Intergovernmental Cooperation Authority for Harrisburg

Minutes of the Governing Board

Regular Meeting

September 22, 2021

Temple University Harrisburg, Strawberry Square, Harrisburg PA

hbgica.org

Members in Attendance	Ms. Audry Carter Mr. Douglas Hill Mr. H. Ralph Vartan	A Quorum Was Recognized
Ex-Officio Members in Attendance	Mr. Dan Connelly City of Harrisburg Mr. Mark Ryan Office of the Budget	
In Attendance	Ms. Anna Marie Sossong Independent Counsel Mr. Jeffrey Stonehill Authority Manager	
Meeting Begins		4:00 p.m.
Welcome by Audry Carter, Chair	Ms. Carter explained that Mr. Connelly has to leave early and therefore yielded the floor to allow him to proceed with his presentation first.	
Presentation of Ambac Refinancing Plan, Dan Connelly	Before the presentation, Ms. Carter asked if he was able to reconcile numbers with the Controller. Mr. Connelly answered yes. Mr. Connelly presented the "Ambac Forbearance Liability/Series 2005A 2 Paydown and Refinancing Analysis" PowerPoint presentation. He explained key debt components and the Ambac Agreement summary. He added, "There is an alternative strategy that suggests that the City leave the Stadium Bonds outstanding, forgo the benefits of the Ambac agreement, and instead repay the forbearance liability with fund balance proceeds over the course of one to three years (or maybe more)." He explained how that might work. He went on to analyze various pay down scenarios. He concluded, "Proceeding with the refinancing approach outlined in the Five-Year Plan is the best way for the City to achieve its	

	fiscal goals." He suggested defeasing the stadium bonds and making the immediate $4 million payment before deciding what to do with the remaining balance. His analysis included six modeled scenarios: • Scenario 1, Repay Ambac In 1 year without the agreement terms; • Scenario 2, Repay Ambac in 3 years without the agreement terms; • Scenario 3, Repay Ambac in 5 years without the agreement terms; • Scenario 4, Repay Ambac in 5 years following the agreement terms; • Scenario 5, refinance the balance after the agreement, with a higher interest rate; or • Scenario 6, refinance the balance after the agreement, with a lower interest rate. Mr. Connelly emphasized that the target General Fund's fund balance is $11,900,000, or about two months of operating expenses\. Mr. Hill clarified that the settlement agreement does not require that City to refinance the debt for any specific term. Ms. Carter asked about the discount rate. Mr. Vartan asked about what happens when the fund balance temporarily drops below target during the five-year planning process. Mr. Connelly emphasized the final recommended plan is to mix the 2021 pay down with a future 2022 refinancing of the balance. Mr. Vartan asked about the debt reserve fund being liquidated. Ms. Carter requested a FY21 fund balance projection as a result of the mid-year financial report as was done in 2020. Ms. Carter asked if the scenarios were reviewed with the Controller. Mr. Connelly said not yet. Mr. Stonehill clarified the 2021 $4 million forbearance payment was not a maximum payment, but rather the	

	minimum to earn the interest rate reduction. Mr. Stonehill made clear, there is nothing in the proposed settlement that would prevent the City from making additional pre-payments towards the balance in advance of a possible 2022 refinancing. Mr. Vartan urged the City review the plan with all interested parties. Mr. Hill mentioned that there is a 12/31 deadline on the settlement. Ms. Carter spoke to a significant fund balance and the benefit of additional reduction in debt balance. Mr. Vartan asked about the court order to consummate the Ambac settlement. Mr. Grover responded and explained the process. Mr. Connelly confirmed that the City must increase the allocation in the current year budget from $2 million to $4 million to make the 2021 payment required in the execution of the Ambac settlement agreement. Ms. Carter clarified the need for year-end projections and the discrepancy between the administration and the Controller. Ms. Carter clarified the need for the two side letters that Mr. Woolley promised the ICA Board at the time of the approval of the current Five-Year Financial Plan.	
Update on City of Harrisburg Activities	Mr. Stonehill reminded Mr. Connelly that the ICA Board was seeking an update on ongoing collection efforts for delinquencies in the Neighborhood Services Fund. Mr. Connelly responded indicating he did not know. Ms. Carter requested a more thorough update. Mr. Vartan emphasized the need for more information. He asked Mr. Stonehill to send correspondence to the City asking for an update. Ms. Carter asked for the City to provide Mr. Connelly with more information and timely reporting. Mr. Connelly left the meeting at 4:56 p.m.	

	Ms. Carter asked about the court action related to the incinerator lawsuit. Mr. Grover explained the status of the court action, which would allow the City's Act 47 Coordinator to take action against parties involved in the incinerator refinancing, as agreed to be a previous administration. He added that the Commonwealth needs to make a decision. Mr. Grover said that court was "pretty harsh" on the defendants. Ms. Sossong asked about the status of the unsigned Intergovernmental Cooperation Agreement. Mr. Grover explained.	
Report of the Chair, Audry Carter	Ms. Carter delivered a statement. She confirmed there is no status on the City's FY2020 audit. She noted Mayor's new appointments. She asked about the community services division of the police department. She noted the upcoming election. She brought up the software upgrades and asked Mr. Stonehill for a report.	
Report by the Authority Manager, Jeffrey Stonehill	Mr. Stonehill distributed materials to review the Tyler Technologies installation of a new Enterprise Resource Planning (ERP) software for all City departments. This multi-year project be cloud-based and the first module will be the financial management software. Mr. Stonehill said there will be a steering committee. He said it will be somewhat disruptive to the City. He summarized that it is a very positive development and will get rid of the AS400 system forever.	
Bills Paid Report as of September 22, 2021	Report enclosed as appendix. The Year Four funding has arrived from PA DCED. The Year Three audit is about to begin. Mr. Stonehill asked for approval to execute the engagement letter for Zelenkofske Axelrod, LLC, to undertake the Year Three audit. A motion to authorize by Mr. Hill. A second by Mr. Vartan.	Approved 3-0
Other Business	Ms. Sossong mentioned she had submitted an update to PA DCED at their	

