

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON PUBLIC PROPERTY AND
PUBLIC WORKS

Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, October 26, 2011
11:10 a.m.

PRESENT:

COUNCILMAN DARRELL CLARKE, CHAIR
COUNCILMAN FRANK DiCICCO
COUNCILMAN WILLIAM K. GREENLEE
COUNCILMAN JAMES KENNEY
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN FRANK RIZZO, JR.

BILLS 110535, 110632, 110650, 110669 and
110517

- - -

1
2 COUNCILMAN CLARKE: Good
3 morning. This is the Committee on Public
4 Property and Public Works. We have
5 established a quorum. To my left we have
6 Councilman Rizzo, Councilman Greenlee and
7 Councilman DiCicco.

8 Mr. Carter, please read the
9 title of the first bill.

10 THE CLERK: Bill No. 110632, an
11 ordinance authorizing the Philadelphia
12 Authority for Industrial Development
13 ("PAID") to purchase a certain tract of
14 land with the improvements thereon
15 situate at 9470 Ashton Road, under and
16 subject to the terms and conditions of
17 the Philadelphia Industrial and
18 Commercial Development Agreement among
19 the City, PAID, and the Philadelphia
20 Industrial Development Corporation, all
21 under certain terms and conditions.

22 (Witness approached witness
23 table.)

24 COUNCILMAN CLARKE: Please
25 proceed.

1 10/26/11 - PUBLIC PROPERTY - BILL 110517, ETC.

2 MR. DALFO: Good morning.

3 COUNCILMAN CLARKE: Good
4 morning.

5 MR. DALFO: Mr. Chairman and
6 members of the Committee, my name is Tom
7 Dalfo and I represent PIDC and the
8 Philadelphia Authority for Industrial
9 Development. I am here to testify in
10 support of Bill No. 110632.

11 This bill would authorize PAID
12 to purchase an approximately two-acre
13 property located at 9470 Ashton Road in
14 the Grant Industrial Complex in Northeast
15 Philadelphia for a consideration not to
16 exceed \$250,000. After acquisition by
17 PAID, we will market the property to
18 private companies for industrial
19 development.

20 This is an attractive location
21 for modern industrial development in that
22 it provides street frontage to a parcel
23 already owned by PAID for industrial
24 development. The site is in the
25 Industrial Complex and surrounded by

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2 other stable industrial businesses. The
3 site is located just a few minutes from
4 I-95 and has access to a solid employment
5 base, both of which are necessary to
6 support an industrial operation.

7 We intend to purchase the
8 property to consolidate it with an
9 adjacent property which we own and make
10 the combined site more attractive to
11 industrial businesses. In general, there
12 is a lack of marketable industrial
13 properties in the City, which greatly
14 limits our ability to attract and retain
15 industrial companies and the employment
16 opportunities they represent. In a small
17 measure, this acquisition will help to
18 address this situation.

19 The purchase price is the
20 amount negotiated with the property
21 owner. The current owner of the parcel,
22 Trustees of the Burholme Congregation of
23 Jehovah's Witnesses, has agreed to sell
24 the site to PAID.

25 The cost of this acquisition

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2 will be paid from the Industrial and
3 Commercial Development Revolving Fund.

4 I ask that the Committee
5 consider this bill favorably and that the
6 rules of Council be suspended to permit
7 first reading at the next regularly
8 scheduled meeting of Council.

9 Thank you for the opportunity
10 to testify. I'm happy to answer any
11 questions you may have.

12 COUNCILMAN CLARKE: Thank you
13 so much. A couple of quick questions.

14 In terms of obviously the
15 marketability of this particular parcel,
16 at a time when you're hopefully getting
17 close to closure on the deal, is there
18 any requirement to have any community
19 input or is there any community in the
20 adjacent areas? Because the only reason
21 I ask that, because you don't know
22 exactly what it will be at this point, so
23 it's not -- we and City Council are not
24 in a position to ask members in that
25 local community if they're comfortable

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2 with the proposed development, because at
3 this point there is none.

4 MR. DALFO: I think there's
5 some residential across Ashton Road. To
6 the north, south and west, other
7 property, it's all industrial. And
8 Ashton Road, the access there is pretty
9 good up to Grant Avenue.

10 So there hasn't been community
11 outreach per se. We've coordinated with
12 the District Councilpeople in this area
13 to make sure that they're comfortable
14 with the idea.

15 And to help to understand the
16 site, we own about six acres immediately
17 adjacent and wrapping around this site,
18 and our site has been hampered in our
19 ability to attract anybody to develop on
20 it because essentially they'd sort of be
21 buried behind this lot. We have a very
22 limited amount of frontage on Ashton
23 Road. So this acquisition really just
24 squares off an industrial parcel we have
25 and makes it consistent with some of the

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2 other industrial parcels and I think
3 would yield some type of industrial
4 activity that's consistent with the
5 facilities around there. There's a large
6 beverage distribution company immediately
7 to the west. There's a company that
8 specializes in martial arts equipment
9 distribution throughout the United States
10 immediately to the south, and some other
11 companies related -- within sort of
12 related industries, and I think that's
13 the type of stuff we'd see. But, no, we
14 haven't reached out to the community
15 because, as you say, we don't have a
16 project for anybody to react to.

17 COUNCILMAN CLARKE: Right.

18 Understandably.

19 Any other questions from
20 members of the Committee on this
21 particular bill?

22 (No response.)

23 COUNCILMAN CLARKE: Anyone else
24 to testify on this bill?

25 (No response.)

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2 COUNCILMAN CLARKE: There being
3 none, Mr. Carter, please read the title
4 of the next bill.

5 Thank you very much.

6 THE CLERK: Bill No. 110650, an
7 ordinance authorizing the Commissioner of
8 Public Property, on behalf of the City,
9 to acquire the beds of certain portions
10 of Delaware Avenue and Buckius Street,
11 under certain terms and conditions.

12 (Witness approached witness
13 table.)

14 DEPUTY COMMISSIONER HERZINS:
15 Good morning, Chairman Clarke and members
16 of the Committee on Public Property and
17 Public Works. I am John Herzins, Deputy
18 Commissioner of the Department of Public
19 Property, here today to testify in
20 support of Bill No. 110650.

21 This bill will enable the City
22 to acquire property to assist the Streets
23 Department with the opening of unopened
24 portions of Delaware Avenue in accordance
25 with Bill No. 110704.

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2 I note that an ordinance for
3 the acquisition of the parcels for the
4 extension of Delaware Avenue was enacted
5 in 2008. However, the Eminent Domain
6 Code requires a declaration of taking for
7 condemnation to be filed within one year
8 of the authorizing ordinance. Therefore,
9 this new ordinance is required in order
10 to commence with condemnation.

11 The Department supports this
12 measure, and I respectfully ask that City
13 Council approve Bill No. 110650. I am
14 requesting a suspension of the rules so
15 as to allow first reading at the next
16 session.

17 Thank you.

18 COUNCILMAN CLARKE: Thank you.

19 Let the record reflect that
20 Councilwoman Donna Reed Miller has joined
21 the Committee.

22 Any questions of this witness
23 on this particular bill?

24 (No response.)

25 COUNCILMAN CLARKE: There being

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2 none, anyone else to testify on this
3 bill?

4 (No response.)

5 COUNCILMAN CLARKE: There being
6 none, thank you very much.

7 Mr. Carter.

8 THE CLERK: Bill No. 110669, an
9 ordinance authorizing the Commissioner of
10 Public Property, on behalf of the City of
11 Philadelphia, to convey a parcel of land
12 with the improvements thereon, located at
13 921 through 27 Ellsworth Street, under
14 certain terms and conditions.

15 DEPUTY COMMISSIONER HERZINS:

16 Good morning, Chairman Clarke and members
17 of the Committee on Public Property and
18 Public Works. I am John Herzins, Deputy
19 Commissioner of the Department of Public
20 Property, here to testify in support of
21 this bill.

22 A request for proposals was
23 issued by the Office of Housing and
24 Community Development for the development
25 of the above-referenced parcel of land

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2 into a low-income senior housing
3 facility. St. Maron's CDC and BCM
4 Affordable Housing are the joint
5 developers that were selected in this --
6 as a result of the RFP.

7 The Department supports this
8 measure and, accordingly, I respectfully
9 ask that City Council approve Bill No.
10 110669. I am requesting a suspension of
11 the rules so as to allow for first
12 reading at the next session of Council.

13 Thank you.

14 COUNCILMAN CLARKE: Thank you.

15 For the record, what Council
16 district is that in?

17 DEPUTY COMMISSIONER HERZINS:
18 Councilman DiCicco.

19 COUNCILMAN CLARKE: DiCicco,
20 okay. Just keeping track on where all
21 the housing development is going.

22 COUNCILMAN DiCICCO: We have
23 this --

24 COUNCILMAN CLARKE: I've been
25 accused that --

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2 COUNCILMAN DiCICCO: We have
3 this running debate as to what district
4 has more development. I will say with
5 the announcement of the North Broad
6 Street Master Plan, if not now, you
7 probably will have more going forward.

