

1 CHICAGO INFRASTRUCTURE TRUST
2 BOARD MEETING
3 CITY OF CHICAGO
4

5 BOARD MEMBERS:

6 MR. JAMES BELL, Chairman
MS. DIANA FERGUSON
7 MR. DAVID HOFFMAN
MR. JORGE RAMIREZ

8
9 ADVISORY BOARD MEMBERS:

10 ALDERMAN LATASHA THOMAS
MR. DAMON SILVERS
11 TREASURER STEPHANIE NEELY
MS. MARY SUE BARRETT

12
13 CHIEF EXECUTIVE OFFICER:

MR. STEPHEN BEITLER

14
15 DIRECTOR, ENERGY PROGRAM

MS. CLAIRE TRAMM

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18
19
20 November 6, 2013
2:30 p.m.
21 Metropolitan Planning Council
140 South Dearborn
22 Suite 1400
Chicago, Illinois
23
24

1 CHAIRMAN BELL: Good afternoon. I
2 want to thank all of you for showing up to be
3 part of this important process. We're going to
4 get started because obviously we have a lot to
5 do.

6 I do want to thank the Metropolitan
7 Planning Council for allowing us to use their
8 space. As you know, we're on a tight budget and
9 so everything that is provided pro bono we
10 really do appreciate, and we appreciate quite a
11 bit.

12 Jorge, although he can only be here
13 until 3:15, hasn't shown up yet, so I was going
14 to go out of order, but I'm not now because he's
15 not here, so we're going to go through the --
16 start from the beginning of the agenda and then
17 we will start on the infrastructure project as
18 soon as he gets here. John Pope is ill so he
19 won't be joining us today.

20 So to order -- I've just done that.
21 We'll go through the first organizational matter
22 which is principally approving the minutes. So
23 any questions, comments or changes to the
24 minutes for last meeting?

1 MR. HOFFMAN: No.

2 CHAIRMAN BELL: Do I have a motion?

3 MR. HOFFMAN: So moved.

4 MS. FERGUSON: Second.

5 CHAIRMAN BELL: All right. So passed.

6 Okay. Steve, you'll walk us through
7 the budget?

8 MR. BEITLER: Actually, Vivian Funches
9 is here today. She's going to take us through
10 the budget. She's joined by Lester McKeever.

11 CHAIRMAN BELL: Why don't you introduce
12 Lester and his firm because people might not
13 know that we have retained them?

14 MR. BEITLER: Well, Washington and
15 McKeever is our accounting firm, and Lester
16 McKeever is obviously one of the named partners.
17 I presume that many people in the room know
18 him.

19 Vivian Funches is the accountant who
20 works with us to keep me on the straight and
21 narrow.

22 So, Vivian, if you would, please?

23 MS. FUNCHES: The podium or am I using
24 a wireless mic? I'm up against the pole here.

1 MR. BEITLER: Do you want to come up or
2 stay there?

3 MS. FUNCHES: I can come up.

4 Good afternoon. The first statement
5 that I'm going to go over is the statement of
6 financial position which shows current assets,
7 total assets of 261,786 which represents mostly
8 a receivable from the City of Chicago.

9 Our total liabilities are 261,786
10 which gives us total liability and net assets of
11 261,786. Currently there's no fixed assets.

12 Do anybody have any questions about
13 the statement?

14 CHAIRMAN BELL: What's the deferred
15 revenue number? What does that mean?

16 MS. FUNCHES: The deferred revenue
17 represents what has not been expended of the
18 grant receivable of 250,000.

19 CHAIRMAN BELL: Okay. Got it.

20 MS. FUNCHES: The next statement is the
21 statement of activities which represents budget
22 versus actual for the nine months ended
23 September the 30th.

24 The first column of actual shows

1 that our total income is 304,982 with total
2 expenses of 304,982. The bulk of the expenses
3 represents staff time as well as consultants
4 which compared to budget is 452,412 which shows
5 a variable budget of 147,430.

6 CHAIRMAN BELL: Now, the budget column,
7 is it time phased?

8 MS. FUNCHES: Yes, it is.

9 CHAIRMAN BELL: So we're under spending
10 by 147,000 at this point?

11 MS. FUNCHES: Yes, we are.

12 CHAIRMAN BELL: Okay. That's a good
13 thing.

14 MS. FUNCHES: Yes, it is, favorable.

15 The total annual budget is 835,397
16 which leaves a remaining budget for 2013 of
17 382,985. We are estimating our forth quarter
18 expenditures of 247,045 which it appears that
19 we would be coming in under our total budget
20 amount.

21 MR. HOFFMAN: I have a question about
22 that. I'm David Hoffman. Nice to meet you.

23 MS. FUCHES: Nice to meet you.

24 MR. HOFFMAN: It looks like the

1 expected forth quarter expenses would be about
2 equivalent to what we've spent year to date or
3 close.

4 And I guess one line item I would
5 just ask for some detail on either from you or
6 from Steve is legal and professional fees. It
7 looks like we've spent about 94,000 year to date
8 and are expecting to spend \$95,000 in the
9 current quarter, and I was wondering if we can
10 get a breakdown summary of what those are for.

11 MS. FUNCHES: Professional fees
12 represent web design, accounting fees, the
13 consultant that we did not bring on staff yet,
14 the web design, IT support.

15 CHAIRMAN BELL: It sounds like the bulk
16 of them are legal fees then?

17 MS. FUNCHES: No. No. Most of it is
18 the consultants that we had expected to hire
19 that we have not hired yet, plus accounting and
20 web design and IT support.

21 CHAIRMAN BELL: I guess in the future
22 I'd like those broken out separate than legal.
23 Put the big hitters separately because I think
24 it's little easier.

1 When I read that I immediately
2 thought there were legal fees, and my question
3 was going to be the same.

4 MS. FUNCHES: It's actually a roll up.
5 That's a summary. I do have individual accounts
6 up under there.

7 CHAIRMAN BELL: It's just what the big
8 ticket items are is what we would like to
9 understand because that's what we want to be
10 sure we manage as we go forward. Okay?

11 MS. FUNCHES: Yes.

12 CHAIRMAN BELL: David? I'm sorry.

13 MR. HOFFMAN: I agree. I mean, I do
14 think that the forth quarter spending looks like
15 a very high level of spending compared to what
16 has been spent. It's effectively on pace to
17 have a million dollar annual level spending
18 which may be justified, but I just think it
19 would be different than what we've seen
20 previously.

21 Just to break it down one bit
22 further, so \$95,000 for the professional fees
23 for the quarter, what's the biggest item in that
24 \$95,000?

1 MS. FUNCHES: Consultants,
2 non-employees.

3 MR. HOFFMAN: How much is that?

4 MS. FUNCHES: I actually have that.
5 Give me one second. I do have the details.

6 MR. HOFFMAN: Sure. Take your time.

7 MS. FUNCHES: So the non-employees
8 we're expecting to expend 100 grand. No, I'm
9 sorry, we expect to spend 60 grand of that
10 95,000 for the first quarter.

11 CHAIRMAN BELL: For the forth quarter?.

12 MS. FUNCHES: For the forth quarter.

13 MR. HOFFMAN: And how many people is
14 that?

15 MS. FUNCHES: Three.

16 MR. HOFFMAN: Okay.

17 TREASURER NEELY: Mr. Chairman, can I
18 ask for a point of clarification?

19 CHAIRMAN BELL: Sure.

20 TREASURER NEELY: I'm sorry, \$60,000 is
21 for what?

22 MR. HOFFMAN: Consultants.

23 TREASURER NEELY: Okay. What type of
24 consultants?

1 MS. FUNCHES: Working on the
2 Retrofit One project and the --

3 MR. BEITLER: They're working on
4 various energy projects, particularly
5 Retrofit One.

6 MR. HOFFMAN: Steve, just to understand
7 this, I mean, I know that you've explained that
8 it has not been easy to have a flow of funds
9 that would allow you to hire, so what I'm
10 gathering here, and I want to see if I'm
11 understanding correctly, is that you, therefore,
12 draw people in as non-employee consultants
13 because you haven't been able to bring in
14 employees under a more regular basis, and the
15 three people that are being described being paid
16 a total of \$60,000 for the forth quarter fit
17 within that category and you're using them as
18 you would employees?

19 MR. BEITLER: Yes, that's correct.

20 MR. HOFFMAN: Is there any -- Can you
21 say just a little bit more? I think you've said
22 this to us previously, but I think it would be
23 helpful to hear.

24 These three people are being paid on

1 average \$20,000 for the forth quarter each. Can
2 you describe a little bit what you're having
3 them do and what their -- what the scope of
4 their responsibilities are?