	request to include in the quarterly Act 47 Coordinator's report to the court. Ms. Sossong asked Ms. Hutzel from PA DCED whether the department has made an official appointment of a new Act 47 Coordinator following the retirement of Marita Kelley. Ms. Hutzel responded, no, not yet. Ms. Sossong urged action by PA DCED in light of the incinerator lawsuit.	
Public Comment	Mr. Eric Epstein made a couple of observations. Mr. Lawrence Binda asked a question. Mr. Grover responded. Ms. Sossong elaborated. Ms. Carter commented. Mr. Stonehill pointed out that Mr. Connelly's presentation is now a public document. Mr. Vartan offered some additional information.	
Close of Meeting 5:30 p.m.	Motion by Mr. Vartan. Second by Mr. Hill.	Approved 3-0

Respectfully submitted:

Jeffrey Stonehill

Jeffrey M. Stonehill, Authority Manager

Appendix Documents

Summary of Bills Paid – Intergovernmental Cooperation Authority for Harrisburg

Report – September 22, 2021

• PA Media Group *Legal Advertisement*	$130.09	August 22, 2021
• Digital Ocean *Website software licenses*	$10.60	September 1, 2021
• Digital Ocean *Web Host*	$5.72	September 1, 2021
• Startup Harrisburg *Virtual Office Monthly Subscription*	$95.00	September 1, 2021
• Pietragallo Gordon Alfano Bosick and Raspanti *Legal Services*	$634.50	September 22, 2021
• Johnson & Duffie *Independent General Counsel*	$297.50	September 22, 2021
• MESH PA LLC *Authority Manager*	$4,200.00	September 22, 2021

Starting balance: $85,057.34

Ending balance: $79,814.02

• Interest earnings Y-T-D	$13.06
• Fees Y-T-D	$0

Note: The check for Year Four funding (2021-2022) has arrived but not yet been deposited.

September 22, 2021

Jeffrey Stonehill
Intergovernmental Cooperation Authority of Harrisburg

Dear Mr. Stonehill:

The following represents our understanding of the services we will provide Intergovernmental Cooperation Authority of Harrisburg ("Authority").

You have requested that we audit the cash basis financial statements of the governmental activities as of June 30, 2021, and for the year then ended, which collectively comprise the Authority's basic financial statements as listed in the table of contents. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audit will be conducted with the objective of our expressing an opinion on those basic financial statements.

Auditor Responsibilities

We will conduct our audit in accordance with U.S. GAAS. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the basic financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the basic financial statements, whether due to fraud or error, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used, and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the basic financial statements and related matters.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements (whether caused by errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the basic financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we have identified during the audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any other periods.

We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the basic financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Compliance with Laws and Regulations

As previously discussed, as part of obtaining reasonable assurance about whether the basic financial statements are free of material misstatement, we will perform tests of Authority's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Other Services

We will assist in preparing the cash basis financial statements in conformity with U.S. generally accepted accounting principles based on information provided by you. We will not assume management responsibilities on behalf of the Authority. However, we will provide advice and recommendations to assist management of the Authority in performing its responsibilities. We will perform these services in accordance with applicable professional standards. This engagement is limited to the nonaudit services previously outlined. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities, including determining account coding and approving journal entries.

With respect to any nonattest services we perform, the Authority's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

Management Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

a. For the preparation and fair presentation of the cash basis financial statements in accordance with accounting principles generally accepted in the United States of America;
b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the basic financial statements that are free from material misstatement, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements;
c. To provide us with:
    1. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the basic financial statements such as records, documentation, and other matters;
    2. Additional information that we may request from management for the purpose of the audit; and
    3. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
d. For including the auditor's report in any document containing the basic financial statements that indicates that such basic financial statements have been audited by the entity's auditor;
e. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities;
f. For adjusting the basic financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement

and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the basic financial statements as a whole.

g. For acceptance of nonattest services, including identifying the proper party to oversee the nonattest work.
h. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets.
i. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on the financials; and
j. For the accuracy and completeness of all information provided.

You agree to assume all management responsibilities relating to the financial statements and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and any other nonaudit services that you have reviewed and approved those services prior to the financial statement issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

Reporting

We will issue a written report upon completion of our audit of the Authority's basic financial statements. Our report will be addressed to the governing body of the Authority. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

Engagement Administration, Fee, and Other

We understand that your employees will prepare all confirmations we request and will locate any documents or support for any other transactions we select for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

We expect to begin the audit on approximately September 10, 2021 and to issue our reports no later than November 15, 2021. Kimberly Stank is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another qualified firm representative to sign them.

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible to maintain such original information. By signing this engagement letter, you affirm that you have all the data and records to make your books and records complete.

We will provide you a list of required schedules and analyses to be prepared by your personnel before the audit begins. Timely completion of our audit is dependent on cooperation in preparing schedules and analyses timely and accurately. If there are delays in preparing the material or if schedules must be continually revised, costs will increase. We will advise you of difficulties or delays in completing the engagement.