8 COUNCILMAN CLARKE: At this
9 point, it's all speculative.

10 COUNCILMAN DiCICCO: I have
11 confidence.

12 COUNCILMAN CLARKE: Thank you.
13 Thank you.

14 Any questions of this witness
15 on this particular bill?

16 (No response.)

17 COUNCILMAN CLARKE: Anyone else
18 to testify on this bill?

19 Mr. Ali.

20 (Witness approached witness
21 table.)

22 MR. ALI: Good morning,
23 Chairman Clarke and other members of this
24 Public Property and Public Works
25 Committee. I am Jihad Ali. I'm here on

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2 behalf of the Contractors Roundtable,
3 which is an African American group of
4 contractors and general contractors, both
5 Latino -- and subcontractors -- and
6 African Americans. I'm also here as a
7 representative of the Guardian Civic
8 League, which is the Black Police
9 Organization of Philadelphia, which has a
10 real estate development committee.

11 By way of disclosure, I'd like
12 to say I'm an independent journalist for
13 the Guardian Civic League. I'm a
14 certified producer for public access TV,
15 and I am going -- we are currently doing
16 a report on this Public Property whole
17 industry.

18 I'm here on behalf of Bill
19 110669. I'm not sure if 110535 is
20 attached to this bill.

21 COUNCILMAN CLARKE: No. What
22 happened, they're actually the same bill.

23 MR. ALI: So the Bill number is
24 110669?

25 COUNCILMAN CLARKE: 669,

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2 correct.

3 MR. ALI: Mr. Chairman, I have
4 some questions about Public Property,
5 because when this issue of Public
6 Property documents conveyances comes
7 before the people, the representatives of
8 the people, sometimes it's a big
9 question.

10 By way of respect and by
11 Councilman DiCicco's office, because I
12 know that he has a concern that if a
13 person has a problem, at least to give
14 him the courtesy to respond. I went to
15 the Chief Clerk's Office to obtain
16 whatever might be in the file concerning
17 this document, this bill. In the file
18 was a one-page document that listed that
19 this was being given to a developer. I
20 then went to Councilman DiCicco's office
21 to get some assistance and find out who
22 was the identity of the developer and
23 exactly what were their plans in terms of
24 economic opportunities for contractors,
25 both Latinos and African Americans.

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2 Councilman DiCicco's office
3 helped me tremendously, but all they
4 could provide me was just one name of the
5 developer, who was identified as Joe
6 Keller or something.

7 COUNCILMAN DiCICCO: Joe Kater,
8 K-A-T-E-R.

9 MR. ALI: Thank you,
10 Councilman.

11 I then went over to PAID,
12 because originally I thought according to
13 the other bills, it was mentioned that
14 PAID was involved in it. I attended the
15 Board meeting yesterday at PAID. I spoke
16 to Mr. Deegan and the Chairman, who have
17 always gone out of their way to assist me
18 and giving me information, and they
19 didn't know anything about this, because
20 they said it might not have been before
21 them before, but now I understand.

22 The question I had was, on
23 this -- the reason I'm here today is
24 because there is a lack of information,
25 and I know that this Committee and this

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2 Council has gone out of their way to
3 provide transparency on everything
4 concerning the City. So why is it that
5 when it comes to Public Property,
6 documents aren't available? There's
7 nothing in the file.

8 Questions that a citizen like
9 myself might ask is, is there a public
10 file available at Public Property for
11 inspection? The conveyance of this
12 parcel, is this contingent on this
13 property being developed exclusively as
14 elderly housing? And what is the
15 purchase price of this parcel? And will
16 the recipient of this parcel have
17 assignment rights? And will a HUD-1 or
18 1-A settlement sheet be required on this
19 project, and is that available for public
20 inspection?

21 That's the questions that I
22 have for OHCD -- I'm sorry; for Public
23 Property. For OHCD, I don't know, is
24 there a representative of OHCD here
25 today?

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2 COUNCILMAN CLARKE: I do not
3 see the usual suspects, so I do not
4 believe so.

5 MR. ALI: In regards to OHCD,
6 the bill says that this was advertised.
7 The question is, how was it advertised?
8 Their website normally says that they
9 advertise in five newspapers. The
10 closing date of this bill advertisement I
11 believe was in August. About 18 days
12 later it closed. I'd like to know how
13 many respondents it was.

14 And in regards to the CDC that
15 was chosen, along with the BCM developer,
16 who is the BCM developer? What has been
17 their past performance in regards to
18 minority businesses in the City of
19 Philadelphia, and what is the experience
20 of BCM in elderly housing? And also has
21 the developer submitted an application at
22 PHFA for funding in the 2012 application
23 process?

24 If the developer is here today,
25 my questions I would ask him is, did he

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2 advertise for MBE participation on his
3 project at the time that he was
4 soliciting responses for this parcel?

5 And has he submitted an economic
6 opportunity plan, as approved by the City
7 of Philadelphia, not a plan in lieu of
8 that plan, which is normally the
9 procedure at OHCD.

10 COUNCILMAN CLARKE: Councilman
11 DiCicco.

12 COUNCILMAN DiCICCO: Yeah. I
13 think Mr. Herzins probably has some of
14 the answers to your questions. Mr. Ali,
15 as you know, I will do my best to arrange
16 a meeting with you and Joe Kater, who is
17 the -- I believe his title is Executive
18 Director of the CDC.

19 This project came about several
20 years ago as a result of a conversation I
21 had with the Monsignor of St. Maron's,
22 who recently passed away, about creating
23 opportunities in our neighborhood for
24 low-income, affordable senior housing.
25 This CDC is new. They don't have the

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2 experience of development. I'll be the
3 first to tell you that. But I know that
4 there was -- they were in front of the
5 Zoning Board to get a variance, because
6 it is currently a City public parking
7 lot. So they needed to get a variance to
8 create residential housing there. So
9 there was a public notification as to
10 that.

11 Some of the other things I
12 don't have an answer for, but I'll
13 certainly work with you to schedule that
14 meeting to talk to the CDC folks and then
15 take it from there.

16 MR. ALI: That's fine.
17 Councilman, your word means something to
18 me. We can include that.

19 COUNCILMAN DiCICCO: I just
20 went into my office. They said you were
21 there, so I figure I'd see you up here.

22 MR. ALI: I'm good with that.

23 COUNCILMAN CLARKE: First, let
24 me for the record reflect that Councilman
25 James Kenney has joined the Committee.

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2 Mr. Herzins.

3 DEPUTY COMMISSIONER HERZINS:

4 Councilman, I just wanted to actually
5 distribute to the Council the economic
6 opportunity plan that was developed for
7 this project.

8 COUNCILMAN CLARKE: Okay.

9 DEPUTY COMMISSIONER HERZINS: I
10 think one of your questions, sir, was the
11 price of this. This is a nominal
12 transaction due to the senior affordable
13 housing project involved.

14 MR. ALI: Will the developer
15 have assignment rights?

16 (Audience member speaking
17 without microphone.)

18 COUNCILMAN CLARKE: Excuse me.
19 Do you want to have this for the record?

20 DEPUTY COMMISSIONER HERZINS:
21 Right. We have --

22 COUNCILMAN CLARKE: I mean, if
23 we have people that are going to testify
24 or respond to questions, we need them to
25 come up.

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2 DEPUTY COMMISSIONER HERZINS:

3 The agreement of sale will be limited to
4 the development of this particular
5 project.

6 COUNCILMAN CLARKE: Okay.

7 DEPUTY COMMISSIONER HERZINS:

8 It won't move forward if this project
9 does not develop.

10 COUNCILMAN CLARKE: Okay.

11 DEPUTY COMMISSIONER HERZINS:

12 There'll be language in the agreement of
13 sale to that effect.

14 COUNCILMAN CLARKE: And the
15 participation goals will be based on OHCD
16 and the traditional Community Development
17 Block Grant requirements --

18 DEPUTY COMMISSIONER HERZINS:

19 Yes.

20 COUNCILMAN CLARKE: -- as it
21 relates to contracts and personnel and
22 certain requirements as it relates to
23 income standards for the residents of the
24 development?

25 DEPUTY COMMISSIONER HERZINS:

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2 Yes.

3 COUNCILMAN CLARKE: All right.

4 I know we've done this a number of times
5 in property conveyance. I know you've
6 done it I know at least in my district
7 and I'm assuming in other Council
8 districts. The information, is that
9 normally provided? Because I think
10 normally we have a representative from
11 OHCD here.

12 DEPUTY COMMISSIONER HERZINS:

13 We tried, but their previous commitments,
14 no one was able to attend. I had
15 requested that they attend.

16 COUNCILMAN DiCICCO: Point of
17 information. I know some of them are
18 actually probably in my office, because I
19 have an 11:30 meeting with them on some
20 other matters. Deborah is there and two
21 more, and I'm not sure who else.

22 COUNCILMAN CLARKE: If you
23 would like, I will try to arrange -- I
24 think the next bill may not be
25 necessarily lengthy, but somewhat

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2 lengthy. Mr. Jihad, if you want me to
3 try and reach out and see if we can get
4 someone here before we conclude our
5 business today.