5 MR. BEITLER: Yes. Actually you'll
6 meet Claire Tramm who is going to do part of the
7 Retrofit One presentation. Claire is a former
8 McKenzie consultant who also worked at Blue Star
9 Energy and on the Climate Action Plan here in
10 Chicago and who has been working diligently on
11 helping to define the Retrofit One project which
12 we'll go through.

13 Then there's Greg Karczewski who is
14 working with us on underutilized property but
15 actually he's being paid through the WBC; Dick
16 Epstein who is here today who is also working
17 with us on energy projects and particularly on
18 CNG, Compressed Natural Gas, as well as doing
19 some work on retrofit; another person Matt
20 Schmidts who's not here today who has been doing
21 research for us as needed. When we need to look
22 up things, he looks up things.

23 MR. HOFFMAN: Well, that's great. I
24 want to commend you because I think that it has

1 been explained to us in terms of your and our
2 goals in trying to move this forward, you know,
3 broader than just retrofit, requires you to have
4 good people around you who are talented and
5 experienced. It sounds like you've been
6 collecting and doing a good job of having those
7 folks work for the Trust, but you haven't had
8 the certainty regarding funding to be able to
9 hire people is what I've heard you say.

10 So I think it all makes a lot of
11 sense and I -- you know, we sat down with
12 Claire, and she's very impressive, and I think
13 you've done a really good job with that.

14 So I think this is good, and I would
15 just say for budgeting and accounting purposes
16 it would be useful and I think beneficial to you
17 and the staff to break that line item out of --
18 really you can call them non-employee
19 consultants or whatever you want, but they are
20 really the people that are allowing you and the
21 Trust staff to do their work when you have
22 limited capabilities to hire.

23 MR. BEITLER: Okay. This, of course,
24 is a high level view of the ledger so we have a

1 significantly detailed ledger that Vivien
2 maintains that lists all the expenses --

3 MS. FUCHES: In detail.

4 MR. BEITLER: -- in detail by month, by
5 person or by activity.

6 MR. HOFFMAN: We don't have that and
7 I'm not sure we need it. If you want, you can
8 provide that or you can just break out this
9 additional line item. That would be helpful.
10 So whatever way you want to go.

11 MR. BEITLER: We'll be happy to break
12 out the line item on the summary view.

13 (Enter Mr. Ramirez.)

14 MR. HOFFMAN: That would be good. The
15 only other question I have, and then my
16 filibuster will end since we now have our other
17 member here, is on the other general and
18 administrative expenses it looks like we have
19 spent a thousand dollars year to date but are
20 planning to spend \$50,000 in the quarter. Could
21 you just explain that one, please?

22 MS. FUNCHES: That's a catchall, so the
23 things that have not been identified because
24 things come up all the time, so things that we

1 don't have a particular category for, we hope
2 not to have to touch that \$50,000. That's more
3 like a contingency.

4 CHAIRMAN BELL: So we're going to under
5 run that.

6 MR. BEITLER: Just to be clear, we're a
7 start-up organization so there are expenses that
8 we haven't necessarily anticipated that are
9 legitimate expenses, and we have created
10 categories as these expenses have come up and
11 taken the money out of miscellaneous and created
12 the category. It would be our goal to have a
13 very, very small miscellaneous number going
14 forward.

15 MR. HOFFMAN: Thank you.

16 CHAIRMAN BELL: Any other questions on
17 the budget presentation?

18 (No response.)

19 Okay. Why don't we jump right into
20 retrofit now that we have Jorge here?

21 MR. BEITLER: So there is a resolution
22 for --

23 CHAIRMAN BELL: I know that. Let's
24 come back to it. Let's use Jorge's time and get

1 through the Infrastructure Trust.

2 MR. BEITLER: Okay. So as most people
3 in the room are aware, we issued an RFQ and an
4 RFP with two subsequent addenda. Tom Morsch,
5 who is sitting in the middle of the room with
6 PFM, was instrumental in enabling us to do this.
7 Thank you, Tom.

8 And so we're doing this update today
9 with which we have a recommendation to the
10 Board. Now, there were three components of the
11 project, renovations for Fleet and Facility
12 Management, renovations for CPS and renovations
13 for the Department of Water Management.

14 Basically the component that we will
15 be addressing today is the Fleet and Facility
16 Management component. Claire will take us
17 through the options that we looked at, and
18 essentially the best option for the Chicago
19 Public Schools was to do a project based on the
20 recommendations of the Trust and the City but
21 through the public schools, so I believe that we
22 accomplished the mission of the Trust but are
23 not recommending to the Board to approve a
24 particular transaction for the Chicago Public

1 Schools.

2 And for the Department of Water
3 Management, there are a number of eccentricities
4 about how structures exist in -- financial
5 structures should exist for the Department of
6 Water Management, so we're continuing to look at
7 that project to determine whether or not it
8 would be a good project for purposes of going
9 forward, but it is not, for today's purposes,
10 appropriate to recommend one way or the other to
11 the Board doing that particular project, so
12 we'll focus today on the Fleet and Facility
13 Management Project.

14 So we have picked a methodology
15 which again Claire will go through in a little
16 bit with my assistance, and we believe that that
17 methodology is a template for doing future
18 transactions for some of the things that you see
19 on the list there and have already begun to look
20 at some of these projects such as the street
21 light replacement program.

22 So we will be asking the Board today
23 to approve this transaction as they see fit to
24 do so and also to approve hiring an independent

1 financial adviser to work on this particular
2 transaction.

3 Claire?

4 MS. TRAMM: Thank you, Steve. Hi
5 everyone. I'm Claire Tramm.

6 I'll take you through a little bit
7 about the background of the RFQ and RFP process.
8 The RFQ process started last January and
9 resulted in a board resolution this August to
10 authorize a placement agent or RFP and
11 selection, so that's what we've have done. In
12 August we issued that RFP.

13 We had 13 respondents at that time.
14 We then subsequently issued two addenda to that
15 RFP asking for greater information about the
16 particular structures that were being suggested
17 and the terms and the qualifications.

18 We narrowed it from then 11
19 respondents to that first addendum down to four
20 at the end of the second, and we will show you
21 later in the presentation some of the high level
22 responses from those four participants.

23 There were six different models
24 considered as a part of the Retrofit One deal

1 evaluation. First, the classic General
2 Obligation Bond as well as Capital Lease and
3 Operating Lease.

4 There were also three more unique
5 models to energy finance that we considered.
6 The first being a Grantor Trust Model, the
7 second an ESCO model. Some of you may have
8 heard of that. If you are familiar with the
9 World Energy Finance, it involves large company
10 guaranteeing the energy savings as part of the
11 deal.

12 And then finally the ESA model or
13 Energy Services Agreement Model. This is very
14 unique. It also involves the guarantee of
15 energy savings but not to the end recipient and
16 the end building owner. So this is the one
17 that's actually gained a lot of traction in the
18 industry in the last few years and has a number
19 of positive benefits, the credit and balance
20 sheet implications that these other five models
21 do not offer.

22 So as we compare these six models
23 along their major axes here of both being off
24 credit and off balance sheet which is very

1 advantageous to the City because it is off
2 credit. It means that our rating as a City, our
3 bond rating is not effected. This is not
4 perceived as a fixed long-term payment
5 obligation on the part of the City.

6 The Energy Service Agreement is
7 perceived as off credit and off balance sheet
8 because if you don't realize any savings as a
9 result of the upgrades installed in your
10 buildings, you pay nothing. If you do realize
11 that savings, then you pay.

12 So it's a contingent payment
13 structure that's very advantageous for folks
14 that are interested in doing these kinds of
15 projects but without committing their own
16 capital and their own balance sheet and their
17 own credit to it.

18 So a little bit more about the ESA
19 model. Another way to think about it really is
20 a PPA or Power Purchase Agreement for megawatt
21 or units of energy savings or sharing in that
22 expected energy savings, and it's similar to a
23 revenue bond or a utility bill in that again it
24 has variable payment obligations as services are

1 actually rendered or as units of energy savings
2 are delivered.

3 It requires guarantee or reserve,
4 unlike a bond, just a UCC 9 fixture filing to
5 secure a contractor in case of default on the
6 proven savings. So that's the financial risk
7 that does need to be mitigated.

8 And because the contractor in this
9 kind of a deal structure is responsible for
10 maximizing the savings, it's also responsible
11 for design, installation, monitoring and O & M
12 of all of those measures.

13 One of the best things about the
14 Energy Service Agreement Model is that under
15 this kind of arrangement the Trust actually gets
16 to keep the potential upside, not our investors
17 in the deal.

