

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

No. 569 M.D. 2011

Petitioner,

v.

CITY OF HARRISBURG,

Respondent

**PETITIONER'S APPLICATION TO EXTEND THE RECEIVERSHIP FOR  
THE CITY OF HARRISBURG**

In his capacity as the Secretary of Community and Economic Development ("Secretary"), and in exercise of the powers reposed in the Secretary by the Municipalities Financial Recovery Act, *as amended*, 53 P.S. § 11701.101 *et seq.* ("Act 47"), Petitioner C. Alan Walker (through his undersigned counsel) hereby requests this Honorable Court to extend the receivership of the City of Harrisburg, Dauphin County ("City"), for a period not to exceed two years, and similarly to

extend the service of Major General William B. Lynch, USAF, Ret. (“Receiver”), as the Receiver.

In support of his Application, the Secretary states as follows:

**I. FACTUAL AND PROCEDURAL BACKGROUND**

**A. Appointment and Term Length of the Receivership**

1. This Honorable Court (per James R. Kelley, Senior Judge), by order entered December 2, 2011, (a) found that the statutory conditions for a receivership for the City of Harrisburg exist; and (b) approved the Secretary’s petition to appoint an initial receiver, David Unkovic, Esquire, to the City for a period not to exceed two years in accordance with Section 710(a) of Act 47. *See* 53 P.S. § 11701.710(a). The receivership as approved by this Court in December 2011 is set to expire by operation of law on December 1, 2013.

2. Following Mr. Unkovic’s resignation as receiver on March 30, 2012, by further Order of the Honorable Bonnie Brigance Leadbetter entered May 24, 2012, this Court appointed Major General William B. Lynch, USAF, Ret. as the Receiver for the City of Harrisburg “for a period not to exceed two years, until no longer than December 1, 2013, subject to extension under 710(b) of Act 47, 53 P.S. § 11701.710(b).”

3. Section 710(b) of Act 47 provides a mechanism by which the Secretary may petition this Honorable Court to extend the receivership if the Secretary can establish, by a preponderance of the evidence, that further implementation of the fiscal recovery plan is necessary to end the City's fiscal emergency. *See* 53 P.S. § 11701.710(b).

4. Section 710(b) of Act 47 does not provide for an extension of the receivership for any period other than two years, providing that this Honorable Court “**shall grant each extension for another two years**” provided the requisite showing of necessity by a preponderance of the evidence is established. *See* 53 P.S. § 11701.710(b) (emphasis added).

**B. The City Remains in a State of Fiscal Emergency**

5. Though much progress has been made during the receivership – most notably the confirmation of the Harrisburg Strong Plan (“Strong Plan”) – the City remains in a state of fiscal emergency. A vivid reminder of that fact occurred as recently as September 11, 2013, when the Receiver announced that the City would not be able to make its scheduled September 15, 2013, debt service payments on two series of general obligation bonds and notes. The Receiver decided to withhold payment in order to maintain sufficient cash-flow to provide vital and necessary services to the citizens of the City.

6. While the Court-confirmed Strong Plan is a significant achievement and offers comprehensive solutions to the City's myriad financial challenges, a number of contingencies remain to be finalized and implemented over the coming months if the Strong Plan is to end the fiscal emergency. *See* Strong Plan: "*Part Eight: Conditions to the Strong Plan's Consummation*," at pp. 59-60. It is only after certain necessary components of the Strong Plan are finalized in the coming months that the City will gain relief from the fiscal emergency, thereby necessitating an extension of the receivership beyond December 1, 2013.

**C. The Receivership Remains Necessary and Vital to Successful Implementation of the Strong Plan in the Near Term**

7. As most clearly evidenced by the continued and ongoing effort to bring the two keystone transactions outlined in the Strong Plan – the monetization of the City's incinerator and parking system – to closing, the function of the Receiver will remain critical beyond December 1, 2013.

8. Neither of the monetization transactions that are the cornerstones of the Strong Plan will be closed and finalized prior to December 1, 2013. *See* Affidavit of William B. Lynch, Receiver for the City of Harrisburg, attached hereto as "Exhibit A."

9. Even upon completion of the monetizations, the Receiver still will have much work to do in terms of coordinating implementation of the remaining smaller components of the Strong Plan (union negotiations, Water and Sewer transition, restoring management capacity, institutionalizing best practices in areas such as debt, capital, OPEB; development of the non-profits for capital and ED/CD, etc.) and working with both the City and its creditors to finalize any outstanding issues that may arise during that process. These smaller components will not be concluded prior to the December 1, 2013. *See* Exhibit “A”.

## II. RELIEF SOUGHT—EXTENSION OF THE RECEIVERSHIP

10. The Strong Plan contemplates a point in time when the fiscal emergency has ended and as a result the receivership has been vacated or terminated, at that time calling for ongoing Plan implementation to be accomplished by a Coordinator in accordance with the provisions of Section 221(b)-(d) of Act 47. *See* Strong Plan: “*Part Eleven: Plan Implementation and Retention of Jurisdiction*” at pp. 63-64.

11. Accordingly, the Secretary, in moving for a two year extension of the receivership, is hopeful that the necessity for ongoing receivership of the City will likely expire long before the passage of two additional years. However, the clear

statutory language contained in Section 710 (b) of Act 47, 53 P.S. § 11701.710(b), does not permit or authorize an extension for any period other than two years.

12. Petitioner respectfully submits that the burden of demonstrating that further implementation of the fiscal recovery plan is necessary to end the City's fiscal emergency by a preponderance of the evidence is plainly met by the averments of this Petition and the Affidavit submitted by Receiver Lynch, thereby obviating the need for a hearing concerning the relief requested herein. *See* 53 P.S. § 11701.710(b). *See* also "Exhibit A."