You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

The audit documentation for this engagement is the property of Zelenkofske Axelrod LLC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a Cognizant or Oversight Agency for Audit or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Zelenkofske Axelrod LLC personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the Cognizant Agency, Oversight Agency for Audit, or Pass-through Entity. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party contesting the audit finding for guidance prior to destroying the audit documentation.

Our firm may transmit confidential information that you provided us to third parties in order to facilitate delivering our services to you. We have obtained confidentiality agreements with all of our service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have the appropriate procedures in place to prevent the unauthorized release of confidential information to others. We will remain responsible for the work provided by any third-party service providers used under this agreement. By your signature below, you consent to having confidential information transmitted to entities outside the firm. Please feel free to inquire if you would like additional information regarding the transmission of confidential information to entities outside the firm.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

At the conclusion of our audit engagement, we will communicate to those charged with governance the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;

- •Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- •Representations we requested from management;
- •Management's consultations with other accountants, if any; and
- •Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management

We will provide copies of our reports to the Authority; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

It is management's responsibility to submit, in the required time period, the information for all outstanding municipal securities in accordance with each of the respective securities requirements, Securities and Exchange Commission and Municipal Securities Rulemaking Board requirements, and any other applicable requirements. You agree that the expected report issuance date above will be sufficient to fulfill management's responsibility related to the above requirements. The expected report issuance date is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit.

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

Our fees for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, typing, postage, travel, copies, telephone, etc.) except that we agree that our gross fee, including expenses, will not exceed $1,500 for the annual audit. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. If we elect to terminate our services for nonpayment, you will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary such as implementing new auditing pronouncement or auditing additional federal or state programs, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We normally bill at least monthly while work progresses. All invoices are due and payable upon presentation. For invoices due over 30 days, a finance charge is assessed on unpaid balances at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum). We reserve the right to halt work if balances remain unpaid after ninety (90) or more days, and not to resume work until all overdue amounts are paid in full. Any balances remaining unpaid after ninety (90) or more days may, at our option, be formalized by the execution of a promissory note. You agree that you shall be liable for all reasonable costs we incur in collection including, but not limited to, reasonable attorney fees.

In the event any dispute arises relating in any way to this engagement, the parties agree to first attempt to resolve such dispute through the non-binding mediation process in the manner set forth herein, with costs to be divided equally between the parties. The mediation shall take place in Philadelphia County or in Dauphin County, Pennsylvania. To effect mediation, the party desiring mediation shall give the other party 10 days' advance written notice of its desire to mediate. The other party shall respond within said 10-day period that it accepts or rejects the mediation process. If (a) the other party rejects the mediation process, (b) does not respond to the mediation notice or (c) the mediation is not successful, then, in any legal proceeding relating in any way to this agreement, all parties hereto hereby irrevocably consent to the jurisdiction and venue of either the United States District Court for the Middle District of Pennsylvania (if there is federal jurisdiction) or the Court of Common Pleas of Dauphin County, Pennsylvania (if there is no federal jurisdiction) and each party hereto further agrees not to raise any objection to such jurisdiction or to the laying of venue of any such proceeding in such county. Each party agrees that service of process in any such proceeding may be duly effected upon it by mailing a copy thereof, to the address given above.

Our Firm's policy requires that payment arrangements must be made for all outstanding invoices prior to release of our work product.

You agree that our liability hereunder for damages will be limited to gross negligence, fraud, or willful misconduct and shall not exceed the total amount paid for these services described herein. These shall be your exclusive remedies.

You further agree that we will not be liable for any lost profits, or for any claim or demand against you by any other party. In no event will we be liable for incidental or consequential damages even if we have been advised of the possibility of such damages. Because of the importance of management's representations to the effective performance of our services, you will release Zelenkofske Axelrod LLC and its personnel from any claims, liabilities, costs, and expenses relating to our services under this letter attributable to any misrepresentations in the representation letter referred to above.

No action, regardless of form, arising out of the services under this agreement may be brought by either party more than three years after the date of the last services provided under this agreement.

It is understood that Zelenkofske Axelrod LLC has spent many years developing its people and intellectual assets, including but not limited to computer software programs and business practices and procedures. Accordingly, you agree that any means of presentation of financial data which represent our internal or external work product or any other of our intellectual assets shall, at all times, remain the property of Zelenkofske Axelrod LLC and shall not be disseminated or shared with any entity not a party thereto without our prior written consent. Additionally, you and your affiliates or related entities agree not to employ any current or former employees of Zelenkofske Axelrod LLC, during the term of this engagement or for a period of three years thereafter without our prior written consent.

Our Firm is a member of the AICPA. We are required to periodically undergo Peer Review to assure high professional standards. In a Peer Review, a team of outside CPAs randomly selects and reviews financial statements, our report, and supporting workpapers. The Peer Review team is obligated to keep the information that it reviews confidential. If this engagement is selected you authorize our Firm to permit peer reviewers to review the workpapers.

Our Firm policy states that work may not begin on an engagement prior to our receipt of a signed engagement letter. However, should you request that we begin work on this engagement prior to our receipt of a signed copy of this engagement letter and we do so as courtesy to you, your receipt of our correspondence, attendance at meetings with us or similar activities shall constitute acceptance of this engagement letter and agreement to all of the terms contained in it.

This letter comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals oral or written and all other communications between the parties. If any provisions of this letter are determined to be unenforceable, all other provisions shall remain in force.

We appreciate the opportunity to be of service to the Authority and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Respectfully,

Zelenkofske Axelrod LLC

Zelenkofske Axelrod LLC

RESPONSE:

This letter correctly sets forth our understanding with the Intergovernmental Cooperation Authority of Harrisburg.