18 So what I've shown you here are four
19 different scenarios. The first one on the left
20 is what the City is currently paying. These is
21 are just dummy numbers to give you a sense of
22 how an Energy Service Agreement takes place.

23 So, for instance, the City is paying
24 \$20 million right now on a given bill in a given

1 building. Under an Energy Service Agreement, if
2 you look at the second bar, if the savings are
3 less than the amount that our ESCO Energy
4 Performance Guarantee partners have suggested
5 these savings should be, then they actually have
6 to meet that shortfall to investors themselves,
7 and the City pays again 20 million, no more than
8 it would otherwise be paying.

9 In the third bar, ESA Scenario
10 No. 2, you'll see that in the case where
11 savings are equal to the ESCO guarantee, the
12 City again is paying no more than what it would
13 have been otherwise if they had never entered
14 into this kind of contract, and the utility
15 bills fall to the projected amount, and the City
16 pays the Trust which pays the investors for the
17 deal.

18 In the last scenario, you see the
19 upside scenario that I'm talking about. So when
20 the savings exceed the amount that the ESCOs
21 have projected that the energy savings measures
22 they're installing will create, in that case the
23 City pays even less on its utility bills.

24 It pays the same amount to the Trust

1 which then is passed to investors, and then the
2 remaining amount is paid to the Trust and is
3 available to be reinvested in City productive --
4 things that benefit the City.

5 TREASURER NEELY: I have a quick
6 question. Is this scenario net or gross of
7 fee? Where is the fee component in this
8 structure?

9 MS. TRAMM: We'll actually get to that
10 later. This is just looking at the scenario
11 under a variety of different --

12 TREASURER NEELY: Where is the fee
13 built in just even in this scenario?

14 MS. TRAMM: Can you describe what fees
15 you're looking for?

16 TREASURER NEELY: I don't know.

17 MR. BEITLER: So there's transactions
18 fees.

19 MS. TRAMM: So the transaction fees are
20 part and parcel of this. They are financed into
21 the amount that is, you know, paid through the
22 Energy Savings Agreement.

23 TREASURER NEELY: So again where is --
24 if you're saying the City will never pay more

1 than the 20, where are the transaction fees in
2 that 20?

3 MS. TRAMM: So the 6, the 8 and 8, the
4 City to Trust to investors, basically we're
5 looking at all of the fees that the investors
6 and others are charging being financed within
7 that amount, so that's it.

8 And we'll get to a more detailed
9 break out later in the presentation. This slide
10 is not meant to answer that question.

11 MR. BEITLER: When we do the initial
12 financing -- I'm sorry.

13 MR. SILVERS: Isn't it the case that
14 it's built in the 8? Part of what the 8 is
15 paying back (unintelligible).

16 MS. TRAMM: Exactly. Yes, it's all
17 part and parcel of the --

18 MR. BELL: You got to speak up so our
19 recorder can hear you.

20 MR. SILVERS: Oh, I'm sorry, what I
21 said was --

22 MR. BELL: And give your name. That
23 would be helpful.

24 MR. SILVERS: I'm Damon Silvers. I'm

1 an Advisory Board Member.

2 What I was -- I'll just repeat what
3 I said which is that the underwriting fee is
4 rolled into the principal of the financing which
5 is then being paid back through the 8 number
6 that's on in the chart there. So that's at
7 least the underwriting fee, that's what that
8 would be. I suppose there are other fees.

9 TREASURER NEELY: Yes.

10 MS. TRAMM: Yes. So those are the
11 total costs including both the principal and the
12 interest and all fees that are being paid back.

13 Okay. So the other model that we've
14 taken a much closer look at is the Capital Lease
15 Model. This can be done in a taxable or tax
16 exempt fashion. It creates, unlike the ESA, a
17 long-term payment obligation. It is, however,
18 less deleterious on the City's balance sheet and
19 credit than traditional debtor bond.

20 It has a lower coverage requirement,
21 lower security requirement, lower cost of
22 capital in some cases and so we have looked at
23 that. They are advantageous for other reasons
24 as well.

1 MR. BEITLER: Claire, if I may.

2 MS. TRAMM: Go ahead.

3 MR. BEITLER: So basically the CPS is
4 looking at using a lease for their financing
5 mechanism and essentially, as Claire will
6 discuss with the ESA on this chart, because the
7 CPS was finished with their project, there was
8 no guarantor which is the third box from the
9 bottom, meaning the contractor that did the work
10 to provide a guarantee in order to enable the
11 CPS to use an ESA.

12 So had the work not been completed
13 at the CPS, we could have asked the contractors
14 to be guarantors and to use an ESA at the CPS
15 which would have been a highly appropriate
16 vehicle in our opinion to recommend to the Board
17 and to the City.

18 So the CPS is going forward with a
19 lease instrument based on the work that we did,
20 but because there is no guarantor available to
21 do an ESA at the CPS.

22 MS. TRAMM: Thanks, Steve.

23 So turning back now to 2FM's
24 recommendation, we will be recommending an

1 Energy Service Agreement be approved by the
2 Board today for deployment in 2FM.

3 As you can see, the Capital Lease
4 Model is on balance sheet and on credit which is
5 why we in this case suggest the Energy Service
6 Agreement Model. There is, as Steve mentioned,
7 an ESCO or savings guarantor in this case, and
8 the project has not yet been commenced. It has
9 merely been scoped by those potential savings
10 guarantors so it's an ideal model at this
11 juncture for 2FM to pursue.

12 MR. HOFFMAN: Claire, can I ask you
13 some questions about that slide?

14 MS. TRAMM: Absolutely.

15 MR. HOFFMAN: I notice that in the
16 boxes about off credit, off balance sheet you've
17 got this chart two slides back and it's got --
18 it's off credit, off balance sheets are the
19 rows. Then for ESAs it says yes and there's a
20 couple of footnotes. I want to ask you about
21 the footnotes.

22 MS. TRAMM: On the previous chart?

23 MR. HOFFMAN: It says Impact of
24 Different Models.

1 MS. TRAMM: Yes.

2 MR. HOFFMAN: So it says an ESA is off
3 credit and then says particular ESA offerors,
4 for example, Hannon Armstrong and Piper Jaffray
5 have confirmed the off-credit treatment with
6 ratings agencies.

7 MS. TRAMM: Yes.

8 MR. HOFFMAN: So that sounds fine if
9 that confirmation is something that we can rest
10 assured upon, but I wanted to ask you about that
11 and get a little more detail since we just have
12 a footnote. I don't know exactly what that
13 means, and I want to make sure we can feel
14 comfortable if that's one of the reasons you
15 recommend it, that it really is off credit.

16 MR. BEITLER: Okay. So to that
17 question, joining us today, and I'll put Michael
18 Dow on the spot, if that's okay, from McGuire
19 Woods who is working with Piper Jaffray who is
20 the firm that we're recommending for the deal,
21 and perhaps you care to explain historically the
22 treatment of ESAs.

23 MR. DOW: I'm a bond lawyer from
24 McGuire Woods so I'm not a banker, but I have

1 been involved in similar types of transaction
2 structures.

3 My understanding is rating agencies
4 have looked at an ESA structure, contingent
5 payment obligations such as this. Because it's
6 an operating expense, there's no incremental
7 cost to the end user of the asset. It's
8 completely based on savings so it's really a
9 negative cost that we're dealing with.

10 I think the rating agencies would
11 phrase it that there's no negative impact on the
12 end user's credit rating as a function of this
13 transaction structure.

14 MR. HOFFMAN: So that sounds good. You
15 know, obviously the way rating agencies view the
16 world has changed. When you say your
17 understanding, I guess one question I would have
18 is has this been used elsewhere.

19 Do we have other municipalities or
20 governmental units using ESAs so that we can say
21 oh, yeah, we had seen this example of where the
22 rating agency has treated it the way you say it
23 or is it all at this point hypothetical and
24 we're going first, and so we, you know, just

1 need to base it on the understanding of how
2 rating agencies would likely treat this?

3 MR. DOW: Right. I can speak for my
4 own experience. I have never had a rating
5 agency tell me directly this is off credit,
6 okay? I have through other bankers and other
7 project participants that brought it to rating
8 agencies that say under this transaction
9 structure it will be treated as off credit.
10 Again, I'm not a banker, so that's not really my
11 function in the transaction.

12 This structure has been used in
13 other -- by other municipalities, other
14 governmental users. For example, most recently
15 the University of Maryland has used a number of
16 these structures, the same structure for various
17 energy improvements at its various institutions,
18 and my understanding is it hasn't been treated
19 as on credit for that.

20 MR. HOFFMAN: And if a rating agency
21 surprised you and said oh, we are going to treat
22 it on credit, would that change your view about
23 whether this was advisable?