6 MR. ALI: Well, I'd like to
7 take Councilman DiCicco up. He's been a
8 gentleman to me throughout his career.
9 He's always followed up on everything
10 that I've asked him and he's always been
11 honest, and all I want is honesty.

12 I'd just like to say this
13 entire Council -- see, you've always
14 lived by that transparency. If I go to
15 any one of your offices, I can get
16 anything that I ask. People are always
17 acceptable to me. The problem is when
18 you deal with these agencies like OHCD.
19 When they deal with you, it's a lot
20 different than they deal with the average
21 citizen. And I'd just like to follow the
22 example of the other great leaders that
23 I've had in my life, like Dr. King, who
24 gives me the courage to come down here
25 and speak before this powerful body, and

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2 it's only because I have that courage
3 that we can talk about a problem that
4 exists, which is the lack of information
5 for the everyday citizen.

6 Thank you.

7 COUNCILMAN CLARKE: Thank you,
8 Mr. Ali. You've been very helpful to us
9 in your due diligence on this matter.
10 Thank you.

11 Anyone else to testify on this
12 bill?

13 (No response.)

14 COUNCILMAN CLARKE: Thank you
15 very much.

16 Mr. Carter, please read the
17 title of the next bill.

18 CHIEF CLERK: Bill No. 110517,
19 an ordinance authorizing the Commissioner
20 of Public Property, on behalf of the City
21 of Philadelphia, to enter into a lease
22 agreement with the Philadelphia Municipal
23 Authority for a certain portion of a
24 parcel of ground located at the Northeast
25 Water Pollution Control Plant, 3899

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2 Richmond Street, Philadelphia,
3 Pennsylvania; all under certain terms and
4 conditions.

5 DEPUTY COMMISSIONER HERZINS:

6 Good morning, Chairman Clarke and members
7 of the Committee on Public Property. I
8 am John Herzins, the City's Deputy Public
9 Property Commissioner, here today to
10 testify in support of Bill No. 110517, a
11 companion bill to Bill No. 110518, which
12 had a hearing before the Committee on
13 Finance on October 18th, 2011 and was
14 reported out favorably.

15 This bill will authorize the
16 City to enter into a site lease for
17 certain property at the City's Northeast
18 Water Pollution Control Plant with the
19 Philadelphia Municipal Authority. The
20 site lease will facilitate the
21 development, lease and maintenance of a
22 biogas cogeneration facility proposed at
23 the site that benefits the Water
24 Department. The term of the proposed
25 site lease is for a period of up to a

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total of 29 years. The City will operate the biogas cogeneration system to produce electricity and heat that will be utilized completely at the Northeast Water Pollution Control Plant. The agreements will also permit the Water Department to acquire the biogas cogeneration system at the end of the lease term.

The Authority will enter into a site sublease with the proposed facility owner/lessor, Banc of America Capital Corp. The Authority will also enter into agreements to be authorized through Bill No. 110518 with a project developer, Ameresco, Inc., and Banc of America Capital Corp. The construction general contractor is Philadelphia-based A.P. Construction, and Philadelphia-based Northeast Energy Systems will be providing the General Electric generation equipment.

Under the proposed schedule, the project will be completed and the

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2 lease payments will begin in 2013. The
3 project must commence this calendar year,
4 2011, and be completed by the end of 2014
5 to qualify for significant tax advantages
6 which reduce the cost of the facility
7 lease payments.

8 The Department supports this
9 measure and, accordingly, I respectfully
10 ask that City Council approve this bill,
11 and I am also requesting a suspension of
12 the rules so as to allow for the first
13 reading at the next session of Council.

14 Thank you.

15 COUNCILMAN CLARKE: Water
16 Commissioner, why don't you just put your
17 testimony in before we ask questions.

18 (Witness approached witness
19 table.)

20 COMMISSIONER NEUKRUG: Good
21 morning, Chairman Clarke and members of
22 the Committee. I am Howard Neukrug, the
23 City's Water Commissioner. I'm here
24 today to testify in support of Bill No.
25 110517.

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2 At the heart of the bill is the
3 authorization for the City through the
4 Department of Public Property to lease
5 land located within the City's Northeast
6 Wastewater Pollution Control Plant to the
7 Philadelphia Municipal Authority for the
8 construction and operation of a highly
9 innovative, green and cost-saving
10 project. This project will use waste
11 biogas, which is a by-product of our
12 treatment processes, to cogenerate both
13 heat and power in the form of
14 electricity. This biogas cogeneration
15 facility will provide almost six
16 megawatts of electricity, enough to
17 displace 85 percent of the plant's
18 electric demand. It will save us money,
19 \$20 million of the 16-year life of this
20 agreement, and will continue to save
21 money for decades to come. It will
22 create a renewable energy source for
23 Philadelphia and be a jobs generator
24 during these difficult times.

25 This project is just one part

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2 of a larger energy strategy to diversify
3 our energy sources and reduce our overall
4 risk to the volatile and uncertain energy
5 markets. We have already installed 1,000
6 solar panels and are exploring sewer,
7 geothermal power, recycled airport
8 de-icing fluid, food waste biogas
9 generation and algae biofuels.

10 As Water Commissioner, one of
11 my priorities is to fully exploit these
12 resources, converting our wastewater
13 pollution control plants into innovative
14 resource recovery facilities for our
15 region. This project sets us on this
16 path.

17 I must also provide value and
18 benefit to the community and our
19 customers. It is for that reason that
20 the Department has designed the cogen
21 system to minimize noise and
22 environmental pollution and to make it as
23 durable a capital asset able to provide a
24 positive return on investment even after
25 the lease runs its course.

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2 This facility is also designed
3 to be operated by the employees of the
4 City of Philadelphia Water Department at
5 the Northeast Plant.

6 This cogen facility will be
7 expensive to build, and while we may have
8 considered moving forward with this
9 project under a more typical public works
10 approach, there are certain tax
11 advantages set forth in the American
12 Recovery and Reinvestment Act of 2009,
13 also known as the stimulus bill, that
14 makes this current opportunity so
15 critical and timely.

16 The Act provides the City a
17 unique opportunity to use an alternative
18 financing structure, which saves us \$12
19 million. Regrettably, the time needed to
20 finalize this complex agreement and embed
21 it within this bill and meet the stimulus
22 bill's deadlines leaves us with a sense
23 of urgency for approval from this
24 Committee and Council.

25 In conclusion, I respectfully

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2 request that this Bill 110557 be amended
3 with a correction in text and a revised
4 Exhibit "A" and that the Committee
5 approve this bill and suspends its rules
6 so that the bill may be read at the next
7 meeting of City Council.

8 This project is a winning
9 proposal. It saves money, reduces
10 greenhouse gas emissions, it creates
11 jobs, promotes energy independence, uses
12 an underutilized resource, is a big step
13 in meeting the Mayor's Greenworks targets
14 and diversifies the City's energy
15 portfolio.

16 I'm happy to take questions.

17 COUNCILMAN CLARKE: Thank you.

18 Any questions of --

19 COUNCILMAN GREENLEE: Real
20 quick.

21 COUNCILMAN CLARKE: Councilman
22 Greenlee.

23 COUNCILMAN GREENLEE: Thank
24 you, Mr. Chairman.

25 I was looking at the revised

1 10/26/11 - PUBLIC PROPERTY - BILL 110517, ETC.

2 exhibit. Can you kind of explain what
3 the revisions are? Is there anything of
4 real note or is it technical?

5 (Witness approached witness
6 table.)

7 COUNCILMAN GREENLEE: I see,
8 you need the St. Joe Prep guy up there.
9 I note that for the record.

10 MR. DAVIS: I'm Barry Davis.
11 I'm with the City's Law Department.

12 The change in the exhibit to
13 the bill is to -- it was actually to make
14 it more generic. We are negotiating
15 these documents with the other parties at
16 this time, and the original exhibit that
17 was provided for this bill back in June
18 when it was introduced is not necessarily
19 consistent with some of the conditions
20 that we're negotiating currently. So the
21 idea was to keep it a very generic --

22 COUNCILMAN GREENLEE: General?

23 MR. DAVIS: Yes.

24 COUNCILMAN GREENLEE: Okay.

25 All right. Thank you.

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2 MR. DAVIS: And the technical
3 correction in the bill was that it was
4 originally misworded, so the --

5 COUNCILMAN GREENLEE: Okay.
6 Thank you.

7 Thank you, Mr. Chairman.

8 COUNCILMAN CLARKE: Thank you,
9 Councilman.

10 Mr. Davis, since you're up
11 here, we have had conversations over the
12 last year about generation of power
13 utilizing municipal facilities. Is this
14 the one that we talked about in our
15 conversations during the course of the
16 Energy Authority?