Acknowledged and agreed on behalf of the Intergovernmental Cooperation Authority of Harrisburg by:

Name: Jeffrey Stonehill

Title: Authority Manager, ICA for Harrisburg

REPORT OF THE INTERGOVERNMENTAL COOPERATION AUTHORITY OF HARRISBURG (“ICA”) TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT (“DCED”) FOR INCLUSION INTO QUARTERLY REPORT TO COMMONWEALTH COURT.

Since the July 2021 DCED report to the Court was submitted, there was a new addition to the Authority Board, Karla Hodge, Assistant to the Executive Director of AFSCME Council 13, which brings the Board to full strength. This new addition is welcome. Ms. Hodge brings a wealth of government experience to the Board to help continue the work for the betterment of the City of Harrisburg.

In July, the report mentioned that the ICA and the City had reached an agreement on the required Intergovernmental Cooperation Agreement (the “Agreement”) as was contemplated by Act 47. The Agreement was approved by both the ICA Board as well as by City Council. However, at the request of the City, the Agreement has not yet been signed. As a result, the City remains under the control of the Coordinator and the Strong Plan and still subject to the Distressed City designation. Notwithstanding that the ICA agreed to postpone the signing of the Agreement, the City’s rationale for the request was never fully explained and the continued delay in the signing of this Agreement is worrisome to the ICA. The City has repeatedly advised that this delay request was made in order to permit the City to obtain several independent court orders on matters that would otherwise terminate in Commonwealth Court if the Distressed City designation ended. The recently issued Western District Federal Court determination in *The Commonwealth of PA, et al. vs. RBC Capital Markets Corp, et. al,* 368 M.D. 2018 and the Commonwealth Court Ambac order may act to change the status quo and move the City to sign the Agreement. The ICA hopes that the Agreement can be signed promptly and the City removed from Act 47, which is required in order to implement the intent of the Ambac amendment.

As always, communications with the City are tenuous and sporadic. The City now provides Dan Connelly, Senior Advisor, Marathon Capital Strategies, to participate in our meetings. Mr. Connelly is knowledgeable about the City finances, refinancing plans and general financial reports and shares that information with the ICA Board. The Mayor has not responded to repeated requests to participate in Board meetings or to provide any other City employees for discussions with the Board. In addition, the City frequently does not provide responses to requests of the Board – either through provision of requested documents or as answers to questions posed by the Board. This behavior makes it difficult for the ICA Board to fully participate as anticipated by the Act and feeds the feelings of concern and discontent with the relationship of the Board and the City. Now that several outstanding matters with Commonwealth Court have been resolved, the ICA hopes that relations between the ICA and the City will improve.

City of Harrisburg

Ambac Forbearance Liability/Series 2005A-2 Paydown and Refinancing Analysis

September 22, 2021

Key Debt Components

G.O. Debt and Forbearance Liability

– In 1997, the City issued non-callable General Obligation debt to refund other outstanding bonds

– Bonds insured by Ambac Assurance Corp, mature in 2022

– In 2012, the City defaulted on the Bonds and Ambac agreed to make scheduled principal and interest payments on the Bonds

– The City incurred a forbearance debt that is now about $26.2 million and accrues interest at 6.75%

G.O. Guarantee – Harrisburg Redevelopment Authority, Series 2005 A-2 Bonds

– The City provides a guarantee on non-callable taxable bonds issued by the HRA in 2005 to renovate the minor league baseball stadium

– Bonds insured by Ambac, mature in 2030

– $5,844,152 of principal and interest payment will remain on the bonds after the November 15, 2021, debt service payment

Ambac Agreement Summary

- The City and Ambac reached an agreement that provides principal and temporary interest rate reductions in its outstanding forbearance liability in exchange for the defeasance of the outstanding Harrisburg Redevelopment Authority Series 2005A-2 Bonds (Stadium Bonds) by December 31, 2021
- The agreement also provides for additional discounts on the forbearance liability for prepayments up to $4 million by December 31, 2021
- Maximizing the benefit of the agreement would result in an immediate $3,288,900 discount on the liability, plus interest savings from a rate reduction from 6.75% to 5%
- After these prepayments, the City would have the option (but not obligation) to refinance the remaining forbearance liability and/or paydown with available cash

Alternative Strategy

- There is an alternative strategy that suggests that the City leave the Stadium Bonds outstanding, forgo the benefits of the Ambac agreement, and instead repay the forbearance liability with fund balance proceeds over the course of one to three years (or maybe more)
- Projections of several modeled scenarios show that this strategy would deplete the City's existing fund balance well below the target level outlined in the Five-Year Plan[1] and fail to maintain reserves sufficient to meet other potentially critical capital needs of the City over the next five years
- Projections show a negative fund balance, which is inconsistent with the goals of the Five-Year Plan and, short of new funding sources or reduced expenses, is infeasible
- The alternative strategy is more expensive on a present value basis, even under conservative assumptions

[1]Five-Year Plan target fund balance equal to two months of operating expenses, or about $11.9 million