24 MR. DOW: Again I'm a lawyer, I can

1 tell you whether or not it's a good structure.

2 MR. BEITLER: You can hand the mic to
3 John if you want.

4 MR. DOW: I can hand it to John.

5 MR. HOFFMAN: I'm trying to figure out
6 how much weight to put on this.

7 MR. COAN: Yeah. The size of this
8 project is 25 and a half million, so not to be
9 flip but whether it's on credit or off credit,
10 that won't move the dial at all for the credit
11 perception of the City.

12 The intent here is to structure it
13 more like a project finance, right, so the
14 project has to be constructed where payments
15 won't begin and the project has to perform, and
16 that's how we keep it off credit is you think of
17 it more as a project finance rather than a
18 revenue credit or GO credit or something of a
19 municipal credit, and that's the whole intent
20 here.

21 I do want to mention that this will
22 be a 20-year financing. We can't control what
23 the rating agencies do in 10 years or 15 years
24 or down the road. So just keep that in mind. I

1 wouldn't want to say this is the sole reason for
2 doing the transaction because they will never
3 give you a written guarantee that they will
4 always view this a particular way for the life
5 of the financing.

6 MR. HOFFMAN: That makes sense. I
7 think that's a good point about the size of
8 this, but as we think about an ESA as perhaps
9 the answer going forward, it sounds like we
10 should keep in mind that we won't know for
11 certain how rating agencies will treat this in
12 the distant future.

13 MR. COAN: In the distant future. Now,
14 again we've structured this as project finance.
15 You'll see all the protections in there. There
16 will be payment of performance bonds. There's
17 guarantees. You know, they are all the things
18 that protect a lender, you know, that the
19 project actually is constructed on time and on
20 budget and performs as expected.

21 MR. HOFFMAN: That's helpful.

22 So then the other aspect is off
23 balance sheet, and the footnote there says that
24 there's a pending FASB ruling expected next

1 year. It says may or may not continue to be
2 treated as off balance sheet, but it is expected
3 that service agreements will continue to be
4 treated as off balance sheet.

5 So since that looks like it has some
6 uncertainty in it, I thought I'd -- and that's
7 what allows the yes answer there in the box, I
8 thought I'd ask a followup about what that
9 means.

10 MS. TRAMM: Should I take a first stab?
11 Also Michael is probably in a good position to
12 comment as well, I think.

13 MR. BEITLER: I think one point to make
14 about that bullet point is that FASB has been
15 reviewing this particular thing for three years
16 and --

17 MS. TRAMM: More than.

18 MR. BEITLER: I'm sorry?

19 MS. TRAMM: Over.

20 MR. BEITLER: Over three years. There
21 is an expectation that FASB will actually make a
22 ruling sometime the end of the year, beginning
23 of the year, although there's no official
24 statement from them that that will occur, so

1 we're simply noting that FASB is looking at this
2 particular issue. If you want to --

3 MS. TRAMM: Yes, so FASB has been
4 considering this for a long time. Our
5 expectation is that given the sort of
6 preliminary findings that they've issued for
7 comment that the Capital Lease, the Operating
8 Lease stand a very good chance of being treated
9 going forward as being on the balance sheet.

10 MR. HOFFMAN: I'm only asking about the
11 ESAs.

12 MS. TRAMM: Yeah. So they've also
13 separated out now in the last several of years
14 and delineated what constitutes, very precisely
15 with accounting rules applied, what constitutes
16 an Energy Service Agreement and why that would
17 not be considered an Operating Lease.

18 And so we've taken great, great
19 pains in our contract for the Energy Service
20 Agreement to delineate what we're doing from
21 what an Operating Lease does.

22 MR. HOFFMAN: I have a question. We
23 haven't seen that contract, right? In other
24 words, that's still in the process of being

1 drafted. I know we got late last night this one
2 page term sheet. We don't have any other
3 details about what the ESA contract will
4 actually look like; is that right?

5 MR. BEITLER: No, there is a series of
6 documents that we're actually having a drafting
7 session after this meeting.

8 MR. HOFFMAN: I just mean in terms of
9 what we've received.

10 MR. BEITLER: Yes, in terms of what
11 you received, you received the two page, one and
12 a half page term sheet which is a summary of
13 terms for what is contained in a much lengthier
14 document.

15 MR. HOFFMAN: That's being drafted now?

16 MR. BEITLER: That's correct.

17 MR. HOFFMAN: Okay. So when you say
18 yes on the off balance sheet, it's expected,
19 although, let me ask one last question, if the
20 FASB surprised you and came out and said, you
21 know, ESAs won't come as off balance sheet,
22 would that change the recommendation here?

23 MR. BEITLER: It would change the
24 accounting treatment, but I don't think it would

1 change the recommendation.

2 MR. COAN: Steve, can I just make a
3 mention just so people understand
4 municipalities, they follow GASB, not FASB, and
5 while sometimes GASB does do what FASB does,
6 there's no guarantee, so just because FASB might
7 come out with a rule doesn't mean that
8 municipalities have to follow that rule. They
9 operate under GASB rules.

10 MR. HOFFMAN: Has GASB issued a rule or
11 statement?

12 MR. COAN: Not to my knowledge.

13 MR. HOFFMAN: So there's a level of
14 uncertainty, but there's a level of expectation
15 that it would proper to treat that way, is that
16 my understanding?

17 MR. COAN: Right. And we also can look
18 at FASB rules, so we'll look at the rules for
19 Operating Leases versus Capital Leases and
20 follow those.

21 MR. HOFFMAN: So all we can do here is
22 just assess the risk.

23 MR. COAN: Yes.

24 MR. HOFFMAN: And your assessment of

1 the risk is that this would be -- that GASB or
2 somehow there would be an obligation on the City
3 or the Trust to treat it in a different fashion.

4 MR. COAN: Yes. Like I said, keep in
5 mind we're structuring this more as a project
6 finance, and that's usually not on the balance
7 sheet of the local entity. It stands on its
8 own.

9 MR. HOFFMAN: So you describe the risk
10 as low?

11 MR. COAN: Yes.

12 CHAIRMAN BELL: I guess, David, the
13 other thing I would say is you asked about how
14 would you look at this in terms of weight. I
15 think it's nice to have off balance sheet. I
16 think it's nice to have it not impacted by the
17 rating agencies, but I think the cost is a big
18 deal, and it's low for the transfer of risk and
19 the fact you get the upside.

20 I would weigh those heavier
21 personally, and I think the City would look at
22 it in the same way than these two, but I think
23 these two are nice to have. As long as you have
24 a shot at getting them, we want to go after

1 them.

2 If it ended up that you had to, I
3 still think the risk transfer and the fact that
4 you get the upside and the rates are low is
5 great.

6 MR. BEITLER: Alderman Thomas?

7 ALDERMAN THOMAS: Thank you. This is a
8 question. I'm going back to the slide that you
9 were on talking about the cause, how do we come
10 up with the two interest rates being the same?
11 The interest rates and fees are not going to
12 change?

13 MS. TRAMM: Yeah, so the first thing I
14 would say is that the reason that the Capital
15 Lease and the ESA are projected to be about the
16 same in terms of range is that when you have the
17 savings guarantor also involved in this kind of
18 a contract, you're essentially taking two puzzle
19 pieces that are a perfect fit for one another,
20 linking them together, the Energy Service
21 Contract and the Energy Performance Guarantees.

22 You're putting those two puzzle
23 pieces together and together they look exactly
24 like a Capital Lease or, you know, a very normal

1 financial product for the market.

2 So they don't have, you know, the
3 fluctuating cash flows that either one of those
4 two things have on their own. That's why they
5 look about the same.

6 Steve, do you want to talk a little
7 bit about, you know, the rates and how we expect
8 them to change over time?

9 MR. BEITLER: Well, these are
10 indicative rates so that's why we have a range.
11 We believe that our rate will come in on a final
12 basis somewhere --

13 TREASURER NEELY: What is the price
14 level?

15 MR. BEITLER: It's MMD plus --

16 MR. COAN: The lenders will look at a
17 variety of factors to price their rate. One
18 might be a function of a municipal index called
19 MMD. It might also be their cost of funds. It
20 might also be their perception of risk. So it
21 would be a whole variety. It won't be a simple
22 formulaic.

23 And just so people know, we solicit
24 a wide range of both traditional and

1 nontraditional investors so we will have a
2 number of indicative rates to look at.

3 MR. BEITLER: Did we answer your
4 question?

5 TREASURER NEELY: Yes.

6 MS. TRAMM: So here is a slide
7 expressing the somewhat complicated deal
8 structure behind this. There are --

9 MR. HOFFMAN: Before you get into the
10 complicated deal structure, the last meeting we
11 heard a complicated deal structure. I want to
12 clarify that's gone, we can effectively ignore
13 it?