13. The Secretary represents and certifies to this Honorable Court the following: (a) the City remains in a state of fiscal emergency; (b) the Receiver is necessary and vital to the ongoing effective implementation of the Harrisburg Strong Plan; and (c) the Receiver continues to play a critical role in ending the City's fiscal emergency.

WHEREFORE, pursuant to Section 710(b) of the Municipalities Financial Recovery Act, 53 P.S. § 11701.710(b), the Secretary of Community and Economic Development respectfully requests this Honorable Court to grant an extension of two (2) years to the receivership of the City of Harrisburg (with Maj. Gen. William B. Lynch, continuing to serve as Receiver), until December 1, 2015, unless sooner terminated by operation of Act 47 or further Order of this Court.

Respectfully submitted,



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**Attorneys for C. Alan Walker, in  
his capacity as Secretary of  
Community and Economic  
Development**

DATE: November 18, 2013

**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, upon consideration of Petitioner's Application to Extend the Receivership for the City of Harrisburg pursuant to section 710(b) of the Municipalities Financial Recovery Act ("Act 47"), 53 P.S. § 11701.710(b), the Court hereby finds and orders as follows:

1. On Petition of the Secretary of Community and Economic Development, this Court on December 2, 2011, declared the City of Harrisburg ("City") to be in receivership pursuant to Section 702(e)(2) of Act 47, 53 P.S. § 11701.702(e)(2), and immediately appointed a receiver.

2. By Order entered May 24, 2012, this Court (per Leadbetter, J.) found Major General William B. Lynch, USAF, Ret., to be qualified to serve as the Receiver for the City to fill a vacancy in that office, and on recommendation of the Secretary appointed Gen. Lynch to serve as Receiver for a period not to extend beyond December 1, 2013 (*i.e.*, two years after the Court established the receivership for the City), subject to possible extension under Section 710(b) of Act 47, 53 P.S. § 11701.710(b).

3. By Order entered September 23, 2013, acting pursuant to Section 703(e) of Act 47, 53 P.S. § 11701.703(e), this Court confirmed the modified recovery plan, titled the "Harrisburg Strong Plan," that had been submitted by the Receiver.



4. Critical components of the Receiver's Harrisburg Strong Plan ("Strong Plan") require further implementation after the date of expiration of the term of the receivership.

5. There are numerous factors and other contingencies that must be appropriately addressed as implementation of the Strong Plan progresses; and the Receiver's role during this time will be necessary and vital to successful implementation of the Strong Plan.

6. The City of Harrisburg remains in a state of fiscal emergency.

7. Successful implementation of a recovery plan is necessary to end the City's fiscal emergency, and the Receiver's role is necessary and vital in achieving that objective.

For these reasons, it is hereby **ORDERED** that the receivership for the City of Harrisburg is **EXTENDED** for a period of two (2) years. The two-year extension granted herein shall begin on December 2, 2013, and end on December 1, 2015, subject to further extension pursuant to Section 710(b) of Act 47, 53 P.S. § 11701.710(b), unless sooner terminated by operation of Act 47 or further Order of this Court.

BY THE COURT:

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# EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

I, **William B. Lynch**, Receiver for the City of Harrisburg, being duly sworn,  
do hereby depose and say as follows:

1. By Order of Commonwealth Court dated May 24, 2013, my term as  
Receiver for the City of Harrisburg (“City”) is set to expire on December 1, 2013.

2. While much progress has been made during my time as Receiver,  
most notably the confirmation of the Harrisburg Strong Recovery Plan (“Strong  
Plan”), the City remains in a state of fiscal emergency.

3. I have communicated to C. Alan Walker, Secretary of the Department  
of Community and Economic Development (“Secretary”), that the City currently  
remains in a state of fiscal emergency.

4. As has been communicated to both the Secretary and the Commonwealth Court through quarterly status updates, hearings, and status conferences, a number of contingencies remain to be finalized and implemented over the coming months if the Strong Plan is to end the City's fiscal emergency.

5. This is most clearly evidenced by the continued efforts to bring the two cornerstone transactions outlined in the Strong Plan – the monetization of the City's incinerator and parking system – to closing. These transactions will not be finalized prior to December 1, 2013.

6. Even upon completion of the monetizations, there remain several initiatives of the Strong Plan that will need to be coordinated and implemented by my office. These outstanding initiatives include, but are not limited to, on-going union negotiations, Water and Sewer transition, restoring management capacity, institutionalizing best practices in areas such as debt, capital, OPEB; development of the non-profits for capital and ED/CD, etc. These additional initiatives of the Strong Plan will not be concluded prior to December 1, 2013.

7. It will only be after the ongoing implementation of the referenced initiatives of the Strong Plan are finalized after December 1, 2013 that the City will gain some measure of relief from its fiscal emergency.

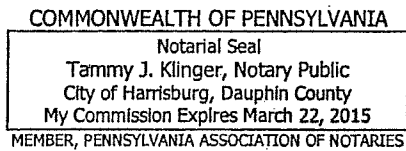
8. Therefore, further implementation of the fiscal recovery plan beyond December 1, 2013 is necessary to end the City's fiscal emergency.

By: William B. Lynch  
WILLIAM B. LYNCH  
Receiver for the City of Harrisburg  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120  
(717) 231-5558

Sworn and subscribed to before  
me this 18<sup>th</sup> day of November, 2013.

Tammy J. Klinger

NOTARY PUBLIC



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18<sup>th</sup> day of November, 2013, I served a true and correct copy of the foregoing PETITIONER'S APPLICATION TO EXTEND THE RECEIVERSHIP FOR THE CITY OF HARRISBURG via first class mail, postage prepaid upon the individuals identified on Exhibit A hereto at the addressees indicated on Exhibit A.

By: 

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