Scenario Analysis Summary

	Existing	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6
		No Ambac Agreement Benefits			Maximize Ambac Agreement Benefits		
		Repay w/Cash One Year	Repay w/Cash Three Years	Repay w/Cash Five Years	Repay w/Cash Five Years	Hybrid 4.80% Refi	Hybrid 3.36% Refi
Gross Outflows[1]	44,086,549	31,882,667	33,223,458	34,710,907	30,756,439	34,995,480	32,794,020
PV Outflows (3.36%)[1]	36,005,721	31,177,810	31,458,215	32,248,114	28,844,583	30,142,724	28,327,234
Projected Fund Balance[2]							
YE 2021		(1,704,740)	19,680,438	16,000,438	16,000,438	16,000,438	16,000,438
YE 2022		(7,756,599)	1,128,579	7,448,579	8,102,284	10,115,444	10,322,078
YE 2023		(4,098,107)	(5,438,898)	4,218,165	5,523,215	11,865,601	12,268,064
YE 2024		(766,965)	(2,107,756)	2,660,401	4,613,396	13,284,928	13,882,207
YE 2025		1,566,541	225,749	(1,261,701)	96,648	13,705,928	14,502,561
Fund Balance Target[3]		$11,900,000	$11,900,000	$11,900,000	$11,900,000	$11,900,000	$11,900,000

[1] Includes cash outflows of the Ambac forbearance liability and Series 2005A-2 Stadium Bonds
[2] Projected fund balance based on revenue and expense assumptions in the 2021 Adopted Five-Year Plan, adjusted for the following: 1) annual debt service expenses based on the assumptions in each scenario; 2) mid-year 2021 results and revised 2021 projections; 3) beginning 2021 fund balance is net of encumbrances of approximately $2.6 million, which are assumed to carryover on a rolling basis
[3] Equal to approximately two months of operating expenses

– Proceeding with the refinancing approach outlined in the Five-Year Plan is the best way for the City to achieve its fiscal goals
  - Maximize benefits of the Ambac Agreement before December 31, 2021 deadline
  - Take necessary steps to put City in position to execute a refinancing
  - Determine optimal mix a refinancing proceeds and fund balance to address remaining Ambac forbearance liability
  - Develop a plan of finance which will depend on factors such as the City's ability to maintain target fund balance levels, the outcome of the credit rating agency process, and market conditions

Summary

This analysis includes six modeled scenarios:

	Scenario 1 Repay Ambac 1 Year	Scenario 2 Repay Ambac 3 Years	Scenario 3 Repay Ambac 5 Years	Scenario 4 Repay Ambac 5 Years	Scenario 5 Hybrid (Higher Int Rate)	Scenario 6 Hybrid (Lower Int rate)
Ambac Agreement	No	No	No	Yes	Yes	Yes
Forbearance Repayment						
12/15/21	$26,685,178	$5,300,000	$9,980,000	$4,000,000	$4,000,000	$4,000,000
2022	-	$12,500,000	$2,500,000	$2,500,000	-	-
2023	-	$10,225,969	$6,888,906	$6,888,906	-	-
2024	-	-	$4,888,906	$4,888,906	-	-
2025	-	-	$6,255,607	$7,498,628	-	-
Cash Defease Stadium Bonds	NA	NA	NA	Approx. $4,980,000	Approx. $4,980,000	Approx. $4,980,000
Refinance Rate	NA	NA	NA	NA	4.80%[1]	3.36%[2]
PV Disc. Rate[3]	3.36%	3.36%	3.36%	3.36%	3.36%	3.36%

[1] Conservative rate based on feedback from multiple underwriting firms; rate used for multi-year planning purposes; City likely to achieve much lower interest rate

[2] Based on taxable A3 scale as of September 2, 2021 + 100 basis points

[3] PV Discount Rate equal to All-in Cost of Lower Rate scenario

Other financing assumptions: $350,000 cost of issuance; Dated date – March 15, 2022; 2032 maturity to match existing debt

Projection Assumptions

Projected fund balance based on revenue and expense assumptions in the 2021 Adopted Five-Year Plan, adjusted for the following:

1) annual debt service expenses based on the assumptions in each scenario;

2) mid-year 2021 results and revised 2021 projections;

3) beginning 2021 fund balance is net of encumbrances of approximately $2.6 million, which are assumed to carryover on a rolling basis.

Scenario 1 – Paydown Ambac Liability in One Year (no Ambac discounts)

Year	Forbearance	Series 2005 A-2	Aggregate	PV
2021	26,685,178	-	26,685,178	26,685,178
2022	-	653,705	653,705	632,455
2023	-	651,345	651,345	609,686
2024	-	647,945	647,945	586,787
2025	-	648,375	648,375	568,089
2026	-	647,276	647,276	548,690
2027	-	649,503	649,503	532,680
2028	-	650,144	650,144	515,872
2029	-	649,197	649,197	498,375
2030[1]	-	-	-	-
2031	-	-	-	-
2032	-	-	-	-
	26,685,178	5,197,489	31,882,667	31,177,810

	Proj 2021	Proj 2022	Proj 2023	Proj 2024	Proj 2025
Revenues	66,476,063	65,358,263	68,076,053	68,711,161	69,218,608
Expenses	71,026,945	71,410,122	64,417,562	65,380,019	66,885,102
Cash Surplus/Deficit	(4,550,882)	(6,051,859)	3,658,492	3,331,142	2,333,506
Ambac Repay	26,685,178				
Series 2005A2 Defease					
Subtotal	26,685,178				
Beg Fund Balance	29,531,320	(1,704,740)	(7,756,599)	(4,098,107)	(766,965)
End Fund Balance	(1,704,740)	(7,756,599)	(4,098,107)	(766,965)	1,566,541

[1] Assumes Stadium Bond Debt Service Reserve Fund is released resulting in no Net Debt Service in 2030

Scenario 2 – Paydown Ambac Liability in Three Years (no Ambac discounts)