17 MR. DAVIS: This is certainly
18 one of the major projects that we
19 anticipated and have been working on for
20 quite some time. I should note that one
21 of the conditions of the agreements that
22 we'll enter into is that this will be
23 fully assignable from the current
24 Philadelphia Municipal Authority to an
25 energy authority if the City desires to

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2 consolidate energy projects at the Energy
3 Authority.

4 COUNCILMAN CLARKE: Okay.

5 Great.

6 Any other questions of these
7 witnesses at this time on this particular
8 bill?

9 (No response.)

10 COUNCILMAN CLARKE: There being
11 none, thank you very much.

12 COUNCILMAN DiCICCO: I'm sorry.

13 COUNCILMAN CLARKE: Councilman
14 DiCicco.

15 COUNCILMAN DiCICCO: I was not
16 at the Finance Committee hearing, so I
17 don't know too much about this, but
18 through conversations with other folks,
19 this company was the low bidder that is
20 going to build this, correct?

21 COMMISSIONER NEUKRUG: That's
22 correct.

23 COUNCILMAN DiCICCO: Are there
24 any contingencies that would bring this
25 matter back to City Council if for some

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2 reason the costs of the project were to
3 exceed what was originally agreed to?

4 COMMISSIONER NEUKRUG: At that
5 present, there are not.

6 COUNCILMAN DiCICCO: And is
7 that normal -- I guess the question I'm
8 asking and I'm making a statement at the
9 same time. That's pretty normal the way
10 we do things; traditionally we don't have
11 any contingencies?

12 COMMISSIONER NEUKRUG: As I
13 understand it, yes, but I'm willing to
14 sit down and talk with you and other
15 Councilpeople about that.

16 COUNCILMAN DiCICCO: And if
17 this bill doesn't get voted out today,
18 does this put the project in any -- is it
19 in jeopardy?

20 COMMISSIONER NEUKRUG: We are
21 under a very tight timeframe. December
22 31st is the absolute deadline for this
23 project to have a full agreement and to
24 have broken ground. So, yes, it is a
25 very tight timeframe and --

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2 COUNCILMAN DiCICCO: It's
3 tight, but if it were held today to the
4 next Public Property Committee hearing,
5 which I think we're going to have one
6 more, I think there's another one
7 scheduled --

8 COUNCILMAN CLARKE: I'm not
9 sure.

10 COUNCILMAN DiCICCO: In any
11 case, we'd have to get this done by
12 December 15th.

13 COMMISSIONER NEUKRUG: Yes. I
14 think there may be other opportunities
15 beyond this Committee to sit down,
16 discuss and then have changes if --

17 COUNCILMAN DiCICCO: That does
18 concern me a little bit. I'm not a
19 lawyer. I don't know how we do that. If
20 we vote it out favorably, whether there's
21 a suspension or not, how do we interject
22 language that would cause this to have to
23 come back to City Council in the event
24 that there is some overages that were not
25 anticipated when they actually did the

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2 bid?

3 MR. DAVIS: Councilman, the
4 concept of coming back to Council I think
5 presents some problems. The issue is
6 that this project will be constructed on
7 the City's site clearly for the benefit
8 of the City's Water Department. It will
9 be paid for through lease payments to a
10 bank, which is going to be the owner of
11 the project. It will -- the timing of
12 coming back I think presents some
13 problems in that we would come back at
14 sometime in 2013 perhaps when the project
15 is nearing completion and have determined
16 that there were some cost overruns at
17 that point.

18 I think the practical problem
19 of that is that how do the other parties
20 to the agreement get assurances that in
21 fact they will get paid if there is, in
22 effect, a --

23 COUNCILMAN DiCICCO: To that
24 point, I mean, if in 2013 there were some
25 cost overruns, the parties would be the

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2 Water Department and the developer. It
3 wouldn't -- City Council would not be a
4 party to that.

5 MR. DAVIS: That is correct.

6 COUNCILMAN DiCICCO: And that's
7 what I'm trying to get to. My
8 understanding is, in other jurisdictions
9 there are certain levels of overruns when
10 you hit a certain number, whether it's 10
11 percent, 20 percent, whatever, that would
12 cause the developer to have to come back
13 to the legislative body to get approval.

14 COUNCILMAN KENNEY: Point of
15 information.

16 COUNCILMAN CLARKE: Councilman
17 Kenney.

18 COUNCILMAN KENNEY: One of the
19 things about working in the private
20 sector, I do get criticized sometimes for
21 being in the private sector, but the
22 things that you learn in the private
23 sector bring benefit to your public
24 service work.

25 The way it works in the private

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2 sector between design and development is
3 that the owner, the client, will make a
4 determination between the design team and
5 the contractor whether or not to accept
6 that change order, which increases the
7 cost. Who on this project is the City's
8 client rep to argue with the contractor
9 and/or the developer as to who is at
10 fault for the cost overrun?

11 For example, if a set of
12 chillers is determined by the GC or by
13 the project manager they need to be moved
14 300 yards, there's a redesign cost and a
15 cost of moving that. Under
16 private-sector circumstances, the owner
17 of the project would say, Whoa, that was
18 not in the design, that's yours to eat,
19 I'm not eating it, or there would be some
20 dispute mechanism. The issue with
21 government is is that who is the project
22 management oversight for the City, for
23 the taxpayer, and that's where the
24 dispute comes in. Because once the
25 project is down the road, if there's no

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2 mechanism to say, Wait a minute, what is
3 that, why did it cost that and why are we
4 eating it as opposed to you eating it,
5 then we get to the end of the project and
6 it's three, four, five million dollars
7 over budget, who then determines whether
8 we pay them that extra money?

9 MR. DAVIS: So the construct is
10 that this is a firm fixed-price contract.
11 The Water Department -- this is actually
12 a project that would be done through the
13 Philadelphia Municipal Authority, but, in
14 effect, the Water Department will be
15 assuming the responsibilities of the
16 Authority. The Authority will have the
17 direct oversight in terms of any proposed
18 changes to the contract, change orders
19 that would be part of that.

20 COUNCILMAN KENNEY: But take no
21 offense to this following statement: In
22 the private sector, if I'm the developer,
23 it's my money and I will decide whether
24 or not, through a discussion, whether or
25 not I agree with the assertion that it's

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2 a valid change order and I will agree to
3 eat that or I will say to either the GC
4 or the design team, the architecture
5 firm, That's your problem, you left that
6 out of the drawing, dude. I mean, we're
7 not paying that.

8 In this particular situation,
9 it's the Water Department itself with a
10 project that they want to get done
11 saying, Maybe you'd be more likely to
12 approve the change order as opposed to
13 not if it was your own money.

14 MR. DAVIS: Yeah. I mean, I
15 certainly see your point, and I think,
16 though, that it is the -- that is
17 essentially the way every public works
18 project is done, and for better or for
19 worse, the way that those projects are
20 bid is that you are bidding a
21 specification that is in front of you and
22 to the extent that there needs to be a
23 change because the specification did not
24 anticipate a particular problem that --

25 COUNCILMAN KENNEY: The

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2 question is, whose fault that is.

3 MR. DAVIS: And --

4 COUNCILMAN KENNEY: That's the
5 question, whose fault is it. Is it left
6 out of the design documents or it's
7 something that we couldn't foresee, it's
8 got to be done --

9 MR. DAVIS: Well, actually,
10 there's a slight advantage in this case,
11 and, that is, that the developer here is
12 assuming design and construction
13 responsibility.

14 COUNCILMAN KENNEY: So they're
15 going to eat all the overruns?

16 MR. DAVIS: So they are going
17 to eat everything, except something that
18 would be truly, truly unanticipated.

19 COUNCILMAN KENNEY: I mean, but
20 there's not -- during the Convention
21 Center expansion, there was one person
22 who was paid by the Center, who was the
23 client, to follow all those issues and to
24 make that argument, Yes, I see your
25 point, we'll eat it; no, you left this

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2 curtain wall out and now you want to put
3 it back in and you should have put it
4 back in in the original design. That's
5 the dispute that is -- the decision of
6 who pays the mistake, and I don't know
7 whether or not, as Councilman DiCicco
8 raised, who pays for the mistakes in the
9 end is the taxpayer.

10 MR. DAVIS: I'll give you an
11 example of where this could come up, you
12 know, in terms of this being a firm
13 fixed-price contract. The type of
14 unforeseen circumstance might be that
15 we're building a foundation for the
16 project and let's say that we, in the
17 course of the excavation of that
18 foundation, we determine that the soil
19 there is unstable, that they are
20 unanticipated in a way that is different
21 than other soils on the site.

22 COUNCILMAN KENNEY: So you're
23 saying it wouldn't be the responsibility
24 of the site civil engineer?

25 MR. DAVIS: What I'm saying is

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2 that the condition that exists on our
3 site, on our land, would not have been
4 knowable by the contractor at the time
5 that he bid on this project. So that
6 might be the kind of thing that would
7 fall into a completely unanticipated --

8 COUNCILMAN KENNEY: I'll go
9 back. My only concern is that if it's my
10 project and I'm financing it privately
11 and I'm paying for it, I'm going to have
12 a much stronger response to those
13 requests than the government generally
14 would, because, "Just do it." And I
15 think that's the issue.