14 MS. TRAMM: Yes.

15 CHAIRMAN BELL: That is one they
16 considered.

17 MR. HOFFMAN: Just a clarification
18 question actually.

19 MR. BEITLER: Are you looking for a
20 response or are we just --

21 MR. HOFFMAN: You responded. I didn't
22 want to interrupt.

23 MS. TRAMM: So this is what the ESA
24 looks like in terms of financial flows. You'll

1 see the Chicago Infrastructure Trust at the
2 center as the project sponsor and owner. The
3 City of Chicago is the main project host.

4 Up at the top of the page they are
5 making payments based on the energy savings.
6 Once energy savings are realized, they make
7 payments. If they are not realized, they make
8 no payments.

9 Complementing that, as I mentioned
10 it's sort of like two puzzle pieces that
11 perfectly fit together, in addition to that
12 payment, energy savings payment stream, there's
13 also a guarantee coming from our ESCO partners,
14 Energy Service Companies, that actually do the
15 work. They guarantee that work and then they
16 guarantee that it will meet a certain level of
17 energy efficiency.

18 Because that guarantee is not made
19 to the City, it's made to another entity, the
20 project host, the Trust, that is what really
21 lends this off credit and off balance sheet
22 service agreement treatment.

23 MR. HOFFMAN: Can I pause you right
24 there?

1 MS. TRAMM: Yes.

2 MR. HOFFMAN: It's tax exempt though,
3 right?

4 MS. TRAMM: It is.

5 MR. HOFFMAN: And is there -- I'm just
6 not enough of an expert to understand these, but
7 I want to try to understand them.

8 But what's a bit confusing is that
9 what you just said shows that the reason it's
10 off balance is because it's not a City entity,
11 that ultimately the guarantee is being made from
12 the ESCOs, it's being made to us as a
13 nongovernmental entity, yet the City is
14 receiving the benefit of tax exempt treatment as
15 if it's a City debt or obligation.

16 So can you explain that what I'm
17 perceiving, perhaps wrongly, but perceiving as
18 an inconsistency between those two things?

19 MS. TRAMM: So if you look at the
20 Trust role on this side, we are acting as a tax
21 exempt issuer under home rule enactment on
22 behalf of -- Do you want to get into details?
23 We have experts.

24 MR. BEITLER: We have a series of

1 attorneys in the room who are all -- -

2 MS. TRAMM: I'll give it to the
3 experts.

4 MR. BEITLER: Who wants to --

5 MR. WALLACK: You can give it to me.

6 MR. HOFFMAN: In the interest of time,
7 I think that all -- given what Steve just said,
8 if it's clear to the experts that we, as an
9 independent non-for-profit entity can still act
10 as an effectively tax exempt issuer then I think
11 that satisfies my question.

12 MR. WALLACK: Yes.

13 MR. HOFFMAN: Okay. Thank you.

14 MR. BEITLER: That was Jerry Wallack.

15 MR. FALK: Yes. Remember, the reason
16 it's not inconsistent is because on the one hand
17 you're talking about an IRS ruling and on the
18 other hand you're talking about treatment for
19 accounting purposes.

20 So the IRS has already weighed in
21 with revenue rulings on comparable circumstances
22 that we're going to rely on and we feel pretty
23 good about for purposes of the tax exempt
24 conduit approach.

1 MR. WALLACK: The IRS allows the City
2 as a home rule unit to designate the Trust as an
3 on behalf of issuer for the City.

4 MR. HOFFMAN: Even though we're a
5 nongovernmental entity?

6 MR. WALLACK: Even though you're a
7 nongovernmental entity, and there are IRS
8 rulings to that effect.

9 MR. FALK: Particularly because you're
10 a nongovernmental entity you wouldn't need it.

11 MR. HOFFMAN: Thank you very much.

12 MR. BEITLER: I would just like to say
13 that there was a great deal of thought given to
14 this by all the individuals in the room here
15 today, particularly the attorneys who are seated
16 here, and it was quite a thorough analysis.

17 MR. HOFFMAN: Thank you.

18 MR. SILVERS: Can we put the slide back
19 up with the transaction structure? Let me just
20 say first that my cursory look in comparison
21 with other transactions of this type that I've
22 seen that this is very well thought out and the
23 numbers are good.

24 MS. TRAMM: Thank you.

1 MR. SILVERS: But I do want to ask one
2 question because the import of what the
3 discussion has just occurred is about risk. It
4 seems to me that the risk that is in this
5 transaction is the risk that the contractors,
6 Noresco, Ameresco and Schneider Electric, turn
7 out not to be able to honor the guarantee. What
8 analysis do you have of them, of their credit?

9 MS. TRAMM: That's a great question.
10 They've been doing this for decades now,
11 guaranteeing this. And so it's interesting I
12 actually had a phone call earlier today with an
13 external party that guarantees the energy
14 performance of deals like this.

15 These folks are all so large that
16 they can guarantee them on their own. They've
17 been doing so successfully in many, many markets
18 for many years. There are -- If we were working
19 with a smaller name, they would have to go to
20 this external firm with whom I was speaking
21 earlier today to have that energy savings
22 guaranteed because they would not be a reliable
23 guarantor.

24 MR. BEITLER: They have all gone

1 through a qualification process with the City to
2 verify that they have the financial ability to
3 be able to participate in these projects;
4 however, I think to your question, if you're
5 asking --

6 MR. SILVERS: I'm asking what is their
7 credit rating.

8 MR. BEITLER: -- 15 years from today
9 will they have the wherewithal to stand up and
10 provide the guarantee, I think that basically
11 they are very, very large companies and we would
12 hope that they would.

13 CHAIRMAN BELL: Well, you can't answer
14 that. You don't know. The point is --

15 MR. HOFFMAN: There's a term that --
16 I'm sorry, James.

17 CHAIRMAN BELL: I think the real
18 question is what do we have today to validate
19 their creditworthiness. So we could have a
20 credit report, we could have whatever, but I
21 think we ought to get that basically.

22 MR. SILVERS: That's exactly what I
23 was asking.

24 MR. HOFFMAN: Well, Damon, let me ask

1 you because I think that I'm interested in your
2 view about what is and is not a risk here, so
3 hearing you say that that may be the one risk, I
4 would like to have us focus on that.

5 So one way to draft for that seems
6 to me would be to -- I see they are going to --
7 the summary we have says they will provide
8 performance bonds, and a performance bond is
9 only worth something to your point if there's
10 some creditworthiness to the entity.

11 So we could check their credit
12 worthiness now, but there could be a condition
13 in the contract that requires the
14 creditworthiness to stay at a certain level, and
15 if they fall below a certain level then we would
16 be -- we and the City would be free to switch
17 ESCOs or what have you or act in whatever way
18 the City decides if their creditworthiness gets
19 too low which means the performance bonds might
20 not be worth much. It's really a question that
21 you have more experience on this.

22 MR. BEITLER: So if I may interject.
23 If I could ask George Marquisos with the Public
24 Building who actually has done quite a bit of

1 work with the ESCOs.

2 MR. MARQUISOS: Just to clarify one
3 thing, the performance bond is just performance
4 of the construction so it terminates once
5 everything is completely installed. There's no
6 performance guarantee associated with the energy
7 guarantee.

8 The second thing is when we procure
9 these ESCOs through a very open, elaborate
10 process, we examine their financials. And part
11 of the reason that these three were selected is
12 because they had such stellar balance sheets.
13 We have all their financials. The Public
14 Building Commission I should say has it, and we
15 are happy to forward that to you.

16 MR. HOFFMAN: That's helpful. That
17 seems very satisfying in terms of the present
18 condition. I think the only question is what
19 would you do as the PBC if three years from now
20 or five years from now that changed?

21 First of all, would you have a
22 process for checking that? What if it came to
23 your attention that one of the ESCOs credit
24 rating or balance sheets were now weak and you

1 might not have approved them originally? What
2 would you do?

3 MR. MARQUISOS: I think those terms
4 have to be built into the contract, so I'm
5 pretty sure that the lawyers would have to
6 figure that out as part of the performance
7 guarantee contract that should they fail, there
8 are recourses that you would seek, but I can't
9 tell you --

10 CHAIRMAN BELL: Buy guarantor's
11 insurance or something. I mean, that's
12 something that we could consider.

13 MR. BEITLER: And there is an insurance
14 component to the entire transaction.

15 MR. HOFFMAN: Insurance doesn't mean
16 anything if the company doesn't exist.

17 CHAIRMAN BELL: Yeah, it does. That's
18 why you get it. It's a separate insurance.

19 MR. SILVERS: Third party insurance.

20 CHAIRMAN BELL: You get a third party
21 insurance. You don't get it from them.

22 MR. HOFFMAN: So is that part of the --

23 MR. BEITLER: Yes, insurance is a
24 component of the transaction.

1 MR. HOFFMAN: This says liability
2 insurance and builder's risk insurance. Is that
3 the insurance that was just being described?