Year	Forbearance	Series 2005 A-2	Aggregate	PV
2021	5,300,000	-	5,300,000	5,300,000
2022	12,500,000	653,705	13,153,705	12,726,108
2023	10,225,969	651,345	10,877,314	10,181,615
2024	-	647,945	647,945	586,787
2025	-	648,375	648,375	568,089
2026	-	647,276	647,276	548,690
2027	-	649,503	649,503	532,680
2028	-	650,144	650,144	515,872
2029	-	649,197	649,197	498,375
2030[1]	-	-	-	-
2031	-	-	-	-
2032	-	-	-	-
Total	28,025,969	5,197,489	33,223,458	31,458,215

	Proj 2021	Proj 2022	Proj 2023	Proj 2024	Proj 2025
Revenues	66,476,063	65,358,263	68,076,053	68,711,161	69,218,608
Expenses	71,026,945	71,410,122	64,417,562	65,380,019	66,885,102
Cash Surplus/Deficit	(4,550,882)	(6,051,859)	3,658,492	3,331,142	2,333,506
Ambac Repay	5,300,000	12,500,000	10,225,969		
Series 2005A2 Defease					
Subtotal	5,300,000	12,500,000	10,225,969	-	-
Beg Fund Balance	29,531,320	19,680,438	1,128,579	(5,438,898)	(2,107,756)
End Fund Balance	19,680,438	1,128,579	(5,438,898)	(2,107,756)	225,749

[1] Assumes Stadium Bond Debt Service Reserve Fund is released resulting in no Net Debt Service in 2030

Scenario 3 – Paydown Ambac Liability in Five Years (no Ambac discounts)

Year	Forbearance	Series 2005 A-2	Aggregate	PV
2021	8,980,000	-	8,980,000	8,980,000
2022	2,500,000	653,705	3,153,705	3,051,185
2023	6,888,906	651,345	7,540,251	7,057,986
2024	4,888,906	647,945	5,536,851	5,014,242
2025	6,255,607	648,375	6,903,982	6,049,084
2026		647,276	647,276	548,690
2027		649,503	649,503	532,680
2028		650,144	650,144	515,872
2029		649,197	649,197	498,375
2030[1]		-	-	-
2031		-	-	-
2032		-	-	-
Total	29,513,418	5,197,489	34,710,907	32,248,114

	Proj 2021	Proj 2022	Proj 2023	Proj 2024	Proj 2025
Revenues	66,476,063	65,358,263	68,076,053	68,711,161	69,218,608
Expenses	71,026,945	71,410,122	64,417,562	65,380,019	66,885,102
Cash Surplus/Deficit	(4,550,882)	(6,051,859)	3,658,492	3,331,142	2,333,506
Ambac Repay	8,980,000	2,500,000	6,888,906	4,888,906	6,255,607
Series 2005A2 Defease					
Subtotal	8,980,000	2,500,000	6,888,906	4,888,906	6,255,607
Beg Fund Balance	29,531,320	16,000,438	7,448,579	4,218,165	2,660,401
End Fund Balance	16,000,438	7,448,579	4,218,165	2,660,401	(1,261,701)

[1] Assumes Stadium Bond Debt Service Reserve Fund is released resulting in no Net Debt Service in 2030

Scenario 4 – Paydown Ambac Liability in Five Years (Ambac discounts)

Year	Forbearance	Series 2005 A-2	Aggregate	PV
2021	4,000,000	4,980,000	8,980,000	8,980,000
2022	2,500,000	-	2,500,000	2,418,731
2023	6,888,906	-	6,888,906	6,448,300
2024	4,888,906	-	4,888,906	4,427,455
2025	7,498,628	-	7,498,628	6,570,097
2026	-	-	-	-
2027	-	-	-	-
2028	-	-	-	-
2029	-	-	-	-
2030[1]	-	-	-	-
2031	-	-	-	-
2032	-	-	-	-
Total	25,776,439	4,980,000	30,756,439	28,844,583

	Proj 2021	Proj 2022	Proj 2023	Proj 2024	Proj 2025
Revenues	66,476,063	65,358,263	68,076,053	68,711,161	69,218,608
Expenses	71,026,945	70,756,417	63,766,217	64,732,074	66,236,727
Cash Surplus/Deficit	(4,550,882)	(5,398,154)	4,309,837	3,979,087	2,981,881
Ambac Repay	4,000,000	2,500,000	6,888,906	4,888,906	7,498,628
Series 2005A2 Defease	4,980,000				
Subtotal	8,980,000	2,500,000	6,888,906	4,888,906	7,498,628
Beg Fund Balance	29,531,320	16,000,438	8,102,284	5,523,215	4,613,396
End Fund Balance	16,000,438	8,102,284	5,523,215	4,613,396	96,648

[1] Assumes Stadium Bond Debt Service Reserve Fund is released resulting in no Net Debt Service in 2030

Scenario 5 – Hybrid, "Higher Rate" (4.80%) Conservative (Ambac discounts)

Year	Forbearance	Series 2005 A-2	Aggregate	PV
2021	4,000,000	4,980,000	8,980,000	8,980,000
2022	486,840	-	486,840	471,014
2023	2,559,680	-	2,559,680	2,395,966
2024	2,559,760	-	2,559,760	2,318,151
2025	2,560,880	-	2,560,880	2,243,775
2026	2,557,920	-	2,557,920	2,168,325
2027	2,555,760	-	2,555,760	2,096,067
2028	2,554,160	-	2,554,160	2,026,659
2029	2,548,000	-	2,548,000	1,956,048
2030[1]	2,547,040	-	2,547,040	1,891,748
2031	2,545,920	-	2,545,920	1,829,447
2032	2,539,520	-	2,539,520	1,765,526
Total	30,015,480	4,980,000	34,995,480	30,142,724