16 We don't have a Capital Office
17 that operates like a private development
18 project manager would. That's --

19 COMMISSIONER NEUKRUG:
20 Councilman, the Philadelphia Water
21 Department does have a Capital Office
22 where we do approximately \$150 million
23 worth of work a year and we have a very
24 strong group of engineers and inspectors
25 and oversight, and we do run into in

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2 public works, unfortunately, issues of
3 cost overruns and project changes almost
4 on a weekly basis. So, yes, I understand
5 your concerns.

6 COUNCILMAN KENNEY: Finally, I
7 will tell you the experience that I have
8 in the private sector in New Jersey is
9 that if a school board authorizes the
10 construction of a high school and over
11 the course of that construction, there's
12 an aggregate increase in overrun to 20
13 percent, they need to come back. Almost
14 every school district in the State of New
15 Jersey, you have to come back to that
16 district and get the approval by
17 resolution of the district.

18 So, I mean, if that's a model
19 that they use -- and it can be
20 problematic from a development
21 standpoint, but also I guess the taxpayer
22 feels that -- the school district
23 taxpayers feel that they are being at
24 least looked after. That's, I think, the
25 point the Councilman was making.

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2 Thanks. I'm sorry. I didn't
3 mean to interrupt.

4 COUNCILMAN DiCICCO: No.

5 COUNCILMAN CLARKE: Councilman
6 Rizzo.

7 COUNCILMAN RIZZO: For the
8 record, I should know this at this point,
9 but I don't. When we say "cogeneration,"
10 boy, that's a pretty broad statement.
11 There's windmills, there's solar. Could
12 you describe just for the record what
13 exactly you plan to build there?

14 COMMISSIONER NEUKRUG:

15 Certainly, and thank you for that
16 question. And, no, we're not chasing
17 windmills here. We are looking at a
18 project that uses pretty much a diesel
19 engine technology, so a pretty simple
20 technology, but on a very large scale.
21 Instead of diesel fuel, we're using gas
22 that's produced at our wastewater plant
23 as sort of -- it's a methane product,
24 similar to what you find at a landfill
25 where they're collecting methane gas.

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2 Well, our process, as you can imagine,
3 produces plenty of methane. Right now we
4 use some of it for just heating our
5 system and using it for raising the
6 temperature in what we call our
7 digesters. But, unfortunately, we only
8 use a portion of it, and if you drive by
9 I-95, you'll see that there's quite a bit
10 of gas that's flared off from our
11 wastewater plant. That is a waste of
12 energy.

13 So instead, we take this waste
14 gas, we put it through a diesel engine,
15 we generate electricity through that
16 process and as a by-product of that
17 process, we are producing heat, just like
18 a car engine would produce heat, and we
19 take that heat and we use that for our
20 buildings and for our processes. So
21 we're taking one fuel and generating
22 two -- cogenerating two processes out of
23 it, electricity and heat.

24 COUNCILMAN RIZZO: When you
25 say -- maybe it was just a way to

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2 describe it -- diesel engine, it's not
3 really a diesel engine, because diesel
4 engine needs diesel fuel --

5 COMMISSIONER NEUKRUG: Right.

6 COUNCILMAN RIZZO: -- to
7 operate.

8 COMMISSIONER NEUKRUG: Right.

9 I was doing something very similar to a
10 diesel engine that uses an alternative
11 fuel, which in this case is waste gas
12 from our process.

13 COUNCILMAN RIZZO: That's fair.

14 COMMISSIONER NEUKRUG: Very big
15 green project.

16 COUNCILMAN RIZZO: The last
17 question is, what will the neighbors,
18 what will the commuters, what will the
19 community see after the project -- what
20 will be different then than today?

21 COMMISSIONER NEUKRUG: You will
22 not see the flaring of the gas hopefully
23 most of the time. You will not -- we are
24 building and part of the design for this
25 facility is to build a municipal-style

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2 facility that is a pretty large structure
3 similar to the other facilities at the
4 Northeast Wastewater Plant that will
5 house this equipment and protect the
6 community, particularly with the
7 placement and the type of building that
8 we're constructing, protect the community
9 and any possible passerbys from any
10 adverse noise or appearance of this
11 facility.

12 COUNCILMAN RIZZO: Could you
13 supply to the Chair a rendering of what
14 the site will look like?

15 COMMISSIONER NEUKRUG: I'd be
16 very happy to, yes.

17 COUNCILMAN RIZZO: Two-story
18 building, three-story building,
19 five-story building?

20 COMMISSIONER NEUKRUG: It's
21 approximately --

22 MR. DAVIS: It's basically like
23 a large garage. It will be constructed
24 out of brick and concrete, and it has
25 some pollution control equipment on the

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2 top of it that --

3 COUNCILMAN RIZZO: It would be
4 nice to see what --

5 MR. DAVIS: Sure.

6 COMMISSIONER NEUKRUG: Be happy
7 to show that to you.

8 COUNCILMAN RIZZO: That would
9 be great.

10 Thank you, Mr. Chairman.

11 COUNCILMAN CLARKE: Thank you,
12 Councilman.

13 Councilman DiCicco, are you
14 done?

15 COUNCILMAN DiCICCO: Yes.

16 COUNCILMAN CLARKE: Any other
17 questions for these witnesses from
18 members of the Committee?

19 (No response.)

20 COUNCILMAN CLARKE: Anyone else
21 to testify on the bill?

22 (Witnesses approached witness
23 table.)

24 COUNCILMAN KENNEY: Please
25 identify yourself for the record and

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2 proceed.

3 MR. MARTIN: Councilman, my
4 name is William Martin, the Fox
5 Rothschild Law Firm. I'm here on behalf
6 of Ameresco, the developer on this
7 project, and while I'm joined by Linda
8 Nugent, the Senior Project Developer, and
9 Lee Norelli of A.P. Construction, I'm
10 here to just address the narrow issue of
11 the timing of the transaction. If
12 members of Council would separately have
13 any other questions of either Ms. Nugent
14 or Mr. Norelli, we can bring them up.

15 Councilman DiCicco previously
16 raised the issue of timing, which I
17 wanted to address. As was indicated,
18 there is a significant federal tax credit
19 associated with this transaction, which
20 under the requirements of the Stimulus
21 Act only is able to be enjoyed if certain
22 steps are taken during Calendar Year
23 2011, and among the steps that are
24 required are the commitments by the
25 developer to purchase materials and to

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2 make irrevocable commitments as to
3 materials up to an amount of 5 percent of
4 the cost of the project.

5 So as Council currently stands,
6 given the schedule, perhaps this
7 ordinance would be approved at a meeting
8 that would occur in early November, and
9 then the ordinances need to be signed by
10 the Mayor, and it's only after the Mayor
11 signs this and the companion ordinance
12 that I'm in a situation where I can
13 advise my clients that they can enter
14 into legally binding commitments
15 necessary to secure the tax benefits.

16 COUNCILMAN KENNEY: Is that
17 prior to the last session day?

18 MR. MARTIN: It's well prior to
19 the last session day.

20 COUNCILMAN KENNEY: Why is it
21 well prior?

22 MR. MARTIN: Because the nature
23 of the commitments that need to be
24 entered into and then also there's a need
25 to begin construction and --

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2 COUNCILMAN KENNEY: By when?

3 MR. MARTIN: By the end of the
4 year.

5 COUNCILMAN KENNEY: So you have
6 to have a shovel in the ground by the end
7 of the year?

8 MR. MARTIN: Right. So in
9 terms of the discussions we've been
10 having with our clients, you know,
11 certainly if we go back a month or two,
12 we had hoped that the Council process
13 could be concluded by the end of October.
14 That couldn't occur for any number of
15 reasons, and now we understand that the
16 approval process, perhaps the signature
17 of the Mayor, is now bleeding into the
18 middle or latter part of November. But
19 if there's much more significant delay,
20 it puts the entire transaction at risk.

21 COUNCILMAN KENNEY: Councilman
22 DiCicco.

23 COUNCILMAN DiCICCO: I don't
24 suggest that there's going to be any
25 significant delay. I think we may be

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2 talking about a week or two at the
3 maximum. We'll get it done I believe
4 even before the 15th. I don't think
5 there's anyone who does not want to
6 support this. I think it goes to the
7 question of how do we give some
8 protections or insurances that if there
9 are overages, that those overages will be
10 looked at by City Council in conjunction
11 with the Water Department.

12 So, again, I'm not the Chair of
13 this Committee, but I think that
14 everyone's intention is to get this
15 passed, and there may be an amendment
16 that reflects the issues that we brought
17 up in terms of the overages.

18 MR. MARTIN: Thank you,
19 Councilman. And my main purpose is to
20 make clear that the window doesn't extend
21 until the end of the Council session, but
22 should be --

23 COUNCILMAN DiCICCO: I don't
24 think that's the case. I mean, I can't
25 speak for everyone else, but that was not

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2 my intention when I asked the question or
3 raised the issue. That certainly wasn't
4 my intention. That's why I asked is this
5 time sensitive, because I don't want to
6 blow this thing up because we have one
7 issue that we can't agree on.