4 MR. SILVERS: The nature of these
5 structures is that in order for the whole thing
6 to work, there has to be -- there's risk built
7 into this. If we're laying the risk off, we got
8 to lay it off on somebody.

9 I don't see anything wrong with this
10 structure here, and these are very large firms,
11 and as long as we -- and if we have the credit
12 analysis done here, that's a good place to
13 start.

14 It strikes me that the obvious
15 thing, and I think our Chairman is pointing to
16 this, is that there would be some contractual
17 language as there is as you typically find in
18 any kind of credit arrangement, that if these
19 people's creditworthiness deteriorates that
20 they have to do certain things -- we have
21 certain rights and they have to do certain
22 things.

23 CHAIRMAN BELL: Right.

24 MR. SILVERS: I'll leave it to the --

1 I wouldn't presume to tell the team of lawyers
2 here exactly how to draft that, but I think this
3 is commercially standard. These are
4 commercially standard terms.

5 CHAIRMAN BELL: Right.

6 MS. TRAMM: Thank you. Okay. So we'll
7 just review this. This page speaks to how many
8 of the respondents to our RFP did come back and
9 propose either an Energy Service Agreement or a
10 lease, quite a few.

11 And the ESA structure, as you can
12 see, has gained quite a lot of traction and
13 really was quite a popular recommendation for
14 this deal, so we're recommending it in this case
15 for 2FM.

16 We're also recommending that Piper
17 Jaffray be selected as our placement agent for
18 this deal. They were found to be both the least
19 cost, offer the most favorable terms and
20 conditions for the deal and really just all
21 around best value.

22 On this chart you can see their
23 estimated interest rate but also their fees were
24 both the lowest compared to the other two

1 respondents which did come back with an Energy
2 Service Agreement or lease proposals in the
3 final round.

4 Stephanie?

5 TREASURER NEELY: I don't know if all
6 the participants in the structure have been
7 determined yet, but is there minority
8 participants in the structure?

9 MR. BEITLER: We're in the process of
10 determining other participants for minority
11 participation.

12 CHAIRMAN BELL: I think you should just
13 say we've had the discussion, we know we need to
14 and we're going to go figure it out.

15 ALDERMAN THOMAS: It's required.

16 CHAIRMAN BELL: It's that simple. They
17 know it. We've told them that we have to have a
18 partner --

19 ALDERMAN THOMAS: It's required by the
20 City Council.

21 MR. BEITLER: We had one minority firm
22 respond that was a bond firm but that doesn't
23 participate in ESAs so we're working with Piper
24 Jaffray to determine a minority firm that would

1 be appropriate for this particular transaction.

2 MR. HOFFMAN: I have a question on that
3 slide. So what we're talking about here is a
4 tax exempt ESA, right? So we're on the left
5 side of the chart. This compares Piper and two
6 other placement agents. And it says that total
7 percentage here is 3.84 because Piper put down
8 an interest rate of 3.75 percent. I just want
9 to understand that number.

10 MS. TRAMM: It's not because they put
11 that down. It's because they both had the
12 lowest estimated interest rate after canvassing
13 their contacts as well as if you look at the
14 fees only line, they were by far the lowest.

15 MR. HOFFMAN: And can you give us a
16 comfort level that when Piper came back and said
17 we think a 3.75 percent interest rate is
18 realistic, even though that sounds like it was
19 the lowest interest rate that you heard from
20 other respondents, that that's realistic and not
21 someone who's just coming forward wanting the
22 business and putting down the lowest?

23 TREASURER NEELY: And why wouldn't that
24 change today? (Unintelligible).

1 MR. BEITLER: So it's an indicative
2 rate and when they price, it will probably be
3 different.

4 CHAIRMAN BELL: That's why you're
5 showing the range.

6 MR. BEITLER: That's why we're showing
7 a range.

8 CHAIRMAN BELL: And we're going to cap
9 them at a range, and if they can't do that rate,
10 then they got to come back.

11 MR. BEITLER: But this was the
12 indicative rate on the day we closed the RFP
13 which is the standard methodology for how this
14 work is done.

15 And we had many, many, many, many,
16 many, many, many, many, et cetera, et cetera
17 discussions because Piper had a much better rate
18 across the board than the other respondents, and
19 it caused a significant amount of research to
20 make sure that we felt comfortable that Piper
21 would be able to deliver the appropriate rate in
22 line with the indicative rate, and we believe
23 today that we have confidence that Piper will,
24 in fact, do that.

1 CHAIRMAN BELL: I think we need to be
2 clear with everyone. Rates are perishable. I
3 mean, they only last for so long and they will
4 change. That's the only thing we know for
5 certain, and that's why the range, and we only
6 can go by what happened at the time we bid in
7 comparison -- comparing people in that time
8 frame because we know next week they will
9 change.

10 MR. BEITLER: I would like to add that
11 despite this being a small deal, it's actually
12 in many respects a difficult transaction because
13 it's one transaction that's really composed of a
14 lot of smaller projects and not all of the
15 projects necessarily have the same return
16 profile, so some projects return one year and
17 some projects return in 30 years, and so when
18 you go out to the market with an overarching
19 project like this that has a number of smaller
20 projects that have different return profiles, it
21 makes it much more difficult to price the deal
22 and get it as close to the indicative price as
23 you would hope.

24 However, again I believe that Piper

1 will provide an excellent service to the Trust
2 and that we can have confidence that they will
3 do a good job.

4 MS. FERGUSON: Steve, maybe just
5 further clarification on this. What's puzzling
6 to me is Respondent 1 and Piper in this chart
7 both are quoting on a 15-year term, right? The
8 middle one, Respondent 2, has proposed a
9 different term of 20.8 years; is that right?

10 MR. BEITLER: Right.

11 MS. FERGUSON: But for the same term to
12 have a hundred point basis difference in the
13 interest rate is significant. I'm trying to
14 figure out what, either to Treasurer Neely's
15 question earlier, what it's being priced off of
16 or what are the components of that interest rate
17 quote that make us comfortable that it is
18 achievable and realistic. I mean, a hundred
19 basis points off the same term is a lot.

20 MR. COAN: I'll just say in preparing
21 a response we solicited half a dozen lenders
22 who participate in energy savings contracts and
23 these were the indicative rates we received.

24 Just so you know, Piper, again away

1 from the qualifications, and I apologize for
2 the commercial, we do about 120 private
3 placements a year so we have a large group of
4 financing institutions we deal with, and I
5 suspect some of the other firms don't have as
6 large a sales force or contacts with the lending
7 community.

8 MR. HOFFMAN: John, you are with Piper?

9 MR. COAN: Yes.

10 MR. HOFFMAN: What do you do there?

11 MR. COAN: Municipal finance, public
12 finance.

13 MR. HOFFMAN: We haven't met you so
14 it's nice to meet you and welcome. Looking
15 forward to working together.

16 And Michael is your lawyer? Your
17 client, Michael, is Piper?

18 MR. COAN: No, Michael Dow works for
19 McGuire Woods.

20 MR. HOFFMAN: I know. I know he works
21 for McGuire Woods. And your client, Michael, is
22 Piper. Who are you coming to -- I assumed you
23 are here representing someone.

24 MR. DOW: I was brought with -- Piper

1 brought me, right.

2 MR. HOFFMAN: So you're representing

3 Piper or you were brought here. That's fine.

4 You're with Piper. That's fine.

5 So your point, John, is that the
6 comfort level that we should have with the much
7 lower interest rate is based upon effectively
8 your size, experience and access to lenders who
9 are telling you this is realistic?

10 MR. COAN: Correct.

11 MS. FERGUSON: So what you're saying
12 is that your access to that lender pool on the
13 right is larger and more robust than
14 Respondent 1?

15 MR. COAN: Right.

16 MS. FERGUSON: And affords you the
17 opportunity to tap into more aggressive interest
18 rates?

19 MR. COAN: Correct.

20 MS. FERGUSON: Okay.

21 MR. HOFFMAN: Have you guys done ESAs
22 before?

23 MR. COAN: We have.

24 MR. HOFFMAN: With governments?

1 MR. COAN: With governments.

2 MR. HOFFMAN: Can you give us an
3 example?

4 MR. COAN: School districts in Kansas
5 and California have used an ESA structure, and
6 then we're currently doing one for the Federal
7 Government. The USDOT headquarters building is
8 using the ESA structure.