	Proj 2021	Proj 2022	Proj 2023	Proj 2024	Proj 2025
Revenues	66,476,063	65,358,263	68,076,053	68,711,161	69,218,608
Expenses	71,026,945	71,243,257	66,325,897	67,291,834	68,797,607
Cash Surplus/Deficit	(4,550,882)	(5,884,994)	1,750,157	1,419,327	421,001
Ambac Repay	4,000,000	-	-		
Series 2005A2 Defease[1]	4,980,000				
Subtotal	8,980,000	-	-	-	-
Beg Fund Balance	29,531,320	16,000,438	10,115,444	11,865,601	13,284,928
End Fund Balance	16,000,438	10,115,444	11,865,601	13,284,928	13,705,928

[1] Assumes Stadium Bond Debt Service Reserve Fund is released resulting in no Net Debt Service in 2030

Scenario 6 – Hybrid, "Lower Rate" (3.36%) (Ambac discounts)

Year	Forbearance	Series 2005 A-2	Aggregate	PV
2021	4,000,000	4,980,000	8,980,000	8,980,000
2022	280,206	-	280,206	271,097
2023	2,363,851	-	2,363,851	2,212,662
2024	2,364,944	-	2,364,944	2,141,724
2025	2,361,527	-	2,361,527	2,069,106
2026	2,356,232	-	2,356,232	1,997,356
2027	2,355,676	-	2,355,676	1,931,971
2028	2,349,298	-	2,349,298	1,864,106
2029	2,346,755	-	2,346,755	1,801,556
2030[1]	2,349,155	-	2,349,155	1,744,774
2031	2,346,703	-	2,346,703	1,686,293
2032	2,339,675	-	2,339,675	1,626,590
Total	27,814,020	4,980,000	32,794,020	28,327,234

	Proj 2021	Proj 2022	Proj 2023	Proj 2024	Proj 2025
Revenues	66,476,063	65,358,263	68,076,053	68,711,161	69,218,608
Expenses	71,026,945	71,036,623	66,130,067	67,097,018	68,598,254
Cash Surplus/Deficit	(4,550,882)	(5,678,360)	1,945,986	1,614,143	620,354
Ambac Repay	4,000,000	-	-		
Series 2005A2 Defease	4,980,000				
Subtotal	8,980,000	-	-	-	-
Beg Fund Balance	29,531,320	16,000,438	10,322,078	12,268,064	13,882,207
End Fund Balance	16,000,438	10,322,078	12,268,064	13,882,207	14,502,561

[1] Assumes Stadium Bond Debt Service Reserve Fund is released resulting in no Net Debt Service in 2030

INTER

OFFICE

MEMO

To: **HARRISBURG CITY COUNCIL**

From: **Kirk Petroski, City Clerk**
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2021 **RESOLUTION NO. -2021**

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

Deputy City Solicitor 8-20-21
Date

Requested by Department/Bureau: I.T.

Department/Bureau Contact Person: Steve Bortner

For Action on or before:

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

____

Received by: ______________________________ **Date:** ______________

RESOLUTION NO. ___ - 2021

Moved by: ______________________________

A Resolution authorizing the City of Harrisburg to negotiate and enter into an agreement with Tyler Technologies to procure a new software solution that will, among other things, phase out the City's existing mainframe, consolidate operations and financial management onto a single ERP, phase out the City's payroll software, replace the City's accounting software, and integrate with existing systems to increase efficiency.

WHEREAS, on November 22, 2020 the City of Harrisburg (the "City") issued a Request for Letters of Interest and Qualifications to procure new enterprise level software, which is attached hereto as "Exhibit A"; and

WHEREAS, the City received several responses and evaluated four (4) proposals in depth; and

WHEREAS, after significant consideration including meeting with stakeholders, reviewing existing software, and evaluating the capability of proposers, the City determined that the proposal submitted by Tyler Technologies ("Tyler") best fit the needs of the City; and

WHEREAS, a copy of the initial proposal is attached hereto as "Exhibit B"; and

WHEREAS, the City received a comprehensive scope of work, Software as a Service Agreement, and Sales Quotation, which are respectively attached hereto as "Exhibits, C, D, and E"; and

WHEREAS, there are a variety of one time fees for implementation and data conversion, among other things, totaling $650,502.00 and an annual recurring fee of $330,626.00; and

WHEREAS, the agreement is for an initial term of three (3) years, and will annually renew each year thereafter absent a notification of termination or other event of termination; and

WHEREAS, the suite of software provided by Tyler will replace the City's existing mainframe as well as several other legacy pieces of software, modernizing the operational capability of the City and providing gains in efficiency.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the City of Harrisburg is hereby authorized to negotiate and enter into an agreement with Tyler Technologies to procure a new software solution that will, among other things, phase out the City's existing mainframe, consolidate operations and financial management onto a single ERP, phase out the City's payroll software, replace the City's accounting software, and integrate with existing systems to increase efficiency.

BE IT FURTHER RESOLVED that the Mayor, City Controller, and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution________________________________

Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Pa., State Agency Cut From Suit Over Harrisburg Incinerator

By **Matthew Santoni**

Law360 (September 9, 2021, 3:54 PM EDT) -- The state of Pennsylvania and its Department of Community and Economic Development lack standing to pursue a lawsuit against multiple law firms and consultants over the handling of a garbage incinerator project that pushed the state's capital city into financial distress, a Commonwealth Court panel ruled Thursday.

The state government and its agencies lacked their own cause of action and could not use their so-called parens patriae power — the government's ability to take action on behalf of its citizens — over the white-elephant Harrisburg incinerator project, though the coordinator overseeing the city's ongoing recovery from the insolvency brought on by the Harrisburg Authority's project did have standing inherited from the original court-appointed receiver, the unanimous panel said.