8 MR. MARTIN: And I'll step down
9 and if members of the Committee later in
10 this hearing have any further questions
11 of me or my clients, we'd feel happy to
12 come back up.

13 COUNCILMAN KENNEY: But just
14 one issue on the -- and maybe you have to
15 talk to your clients about this first
16 before you can give an answer. The
17 scenario that was spoken about in the
18 last panel relative to this percentage
19 aggregate of change orders that would
20 need to potentially be approved,
21 hypothetically, by a resolution of the
22 Finance Committee, not by an ordinance,
23 just so that there's some level of
24 comfort that these change orders are, in
25 effect, accurately our responsibility as

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2 a government and not the developer or the
3 design team or the construction company's
4 mistake.

5 MR. MARTIN: Certainly it's a
6 valid concern, Councilman, but I think
7 that it becomes very complicated because
8 you have a third-party lender which is
9 entering into commitments at this point
10 to loan a certain amount of money based
11 upon a credit assessment, and I think it
12 warrants sort of broader and more
13 detailed conversation than that that we
14 can probably readily handle.

15 COUNCILMAN KENNEY: But once
16 these two pieces of legislation are out
17 of this room, that conversation is more
18 difficult to have, I would assume, or
19 less likely to occur.

20 MR. MARTIN: Well, I don't
21 think necessarily, Councilman, because I
22 think the companion legislation approved
23 documents which were in a form and
24 substance that the Solicitor's Office
25 deems appropriate, you know.

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2 COUNCILMAN KENNEY: But is that
3 issue discussed in that document approved
4 by the Law Department, the issue of
5 aggregate change order issues?

6 MR. MARTIN: I believe it is,
7 but I would also defer to Mr. Davis'
8 opinion on that, because he's probably
9 closer to the document.

10 COUNCILMAN KENNEY: All right.
11 Thank you.

12 Please identify yourself for
13 the record.

14 MR. ALI: Good morning,
15 Councilman and members of this Committee.
16 My name is Jihad Ali. I'm here on behalf
17 of the Contractors Roundtable, which is
18 an organization of African American
19 contractors, both Latinos and African
20 Americans in the City of Philadelphia,
21 both general contractors and
22 subcontractors.

23 I'm here on behalf of Bill
24 110517. I'd particularly like to comment
25 on the testimony that was submitted for

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2 the record from Joan Schlotterbeck --
3 excuse me if I'm mispronouncing her
4 name -- from Public Property and also
5 Howard Neukrug from the Water
6 Commissioner. Please accept my apology,
7 Howard, if I mispronounce your name.

8 My particular concern is the
9 contractor, the general contractor, A.P.
10 Construction, that was chosen for this
11 job. Through a series of initiatives
12 that the Office of Economic Opportunity
13 initiated at the beginning of this year,
14 there was a series of meetings held
15 throughout the City for contractors to
16 come and talk to the community, so the
17 African American contractors that I
18 represent as well as contractors from
19 John Macklin's organization, Minority
20 Business Enterprise Council. We went to
21 a series of meetings where A.P. was
22 there. We had examined A.P.'s record in
23 the past for projects that they had done
24 for the City of Philadelphia, and we
25 pointed out to them that although they do

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2 comply with the law because they do give
3 work to minorities, but when we,
4 particularly us who are of the African
5 American race, when we particularly
6 looked at it, we saw that all their
7 contracts went to maybe one or two
8 Hispanic firms. When I pointed that out
9 to A&P and to the representatives of the
10 City, at the time the Public Property
11 representative, he took it upon himself
12 to go and give an attestation to the
13 character of A&P, which we thought was
14 inappropriate for the circumstance.
15 Because I don't really want to make an
16 excuse for being pro black males. That's
17 what I am. I don't want to just do well
18 for myself. I want to see African
19 American men and women make it too, and I
20 know that that's the intent of this
21 Council.

22 What occurs to me is that this
23 Council is being circumvented, because
24 when you see these reports that come in
25 and they tell you, whether it's Public

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2 Property or the Water Department, we're
3 complying with OEO, we're in compliance,
4 we're doing 40, 50 percent, when you look
5 at the detail reports, you see that it's
6 not African American men and women that's
7 making this money. You know, and I have
8 a problem with that, because when I look
9 around in my community, we're not getting
10 our share of this economic pie.

11 As Councilman Goode has pointed
12 out on numerous occasions, there's a
13 burden attached to public money and
14 public property, and that burden is you
15 have to have a diversity in your
16 workforce.

17 A&P, it took us -- it took
18 me -- let me give a direct testimony. I
19 requested from OEO. Ms. Burton, who I've
20 testified on numerous occasions, she's a
21 nice lady, but nice is not getting this
22 job done for us. I asked for a meeting
23 with A&P. It took me four months to get
24 a meeting with them. They met with me in
25 their office. When I went to their

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2 office, they introduced me to one black
3 employee that I saw there at their
4 office, and he was a recent hire from the
5 Water Department with 35 years of
6 service. So when I look around in their
7 office and their staff, there's no young
8 black kids, there's no trainees. And
9 when we asked about opportunities for our
10 contractors who aren't making it, Louie
11 Cruz up in your district, Councilman,
12 Complete Steel in your district,
13 Councilman Clarke, there's a host of
14 contractors who aren't making it.

15 So the issue is, A&P, they talk
16 a good game, but when you look at the
17 final results, black males, men and women
18 are not getting anything with A&P. When
19 you look at minorities, minorities that
20 they use, they utilize American Indian
21 Suppliers out of New York. They're the
22 only Indian supplier on that OEO
23 database. They do \$5 million a year in
24 revenue. How is that benefiting the
25 City? How is it benefiting the diverse

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2 communities in Philadelphia?

3 So I'm here today to give you
4 my direct testimony to tell you the
5 reality of it. The reality of it, we
6 need strong leadership on this Council to
7 help us achieve what we are, which we're
8 trying to do, which is an equal -- a fair
9 chance for our share of the economic pie.

10 Thank you.

11 COUNCILMAN CLARKE: Thank you,
12 Mr. Ali.

13 Any questions of this witness
14 from members of the Committee?

15 (No response.)

16 COUNCILMAN CLARKE: Anyone else
17 to testify on this bill?

18 Mr. Davis.

19 MR. DAVIS: Excuse me. I just
20 wanted to make sure that Councilman
21 Kenney's question had gotten answered.
22 This was the question that related to
23 whether or not the documents that are in
24 negotiation currently have a cap on the
25 cost overruns that could occur. There

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2 has not been to date a cap placed on
3 those types of cost overruns. As I said,
4 this was a firm fixed-price contract.
5 The anticipation is that you don't have
6 them, but it is certainly something that
7 I'd be happy to talk with your office
8 about and --

9 COUNCILMAN KENNEY:

10 Mr. Chairman, I wasn't -- and, sir, I
11 wasn't looking for a cap. What I'm
12 looking for is a mechanism to have some
13 oversight or some discussion on why the
14 20 percent aggregate number gets hit.
15 The 20 percent aggregate number may be
16 absolutely and totally justifiable and
17 that's -- I mean, it could be even more.
18 I mean, there are things that you run
19 into that you don't anticipate. There
20 might be somebody sues you and slows you
21 down. I mean, all those -- whether the
22 fault is at the fault of the owner
23 because it's something that was
24 unanticipated or it's a fault of someone
25 providing the service is the dilemma, is

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2 the dispute in every construction
3 development project known, is that any
4 time it's more than it's supposed to be,
5 whose fault is it and who is paying.

6 So it's not a matter of a cap
7 of 20 percent that we won't pay over a
8 change order, but what is the discussion
9 and mechanism when the aggregate 20
10 percent gets hit.

11 MR. DAVIS: All right. Thank
12 you. I do want to make sure that the
13 bill that is considered is the amended
14 bill. So I think Commissioner raised
15 that issue in his testimony, but I want
16 to make sure that that is the bill that's
17 before the Committee.

18 Thanks.

19 COUNCILMAN CLARKE: Thank you.

20 Anyone else?

21 (Witnesses approached witness
22 table.)

23 MR. MARTIN: Councilman,
24 William Martin, Fox Rothschild Law Firm.

25 I think it's appropriate just

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2 to take a few minutes to respond to the
3 prior witness's comments regarding the
4 A.P. Construction and the EOP.

5 First of all, I'd like to share
6 with members of the Committee copies of
7 the economic opportunity plan that has
8 been approved in connection with this
9 transaction. The Water Department has
10 been insistent on the project since the
11 bid process that respondents be sensitive
12 to the policy concerns of the City
13 relating to the economic opportunity
14 plan. The plan was negotiated with the
15 Water Department and the Office of
16 Economic Opportunity.