9 MR. HOFFMAN: Thank you.

10 MR. BEITLER: I think that when you
11 look at the range of respondents that we talked
12 to, there were different types of firms that
13 responded, and I think that the rates were often
14 indicative of the type of firm that was
15 responding.

16 So in some cases it might have been
17 an energy firm -- an energy investing firm that
18 has a reed like structure. In other cases it
19 might have been a bank. Different firms
20 responded, and I think that their rates were
21 basically indicative also of the type of firm
22 that they were.

23 MR. HOFFMAN: I have a question on a
24 slightly different topic but on this chart. So

1 we're listed as the owner?

2 MR. BEITLER: Yes, that's correct.

3 MR. HOFFMAN: Can you explain a little
4 bit about what that means and how you analyze
5 what the potential down sides or risks would be
6 of the Trust being owner?

7 There's a preliminary question in
8 there as well which is what the projects are,
9 what we are the owner of. I know that when 2FM
10 came before us months ago, they had identified
11 about a hundred different buildings ranging from
12 City Hall to libraries to police stations and so
13 on.

14 Will the contract specify the actual
15 projects and what's to be done or is there -- is
16 that to be determined later? In other words,
17 what are we going to --

18 MS. TRAMM: So one of the things that
19 qualifies an Energy Service Agreement as an ESA
20 versus an Operating Lease is that the owner has
21 to have, and this is to the last question, the
22 owner has to have the ability to, you know, with
23 appropriate notice enter the building, control
24 the operation of but also substitute the

1 measures that are taken or add on or suggest
2 additional measures to reap additional energy
3 savings.

4 So in addition to the ones that have
5 been scoped, the actual owner of this project
6 can decide at any point in time to say well,
7 this doesn't really meet our energy -- cost
8 effectiveness criteria or these other things do.
9 That's part and parcel of it being off credit is
10 ceding some of that control over exactly what
11 gets installed to create those negawatts to the
12 owner.

13 In terms of the risks of having the
14 Trust be the owner, there's really two levels I
15 think we have to address that at. One is the
16 security interest that the financiers gave. So
17 if we think about the ownership structure as
18 both being having a right if something goes
19 wrong in the transaction to claim the underlying
20 assets, there is being granted to the end
21 lenders in this model a UCC fixture filing, you
22 know, personal property filing so this security
23 interest line here. It is not titled. It is
24 that. That's what being passed to the lender in

1 case of default by the City.

2 I think Michael Dow is probably in
3 the best position to talk about ownership
4 specifically.

5 MR. BEITLER: I think the City and the
6 Trust are trying to strike the correct balance
7 in terms of, for example, having access to a
8 building. I mean, you can't just have anybody
9 running around in a building, but at the same
10 time in order to meet the requirements of the
11 agreement, there are certain stipulations that
12 have to be made.

13 So as we work through the language
14 of the agreements, we're trying to figure out
15 the correct balance to accomplish the goals so
16 that we can have an off balance sheet, off
17 credit transaction and at the same time afford,
18 you know, common sense requirements for the City
19 of Chicago and its structures in buildings.
20 We're going through that process.

21 MR. HOFFMAN: It sounds like good
22 principles, but it sounds like what I'm hearing
23 you say is that the answer to the question is
24 it's still to be determined.

1 MR. BEITLER: Well, it's not to be
2 completely determined. There are the details to
3 be determined, but there is also a standard
4 methodology as to how an ESA is structured to
5 facilitate the off balance sheet, off credit
6 facet of any ESA; and, therefore, the Trust is
7 the owner of these assets, and then if we could
8 go back to the slide that's got all the -- Yeah.
9 Thank you.

10 Then ownership at the end of the
11 term can automatically revert to the City
12 through Trust abandonment of the property or the
13 City would have a fair market value purchase
14 option which could theoretically be a dollar,
15 although if you want the transaction to be off
16 credit, off balance sheet then you can't
17 negotiate that it is a dollar today, you have to
18 wait until the conclusion of the transaction and
19 then decide whether or not the value of that
20 property is a dollar.

21 So not everything, if you want an
22 off balance sheet, off credit transaction, not
23 everything can be addressed down to this I would
24 say the gnat's ass, some things --

1 MR. HOFFMAN: To use the legal term.

2 MR. BEITLER: Yes.

3 MR. HOFFMAN: Well, putting that point
4 aside, have the different City facilities that
5 will be encompassed by this ESA been decided?
6 What I heard you say --

7 MR. BEITLER: There is a list of all of
8 the sub projects that are to be accomplished in
9 this process, and that list is being attached to
10 the ordinance as well as to the various
11 agreements.

12 MR. HOFFMAN: So it will be part of the
13 contract?

14 MR. BEITLER: Yes.

15 MR. HOFFMAN: So part of the contract
16 will say here are the hundred or so facilities.
17 And then will it also describe the work that's
18 expected to be done?

19 MR. BEITLER: Yes, that's correct.

20 CHAIRMAN BELL: Yes.

21 MR. HOFFMAN: So when the Trust is an
22 owner of that subject matter ESA, and whether
23 it's City Hall, whether it's the 15th District
24 Police Station or whatever it's going to be,

1 what does that mean, and what are the potential
2 down sides as an owner of some government
3 building? I'm just not sure -- I'm trying to
4 understand what that means to be the owner of
5 it.

6 MR. BEITLER: It means that you have
7 taken possession of property and then are
8 basically providing the use of that property.

9 CHAIRMAN BELL: I thought we were just
10 the owner of the project itself.

11 CHIEF FINANCIAL OFFICER SCOTT: That's
12 it. Not the building.

13 CHAIRMAN BELL: Which we fully expect
14 the City to manage. That's basically it.

15 MR. HOFFMAN: So property owners, even
16 partial property owners have liabilities and
17 exposure to things. That can't be the case that
18 we're really like a property owner here, but I'm
19 not sure I understand --

20 CHAIRMAN BELL: We're not a property
21 owner. We have a financial interest in, but we
22 are not a property owner.

23 MR. HOFFMAN: That's what's behind my
24 question. I'm trying to get an explanation when

1 we use the word owner what that actually means
2 in terms of the contract.

3 MR. DOW: It means you hold the asset.
4 You hold title to the asset. You're the tax
5 owner of the asset, however, any risk associated
6 with that ownership can be off loaded on other
7 parties.

8 For instance, the City is going to
9 insure the asset. The City is going to maintain
10 and operate the asset. The ESCO is going to
11 install the asset. You've limited your risk
12 contractually with these other parties to the
13 transaction, but you sit in the middle as just
14 the holder of the asset, you borrow the debt;
15 and from a financing perspective, your only
16 obligation to the lender is to pay other
17 revenues that are produced by the asset.

18 MR. HOFFMAN: That's, of course, our
19 intent is that there is no risk ultimately to
20 the Trust of being "the owner" of this asset
21 because of the arrangements you just described
22 and really our only ongoing obligation --

23 CHAIRMAN BELL: And let's be clear on
24 the definition of what asset we're talking about

1 here. I think that's what's causing some
2 confusion. It's the assets that are part of the
3 project, correct, not the structure. I want to
4 be sure everybody is clear with that.

5 MR. HOFFMAN: Yeah. Sure. We're not
6 going to be owning City Hall.

7 CHAIRMAN BELL: Thank God.

8 MR. BEITLER: No keys will be passed
9 out.

10 MR. MORSCH: No, you're not.

11 MR. HOFFMAN: But I'm trying to clarify
12 that what I think you're implying from your
13 point is that there's no -- ultimately there's
14 no meaningful risk or legal obligation to owning
15 this asset or this project? That's the
16 question. Is that correct?

17 MR. DOW: The structure is such that
18 any risk of ownership is off loaded onto
19 creditworthy parties, not the Trust.

20 MR. HOFFMAN: When you say the
21 structure, you mean these agreements?

22 MR. DOW: These agreements, correct.

23 MR. HOFFMAN: Claire, were you saying
24 that we could change the projects? When you

1 say -- your point about as the ESA requires the
2 entity that is the owner to decide, it can be
3 substitute something. Does that mean
4 substitute, we want a different facility or we
5 now think that what has been decided about the
6 way to renovate this fire station is wrong and
7 it should be renovated this way? Can you
8 explain what you meant by the change?

9 MS. TRAMM: It means that in order to
10 be not classified as an Operating Lease, it must
11 benefit from the credit and balance sheet
12 treatment that we're looking for, there's
13 basically -- you have to meet one of two
14 accounting rules.