"Rather than asserting claims arising out of commercial interactions with an identifiable group of commonwealth citizens, plaintiffs assert claims that allegedly arise from professional relationships between defendants and a specific client, i.e., the authority or the city," wrote Judge Michael H. Wojcik for the panel. "The commonwealth, as parens patriae, purports to bring common law claims against defendants that the legislature has not authorized the attorney general to bring on behalf of the commonwealth's citizens. Because the attorney general would have no authority to bring such claims, the commonwealth, acting by and through the office of general counsel, has no authority to bring them either."

The panel upheld some preliminary objections from the defendants and dismissed the state and DCED from the case, but denied or overruled most other objections related to the coordinator and her claims on behalf of the city and the authority.

Gov. Tom Wolf, DCED and the coordinator had sued the law firms of Eckert Seamans Cherin & Mellott LLC, Buchanan Ingersoll & Rooney PC, Obermayer Rebmann Maxwell & Hippel LLP, Foreman and Caraciolo PC, along with investment bank RBC Capital Markets Corp. and other entities that had consulted on the Harrisburg incinerator rehabilitation project, arguing that they had misled city and authority officials about the financial viability of the waste-to-energy upgrade. Revenues from the project were unable to keep up with its debt, and eventually led Harrisburg to be designated as financially distressed by the state.

The defendants argued in September 2019 that it was up to the city to pursue those claims on its own, and that the state and DCED, which had guaranteed some loans and had to help get the city's finances back on track, lacked standing.

The Commonwealth Court agreed Thursday, and said the state needed to establish a "quasi-sovereign interest" of its own in the case if it wanted to step in. But the state hadn't outlined such an interest on behalf of its general populace or even the significant portion who live in Harrisburg, the panel said, but relied on the harm to the city government, which was able to stand on its own in the suit.

Likewise, DCED's claims stemmed from the losses it allegedly sustained while helping Harrisburg out of insolvency, which was not enough to give the department standing, the panel said.

"A thorough review of the complaint confirms that the claims alleged by DCED are based entirely on the alleged injury and harm suffered by the city," Judge Wojcik wrote. "Despite DCED's assertions, DCED's statutory obligations to aid in the city's recovery are not dependent on the cause of the city's financial distress."

But Marita Kelley, in her capacity as the coordinator for Harrisburg's ongoing recovery, had been given authority to sue the parties responsible for the city's debts, the court found.

A different "receiver" had overseen the creation and first implementation of the city's recovery, known as the Harrisburg Strong Plan, but a Commonwealth Court order in 2014 had designated the coordinator as the "successor" to the receiver responsible for the ongoing aspects of the plan. The plan had contemplated litigation related to the incinerator, and that potential litigation was an "asset" that the receiver and coordinator were entitled to oversee, the panel said.

"Defendants overlook the express language authorizing the receiver to 'require the distressed city or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed city's or authority's assets.' ... A cause of action is a matter that has value which can be used for paying debts of the city and the authority, and therefore falls within the common meaning of 'asset,'" Judge Wojcik wrote. "The authority granted to the receiver is consistent with the authority of a federal bankruptcy trustee to liquidate a debtor's assets. In the context of bankruptcy proceedings, courts have consistently interpreted a debtor's equitable and legal interests in 'property' as encompassing 'causes of action existing at the time the bankruptcy action commences.'"

After dismissing the state and DCED from the case along with all the claims they brought on their own, the court overruled or dismissed as moot most of the defendants' other preliminary objections to the claims brought by the coordinator on behalf of the city and authority.

The exception was a pair of objections from Foreman and Caraciolo, which said the city couldn't claim the firm had aided and abetted Buchanan Ingersoll's alleged breach of fiduciary duty or been unjustly enriched because Foreman was representing the Harrisburg Authority and acting in its interest, even if that interest went against the city.

"Foreman maintains that it cannot be held liable to the city for acting solely to advance the legitimate business interests of its own client, the authority. We agree," Judge Wojcik wrote. "Indeed, to hold otherwise would lead to an absurd result, finding Foreman liable for a failure to prioritize the interests of the city, a non-client, over the interest of its own client, the authority."

An attorney for Buchart Horn, the engineering firm on the project, declined to comment. Counsel for the other parties and representatives of the state did not immediately respond to requests for comment.

Harrisburg, the Harrisburg Authority and coordinator Marita Kelley are represented by Walter E. Anderson, Charles T. Kimmett, Mark D. Davis and Timothy J. Simeone of Harris Wiltshire & Grannis LLP.

RBC is represented by Erica H. Dressler, Jay A. Dubow and Richard J. Zack of Troutman Pepper.

Obermayer Rebmann is represented by Nicholas M. Centrella, Lorie K. Dakessian and Andrew K. Garden of Conrad O'Brien PC.

Eckert Seamans is represented by Matthew H. Haverstick, Mark E. Seiberling, Joshua J. Voss, Edward T. Butkovitz and Shohin H. Vance of Kleinbard LLC.

Buchart Horn Inc. is represented by John J. Sylvanus, George C. Werner Jr. and Justin A. Tomevi of Barley Snyder LLP.

Buchanan Ingersoll is represented by Thomas A. French of Barley Snyder LLP.

Foreman & Caraciolo is represented by Jeffrey McCarron and Candidus Dougherty of Swartz Campbell LLC.

The case is Commonwealth of Pennsylvania et al. v. RBC Capital Markets Corp. et al., case number 368 MD 2018, in the Commonwealth Court of Pennsylvania.

--Additional reporting by Matt Fair. Editing by Amy Rowe.