17 As I indicated previously, I'm
18 joined by Linda Nugent, Senior Project
19 Developer of Ameresco; Lee Norelli,
20 Project Manager of A.P. Construction.
21 I'd suggest Linda just briefly give you
22 an overview of Ameresco and particularly
23 a little bit of background on Ameresco
24 and its commitment to diversity in its
25 projects throughout the country, and Lee

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2 can talk a little bit about some of the
3 work that has been done here already in
4 connection with this project, including
5 specifically contracting with one of the
6 parties that was mentioned in the prior
7 testimony as being the ones that are
8 being ignored by A.P.

9 Linda.

10 MS. NUGENT: Thank you very
11 much. Again, Linda Nugent, Senior
12 Project Developer for Ameresco.

13 Ameresco is an independent
14 energy services company. We've done
15 about \$5 billion in energy solutions. We
16 have about 30 years of experience in
17 these types of projects. We've developed
18 and have operational 29 biogas projects.
19 Twenty-three of these projects are
20 electricity generation, six of these
21 projects are pipeline projects.

22 Ameresco has experience in
23 doing specific projects directly related
24 to this in our San Antonio water project.
25 That was the first project of its kind.

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2 It takes 900,000 CFM of digester gas, and
3 we deliver it -- and we clean it up and
4 deliver it to the natural gas pipeline.
5 It's a 20-year project.

6 We also have a project with the
7 City of Dallas that's quite similar to
8 this project. It's a 4.3 megawatt
9 cogeneration project. They use similar
10 type GE reciprocating engines. They're
11 internal combustion engines -- I know
12 that question was asked earlier -- fueled
13 on digester gas, powered -- the power and
14 the thermal are used on site, similar to
15 this particular project. They had annual
16 savings of about 1.5 million.

17 The majority of our other
18 projects are landfill gas-to-energy
19 projects, very much similar to the
20 digester projects. We're taking the
21 methane gas, using it in combustion
22 engines, producing powers. We have
23 projects ranging everywhere from 1
24 megawatt to 11.4 megawatt projects.

25 We are committed to this

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2 project in terms of diversity. We do a
3 lot of projects with the federal
4 government. We have Housing Authority
5 projects and others that require this
6 commitment. We've been very successful
7 in meeting these goals. We did submit
8 our EOP plan, which was approved, that
9 Bill has passed out to you. We've
10 brought on board as our partner A.P.
11 Construction, which is an established
12 firm with -- a local established firm
13 with a history of meeting its
14 participation goals. Also, Lee will talk
15 about that we've brought on Clark
16 Resources for a third-party monitor for
17 this project for the EOP, and we will be
18 pushing A.P. to meet the 40 percent goals
19 that are represented in the EOP.

20 MR. NORELLI: My name is Lee
21 Norelli. I'm the Project Manager for
22 A.P. Construction.

23 I'd like to start off by
24 emphatically stating I totally disagree
25 with the --

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2 COUNCILMAN CLARKE: One second,
3 please. Councilman had a question.

4 Councilman Rizzo.

5 COUNCILMAN RIZZO: I wanted to
6 ask a question with reference to your
7 testimony. You mention the San Antonio
8 project is going to put some of the
9 product into the natural gas pipeline. I
10 didn't hear any of that about our
11 project. It sounds like we're going to
12 be using everything that we provide. Is
13 that fair?

14 MS. NUGENT: That's correct.
15 You're taking the gas, we're putting in
16 the engines and we're using the
17 electricity, and then the thermal will be
18 used on site. This is a different kind
19 of project. The San Antonio, it requires
20 much more clean-up, expensive process to
21 then put it into the natural gas
22 pipeline. It's unique in what they were
23 doing there. Our City of Dallas project
24 is more similar to what you're doing here
25 at Philadelphia, where you actually have

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2 a high demand for the power used on site
3 and can use the thermal on site.

4 COUNCILMAN RIZZO: Will the
5 design -- let's say that we have extra
6 capacity. When the Water Treatment Plant
7 was built in the 1970s, it was built with
8 a lot of extra capacity, which turned out
9 to be a big value to the City. We take a
10 lot of the suburban waste into
11 Philadelphia and we do pretty well, I
12 understand, with that.

13 But my question is, when you
14 use the word "cogeneration," most people
15 think that they're going to benefit,
16 which they will because of the reduced
17 cost to the City, but we're not really
18 going to put anything back into PGW's
19 hands or anything like that, correct,
20 ever?

21 MS. NUGENT: That's correct, as
22 the project stands now.

23 COUNCILMAN RIZZO: But is there
24 anything in the design that could
25 eventually allow that?

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2 MR. MARTIN: Councilman, if I
3 could interrupt. It's not provided for
4 in the design. The design was as bid by
5 the Water Department. And then also keep
6 in mind that to do what you would suggest
7 puts at risk and actually eliminates the
8 possibility of this \$12 million tax
9 credit. The regulations -- the federal
10 government regulations having to do with
11 the tax credit require the energy being
12 generated to be utilized there on site.

13 COUNCILMAN RIZZO: And only on
14 site?

15 MR. MARTIN: Yes.

16 COUNCILMAN RIZZO: Okay. It
17 would be such a bad thing to make some
18 money on this extra product, huh?

19 Okay. That's all I wanted to
20 hear. Thank you.

21 COUNCILMAN CLARKE: Thank you,
22 Councilman.

23 COUNCILMAN RIZZO: Thank you,
24 Mr. Chairman.

25 COUNCILMAN CLARKE: Thank you.

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2 MR. NORELLI: My name is Lee
3 Norelli. I'm the Project Manager for
4 A.P. Construction.

5 I heard Mr. Ali's testimony and
6 strongly disagree. A.P. has historically
7 for the past 54 years complied with all
8 state, federal and local rules and
9 regulations. We have reached out to the
10 Contractors Roundtable, who Mr. Ali is a
11 business agent. We have also reached out
12 to the National Association of Minority
13 Contractors, which is headed by
14 Mr. Macklin, who I just recently became a
15 friend on LinkedIn with. So we are
16 trying.

17 As Mr. Ali stated, we hired
18 Mr. Credle, a 35-year City employee, who
19 is retired from the Water Department, to
20 join in the forces to engage more
21 minority participation, especially in the
22 African American community. We
23 religiously meet all or exceed all goals,
24 whether they be for the federal
25 guidelines at the Philly International

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2 Airport, the School District of
3 Philadelphia, here at the Water
4 Department, the Streets Department, New
5 Jersey DOT, PennDOT, et cetera.

6 Prior to being awarded this
7 contract, we went through scrutiny with
8 Ms. Angela Dowd-Burton's office,
9 especially Chevelle Harrison, an MBA --
10 MBE Specialist II.

11 We are here to welcome any
12 business that is capable of complying to
13 what we need to comply with, and that is
14 cost and schedule.

15 If I may address the concern of
16 the change orders. Again, we religiously
17 are in the public sector. And I saw
18 Mr. Resta the other day with the
19 Convention Center. I know what he's
20 going through over there. But as a
21 matter of course of business, here again,
22 this Water Department prior to us even
23 being, you know, eligible to compete on
24 this bid, they engaged AECOM. They
25 produced the design documents. They

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2 scrutinized those documents, as the
3 lawyer for the Water Department stated.
4 The foundation, it's on piles, you know.
5 They did their soil analysis. So we
6 don't foresee any large, if at all, any
7 change orders, but we appreciate what
8 your comment is, and my first -- my
9 experience with the City of Philadelphia,
10 Streets Department, Water Department,
11 Airport, they do pretty good scrutiny and
12 I got to give the employees of the City
13 of Philadelphia, you know, great credit,
14 because they scrutinize us pretty good.
15 We don't walk around putting change
16 orders in. As Mr. Clarke might know, we
17 just completed the Kensington CAPA, a
18 similar contract to this where we went
19 out, we were given a set of parameters
20 from the School District of Philadelphia,
21 we engaged the bank for the financing, we
22 engaged the design engineers, and we
23 completed the job in less than 13 months.
24 It's a magnificent school. That's a
25 similar way that this job is getting

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2 approached.

3 The Water Department engaged
4 AECOM to do the initial design. They
5 flushed out what could be sold back to
6 PGW, what could possibly be sold to
7 Philadelphia Electric. I talked to the
8 doctor at the Water Department. Those
9 were all weeded out prior to the RFP
10 coming out. So --

11 COUNCILMAN KENNEY: If I may.

12 MR. NORELLI: -- in the event
13 of any change orders, the change order
14 process would be similar to any other
15 public works contract, although we are
16 engaged by contract to take on the
17 design. So we have to fight first within
18 ourselves.

19 COUNCILMAN CLARKE: I think
20 Councilman Kenney --

21 COUNCILMAN KENNEY: And I
22 appreciate everything you're saying, and
23 this is not directed at A.P. Construction
24 by any stretch. You're a great company
25 and do great work all over the region.

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2 MR. NORELLI: I appreciate
3 that.

