCIL
AND EACH MEMBER THEREOF*

 1-11-13

LINDA D. THOMPSON, MAYOR DATE
CITY OF HARRISBURG
MARTIN LUTHER KING CITY GOV'T CENTER
10 N. 2ND STREET, SUITE 1, LOWER LEVEL
HARRISBURG, PA 17101

KENNETH W. LEE, ESQUIRE DATE
TUCKER ARENSBERG P.C.
2 LEMOYNE DRIVE, SUITE 200
LEMOYNE, PA 17043

COUNSEL FOR THE HONORABLE LINDA D.

RESOLUTION No. 3 of 2013

Moved by: Wanda R. D. Williams

A Resolution authorizing inter-fund tax and revenue anticipation borrowing.

WHEREAS, the City of Harrisburg, Dauphin County, Pennsylvania ("City"), anticipates current revenues as yet uncollected; and

WHEREAS, the City has inadequate funds for current expenditures, including payroll; and

WHEREAS, the City has determined that it is necessary to temporarily transfer amounts from its Water Fund, Sewer Fund, and/or Sanitation Fund ("Originating Funds") for the purpose of meeting current expenses and will evidence its repayment obligation by issuing a note to be repaid from said anticipated revenues; and

WHEREAS, the City desires by the adoption of this resolution to authorize the inter-fund transfer to the General Fund, issuance of its inter-fund tax and revenue anticipation note and the commitment to repay such amounts to the funds from which they were borrowed; and

WHEREAS, the City's authorization to effectuate permanent budgetary reallocations from the Originating Funds to the General Fund has been nullified by directive of the Office of the Receiver, unless such reallocations can be shown to be reimbursing actual costs out of the General Fund; and

WHEREAS, the Office of the Receiver has made representations to the Court and the Suburban Communities, which contribute sewer rental revenues to the Sewer Fund, that all amounts transferred from the Originating Funds shall be transferred back to

EXHIBIT "1"

the Originating Funds in accordance with the promissory note.

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE
COUNCIL OF THE CITY OF HARRISBURG, that:**

(1) The City Council hereby authorizes the issuance of an inter-fund tax and revenue anticipation note in the amount of \$4,000,000 in anticipation of the receipt of current taxes and other General Fund revenues.

(2) The note shall be in the denomination of \$4,000,000, shall be redeemable at any time at the option of the officers of the City without penalty or premium, shall be dated as of January 10, 2013, bear interest at the rate of one half of one percent annually, shall mature on June 20, 2013, shall be substantially in the form annexed to the resolution as Exhibit "A" and hereby made a part of the resolution as though fully set forth in this place.

(3) The City hereby pledges and grants to the Originating Funds, a first lien and charge on its taxes and revenues to be received in its General Fund during the period when the note is outstanding to secure the payment of the indebtedness evidenced hereby and the interest thereon.

(4) Payment of principal in the form of a transfer from the General Fund back to the Originating Funds shall be made in the following amounts and on the following dates:

- a. \$2,000,000 on or prior to March 20, 2013
- b. \$2,000,000 on or prior to June 20, 2013

(5) The appropriate City officers be and hereby are authorized and directed to execute and deliver in the name of, on behalf of, and under the seal of, the City, the tax and revenue anticipation note in the form and containing terms described above, and the City Clerk be and hereby is authorized and directed to attest the same.

(6) The appropriate City officers be and hereby are authorized and directed to perform all acts which are necessary and proper for the valid issuance and securing of the note.

I second this Resolution.

[Handwritten Signature]

YEAS		NAYS
<input checked="" type="checkbox"/>	WEBER	
<input checked="" type="checkbox"/>	KOPLINSKI	
<input checked="" type="checkbox"/>	REID	
<input checked="" type="checkbox"/>	SMITH	
<input checked="" type="checkbox"/>	SUMMERFORD	
<input checked="" type="checkbox"/>	WILSON	
<input checked="" type="checkbox"/>	WILLIAMS	
Yeas	<u>7</u>	
Nays	<u>0</u>	

of the City Council January 8, 2013
Albert R. W. Williams
President of City Council
[Signature]
City Clerk

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date: January 4, 2013

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2012 RESOLUTION NO. 3-2012

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


City Solicitor

1-4-13
Date

Requested by Department/Bureau: Finance

Department/Bureau Contact Person: Bill Krabator

For Action on or before: January 8, 2013

The attached was received in the Office of the City Clerk for introduction on

Received by: 

Date: 1-7-13

\$4,000,000
UNITED STATES OF AMERICA
CITY OF HARRISBURG

DAUPHIN COUNTY, PENNSYLVANIA
PROMISSORY NOTE

January 8, 2013

Maturity Dates: \$2,000,000 on or prior to March 20, 2013 and \$2,000,000 on or prior to June 20, 2013.

Principal Sum: Four Million Dollars (\$4,000,000)

City of Harrisburg, Dauphin County, Pennsylvania (hereinafter referred to as the "City"), in, for value received, hereby acknowledges itself indebted and promises to pay to the Sewer Fund, Water Fund and/or Sanitation Fund ("Originating Funds") of the City the "Principal Sum" stated above in two installments, one on or prior to March 20, 2013 (\$2,000,000) and the second one on or prior to June 20, 2013 (\$2,000,000). The City shall pay to the Originating Funds, interest at the rate of .5% per annum. Principal and interest shall be payable, in an amount sufficient to amortize half of the principal (and interest thereon) on or prior to March 20, 2013, and the other half of the principal (and interest thereon) on or prior to June 20, 2013.

Notwithstanding the foregoing, all unpaid principal and Interest shall be paid in full on June 20, 2013. Interest shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed. Both the principal of and Interest on this Note are payable in lawful money of the United States of America. Principal of and Interest on this Note shall be paid by inter-fund transfer back to the fund(s) from which the inter-fund borrowing originated.

THIS NOTE SHALL BE PREPAYABLE AT A PRICE EQUAL TO ALL OUTSTANDING PRINCIPAL AND INTEREST OWING THROUGH THE DATE OF PREPAYMENT (PAR, PLUS ACCRUED INTEREST THROUGH THE PREPAYMENT DATE) AT THE SOLE AND ABSOLUTE DISCRETION OF THE CITY.

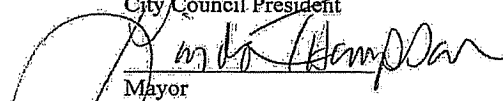
This Note has been duly authorized and issued pursuant to a Resolution of the City Council adopted on January 8, 2013 (the "Resolution") to provide for temporary financing of government operations until such time as tax revenues are collected in sufficient amounts to pay for the same.

It is hereby certified that the City expressly understands that amounts being used by the General Fund are to be replenished in accordance with the Note and made available for Water, Sewer and/or Sanitation Fund purposes. The Office of the Receiver has also committed that all amounts repayable under this Note shall be repaid so that they can ultimately be used for Water, Sewer and/or Sanitation Fund purposes. All conditions, acts and things required to be performed or happen, precedent to or in the issuance of this Note, exist, have been performed and have happened.

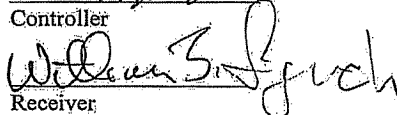
IN WITNESS WHEREOF, the City has caused this Note to be signed by the President of City Council, the Mayor, City Controller and The Office of the Receiver by their manual signatures and this Note to be dated as of the date set forth above and the official corporate seal of the City or a facsimile thereof to be imprinted or impressed hereon.

City of Harrisburg, Pennsylvania


City Council President


Mayor


Controller


Receiver