4 COUNCILMAN KENNEY: You know
5 the tension, you live the tension of the
6 owner and the contractor --

7 MR. NORELLI: Every day.

8 COUNCILMAN KENNEY: -- and the
9 architects and engineers. It's a
10 tension.

11 Do you do work in New Jersey?

12 MR. NORELLI: Yes.

13 COUNCILMAN KENNEY: Have you
14 done schools in New Jersey?

15 MR. NORELLI: Yes, we have.

16 COUNCILMAN KENNEY: So you're
17 familiar with this 20 percent aggregate
18 thing that they require?

19 MR. NORELLI: Yes.

20 COUNCILMAN KENNEY: So you're
21 also familiar with doing that, too.

22 I think what the Finance
23 Committee -- I'm not speaking for them --
24 Finance Committee, that was the other
25 day. The Public Property Committee and

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2 the Finance Committee questions had to do
3 with what our responsibility is as our
4 fiduciary responsibility as a body.
5 Because we have, not this project
6 specific, but overall our capital
7 spending is really haphazard and just
8 because of the unwieldy nature of the
9 beast and all the different departments
10 that have different -- I mean, everybody
11 is doing something different -- that we
12 thought it'd be responsible for us to at
13 least, not, again, by approving it by
14 ordinance, but approving it by resolution
15 of a Finance Committee, similar to the
16 finance committee of a corporation that
17 would say, Okay, we're building this
18 building, we understand the need to pay
19 more or we understand your responsibility
20 as we sign off on it. It's more a matter
21 of form than it is a matter of substance
22 with you specifically.

23 MR. NORELLI: Thank you.

24 COUNCILMAN KENNEY: Thank you.

25 COUNCILMAN CLARKE: Thank you,

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2 Councilman.

3 MR. MARTIN: Thank you.

4 COUNCILMAN CLARKE: Thank you
5 so much.

6 Anyone else to testify on this
7 bill?

8 (Witness approached witness
9 table.)

10 MR. KOHL: I just want to show
11 you the renderings that you asked for and
12 we have.

13 COUNCILMAN CLARKE: Please,
14 sir, state your name for the record.

15 MR. KOHL: My name is Paul
16 Kohl. I'm an engineer with the
17 Philadelphia Water Department, and I have
18 the renderings that were requested and
19 I'd like to be able to present them to
20 you.

21 COUNCILMAN CLARKE: Please put
22 them up, sir.

23 That's great response, sir, I
24 must say.

25 MR. KOHL: The bay doors are

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2 garage doors, effectively, which allow
3 for mechanical access to the equipment.
4 These engines are large, basically like
5 train engines. They run on gas, and
6 they're large block engines, and they
7 come in and out those doors. And this is
8 an aerial view of the facility itself.
9 And my finger is pointing to the scum
10 pad, which is where this facility is
11 going to go. I don't know if anyone can
12 see that from here, but this is it.

13 These are the active digesters.
14 This is the site. This is Castor Avenue.
15 On the other side of 95 is Richmond, and
16 this is the main plant as a whole, and
17 all of this area is industrially zoned.
18 (Indicating.)

19 COUNCILMAN RIZZO: Will this
20 run 24/7?

21 MR. KOHL: Yes, this will run
22 24 hours a day, seven days a week. The
23 building is built with noise attenuation
24 components.

25 COUNCILMAN RIZZO: Unlikely to

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2 be heard off site, right?

3 MR. KOHL: That is correct. We
4 must comply with the air management, and
5 that's part of the permitting
6 requirements, sound levels and pollution,
7 and noise is part of the pollution
8 analysis.

9 COMMISSIONER NEUKRUG: And just
10 for -- this is Howard Neukrug, Water
11 Commissioner.

12 Just for the record, this
13 facility, Councilman Rizzo, you're quite
14 correct, it looks like the facility, and
15 it was designed that way. It was
16 originally designed as a public works
17 project, thinking that we would do this
18 as another construction job at the City
19 of Philadelphia Water Department.
20 Because of the stimulus bill and other
21 incentives and the alternative strategy
22 of how to build, lease, operate this
23 facility, we are here before you with
24 this complex agreement. But at the end
25 of the day, it's a Water Department

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2 project and will be on a Water Department
3 site that the Water Department eventually
4 will own and operate.

5 COUNCILMAN RIZZO: Is there any
6 extra special equipment or training that
7 our firefighters would need in the event
8 of some problem at this facility?

9 (Witness approached witness
10 table.)

11 COUNCILMAN CLARKE:
12 Ms. McCarty, please.

13 MS. McCARTY: Debra McCarty,
14 Deputy Commissioner of Operations.

15 We work with the Fire
16 Department with our facilities. They
17 visit our facilities on a routine basis,
18 and we show them anything new and make
19 sure they know what is necessary, what
20 hazards are at our facilities that they
21 might have to deal with. So that happens
22 on a routine basis. So, of course, we
23 would pull them in on this.

24 COUNCILMAN RIZZO: Ahead of
25 time?

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2 MS. McCARTY: Yes. Yes. Yes.

3 COUNCILMAN RIZZO: Not the day
4 of an event.

5 MS. McCARTY: No. It doesn't
6 work too well that way.

7 COUNCILMAN RIZZO: Been around
8 here a while, though.

9 Okay. Thank you.

10 COUNCILMAN CLARKE: Thank you,
11 Councilman.

12 Any other questions?

13 (No response.)

14 COUNCILMAN CLARKE: Anyone else
15 to testify on this bill?

16 (No response.)

17 COUNCILMAN CLARKE: There being
18 none, we will now go into the public
19 meeting.

20 I call on Councilman Kenney for
21 a motion on Bill No. 110632.

22 COUNCILMAN KENNEY: Thank you,
23 Mr. Chairman. I move that Bill No.
24 110632 be reported out of the Committee
25 with a favorable recommendation and a

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2 request made for rules suspension to
3 allow for first reading at our next
4 Council session.

5 (Duly seconded.)

6 COUNCILMAN CLARKE: It's been
7 moved and seconded.

8 All in favor?

9 (Aye.)

10 COUNCILMAN CLARKE: Those
11 opposed?

12 (No response.)

13 COUNCILMAN CLARKE: The ayes
14 have it. Bill No. 110632 is voted out of
15 Committee with a favorable recommendation
16 and rules suspension to allow reading at
17 the next session of Council.

18 Councilman Kenney.

19 COUNCILMAN KENNEY: Thank you,
20 Mr. Chairman. I move that Bill No.
21 110650 be reported out of this Committee
22 favorably and a request made for rules
23 suspension to allow for first reading at
24 our next Council session.

25 (Duly seconded.)

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2 COUNCILMAN CLARKE: It's been
3 moved and seconded.

4 Those in favor?

5 (Aye.)

6 COUNCILMAN CLARKE: Those
7 opposed?

8 (No response.)

9 COUNCILMAN CLARKE: The ayes
10 have it. Bill No. 110650 is reported out
11 of Committee with a favorable
12 recommendation and rules suspension as to
13 allow reading at the next session of
14 Council.

15 Councilman Kenney.

16 COUNCILMAN KENNEY: Thank you,
17 Mr. Chairman. I move that Bill No.
18 110669 be reported out of this Committee
19 with a favorable recommendation and a
20 request made for rules suspension to
21 allow for first reading at our next
22 Council session.

23 (Duly seconded.)

24 COUNCILMAN CLARKE: It's been
25 moved and seconded.

1 10/26/11 - PUBLIC PROPERTY - BILL 110517, ETC.

2 Those in favor?

3 (Aye.)

4 COUNCILMAN CLARKE: Those
5 opposed?

6 (No response.)

7 COUNCILMAN CLARKE: The ayes
8 have it. Bill No. 110669 is reported out
9 of Committee with a favorable
10 recommendation and rules suspension to
11 allow reading at the next session of
12 Council.

13 We will now go back into the
14 public meeting -- I'm sorry; the public
15 hearing. Bill No. 110517 will be
16 recessed until November 3rd, 9:00 a.m.
17 This will give us an opportunity to craft
18 whatever language that's required for an
19 amendment to deal with this issue about
20 overages, cost overruns, and we want to
21 get a little bit of clarity on the
22 participation. I understand that the EOP
23 was submitted to the Finance Committee.
24 Was it?

25 COMMISSIONER NEUKRUG: Yes.

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2 COUNCILMAN CLARKE: Which is
3 why it wasn't a part of this package. We
4 just want to get clarity.

5 And then there's also one other
6 issue. If there is an amendment to deal
7 with any issues relating to the cost
8 overruns, we want to make sure that it is
9 amended in the appropriate committee, be
10 it Finance or be it Public Property. But
11 I just don't want in any way, shape or
12 form to think that this is not something
13 that we'll proceed. We feel that it
14 obviously is much needed and a lot of
15 people did a lot of good work. So I just
16 want to make sure we have our
17 housekeeping in order. So this bill will
18 be recessed until -- 110517 will be
19 recessed until November 3rd, 9:00 a.m.

20 Thank you very much.

21 (Committee on Public Property
22 and Public Works concluded at 12:25 p.m.)

23 - - -
24
25

1
2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me upon the
7 foregoing matter on October 26, 2011, and that
8 this is a true and correct transcript of same.

9
10
11
12
13 -----
14 MICHELE L. MURPHY
15 RPR-Notary Public
16
17
18

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