15 One is either having control over
16 the operation of assets, so we have put in our
17 contracts ways that, you know, with appropriate
18 notice the Trust and its actors on behalf of can
19 enter and say tweak or tune up a furnace that
20 was installed under this contract or replace a
21 light bulb that was installed under this
22 contract.

23 The second thing is actually --

24 MR. BEITLER: May I? Just to be clear,

1 that could be the City who is acting on behalf
2 of the Trust --

3 MS. TRAMM: Right.

4 MR. BEITLER: -- in this particular
5 scenario.

6 MR. HOFFMAN: Really? Because I'm sure
7 no one here wants to be doing that work, but
8 again it seems a little circular because you're
9 saying to get it off balance sheet, off credit,
10 it has to be an non-city entity, and so you have
11 to have a contract that says the Trust can come
12 in and fix the furnace, but then the Trust can
13 say no, we're going to effectively have the City
14 do that.

15 MS. TRAMM: Yes.

16 MR. HOFFMAN: There's two questions.
17 One, doesn't that then defeat the reasoning
18 behind allowing it to be off balance or off
19 credit; and, second, I just want to make sure
20 that, you know, we're not -- the Trust is not in
21 a position to be sued when the furnace -- if the
22 furnace blows up, that as someone looks at the
23 contract and says well, look, the Trust had some
24 responsibility to maintain and didn't fulfill

1 its responsibility.

2 MR. FALK: David, it's Scott Falk. On
3 your first point, the off balance sheet
4 treatment is an incredibly arcane technical
5 accounting issue. It is not a substantive issue
6 by and large.

7 So there are certain hoops that you
8 have to jump through in order to get it treated
9 properly, but the fact that the actual technical
10 accounting owner can subcontract out the work on
11 the asset is not at all unusual and not
12 inconsistent with the concept behind the off
13 balance sheet treatment of the asset.

14 So I just don't -- I don't want to
15 conflate the issues of actual ownership with
16 accounting ownership because there is a
17 meaningful difference. There are a lot of SPEs
18 that are set up to be bankruptcy remote from the
19 principal owner of the asset that are set up
20 that way for off balance sheet treatment, but,
21 in fact, they have joint management, joint
22 decision makers who control both entities.
23 There's a lot of linkage of the two. It kind of
24 looks like it's all one in the same.

1 But if you meet the technical
2 requirements for off balance sheet treatment as
3 an accounting matter then you've achieved your
4 objective.

5 MR. HOFFMAN: How about the liability
6 point?

7 MR. FALK: Well, best of luck to
8 anybody that wants to come after the Trust given
9 the balance sheet they just showed you.

10 MR. HOFFMAN: Stand away. Stand away.

11 MR. FALK: But we're obviously going to
12 have appropriate indemnities.

13 MR. BEITLER: Was the second answer
14 satisfactory? After the best of luck, the
15 indemnities aspect of it.

16 MR. HOFFMAN: Yeah. I mean, I think
17 that it's one reason why I believe that the way
18 that contracts are drafted is important. I
19 mean, what we've been given late last night is I
20 know a short summary of things so I think that
21 some of this depends on how the terms and
22 conditions come out.

23 MR. BEITLER: If you would care to see
24 the contracts as they exist, we would be happy

1 to forward them all to you.

2 MR. HOFFMAN: Sure. I think that part
3 of what makes sense to me is that once you've
4 gotten through a definition of the terms and
5 conditions of this, and I think that's set out
6 in the timeline, that, you know, we should be
7 hearing from you about those documents.

8 This is all happening last minute
9 and quickly, and I'm think that that's fine to
10 move forward with a good pace given how recently
11 this concept has been brought to us, but I think
12 some of these questions are going to ultimately
13 be answered by the details of the document.

14 MR. BEITLER: Okay.

15 CHAIRMAN BELL: Okay.

16 MS. TRAMM: Okay. I know you had one
17 other question. We didn't really talk about the
18 second accounting rule that it could meet which
19 is other measures can be suggested or installed
20 at any point in time. So those are the two
21 accounting rules that distinguish an ESA from an
22 Operating Lease.

23 So let's on that topic move forward
24 to the schedule, and it is our intention to

1 close by the end of the year on this
2 transaction, if the Board approves it.

3 So given that, we are trying to meet
4 all of these listed dates for bringing forth
5 both the bid sheet, the draft ordinances,
6 bringing this to the City Council and Finance
7 Committee Chairman briefings and City's Finance
8 Committee, meaning before bringing it to a
9 Council vote on December 11th.

10 So it is -- it's been our intention
11 all along to spend the bulk of our time
12 reviewing these transactions during the RFP time
13 in August and September, which were the slides
14 we opened with, and then at this point to just
15 move as quickly as possible hashing out the
16 final details.

17 MR. HOFFMAN: To be clear, the RFP was
18 to select a placement agent and as a result of
19 that we were lead over the last couple of months
20 to this ESA structure, right?

21 MS. TRAMM: Yes.

22 MR. HOFFMAN: But we don't have -- when
23 you say to approve the transaction, the only
24 thing we have in front of us about the

1 transaction that has any details in it is the
2 document we received at midnight last night
3 that's the summary of the terms, right?

4 And, look, this is not criticism. I
5 think that I am pleased with the presentation of
6 the ESA structure. I think the presentation and
7 all the work that's been done makes a lot of
8 sense. I have a real comfort level with the
9 general outlines of the structure so don't take
10 that as a criticism.

11 But when I'm looking at the
12 schedule, you know, we haven't seen any of the
13 details yet. We're being presented with the
14 summary. It sounds like the details are quickly
15 being put together, and it sounds like, and from
16 what, Steve, you told me otherwise, you expect
17 those details to be ready for review perhaps
18 fairly quickly, perhaps next week.

19 But if you are -- if the bid sheets
20 are due a week from today, meaning that you're
21 expecting financing entities to bid on this a
22 week from today, you are presumably sending them
23 something prior to that, right? And I don't
24 think that document is ready to sent out, nor

1 have we seen it.

2 So I do think that -- I'm looking
3 for some clarification about when things are
4 going to be sent out to Piper Jaffray.

5 MR. BEITLER: Piper Jaffray has already
6 sent out a request for quotes from potential
7 investors, and we gave those investors, Piper
8 did, several weeks, and so that particular
9 response is due the 13th of November, so we have
10 been trying to move different events in parallel
11 with each other in order to reach a close by the
12 end of the year.

13 Basically though nothing has been
14 done at this point that would in any way
15 presuppose a decision one way or the other, not
16 only by the Board, but also by the City Council.

17 MR. HOFFMAN: So when you say the
18 request for quotes has been sent out by Piper
19 Jaffray, does that -- I would assume that for
20 any bank or financing entity to bid on it, they
21 would have to see what all the terms and
22 conditions are. So does the request for quotes,
23 whatever that document is --

24 MR. BEITLER: Basically the summary of

1 terms you received is a reflection in a shorter
2 way of the term -- the summary of terms that
3 Piper Jaffray forwarded out.

4 MR. HOFFMAN: So isn't that document,
5 the request for quotes, the document that we
6 need to see to define what people are bidding
7 on?

8 MR. BEITLER: Well, basically you have
9 seen that on a summarized basis.

10 MR. HOFFMAN: You mean the thing we got
11 at midnight last that?

12 MR. BEITLER: Yes, correct.

13 MR. HOFFMAN: If this was just
14 reflecting a document that had previously been
15 sent out --

16 MR. BEITLER: Well, more or less the
17 terms that are in that summary of terms are
18 reflected on the chart that is in this
19 presentation which everybody had seen
20 previously, so it's a function of if you wanted
21 more detail, we're happy to provide it. This
22 is --

23 MR. HOFFMAN: Well, Steve, to be clear,
24 I have said and others have said, including at

1 the last Board meeting three months ago, that in
2 order to approve this transaction I believe we
3 were going to need to see the details of what
4 the transaction was.

5 This chart comparing Capital Lease
6 to ESAs doesn't provide the details of what the
7 transaction is. This document we got at
8 midnight last night gets closer. There's a few
9 paragraphs, a few sentences about what summary
10 of the terms would be, and I think it's all a
11 step in the right direction.

12 But I'm now hearing for the very
13 first time that a request for quotes that
14 effectively has the terms and conditions was
15 already sent out apparently to the marketplace
16 and respondents to bid on and they're expected
17 to bid it by next week.

18 CHAIRMAN BELL: Let me try to help. I
19 think they have to get out -- they have to find
20 out what the deal is going to be before we can
21 approve it. I mean, they basically have set out
22 some criteria that is consistent with what we've
23 said the whole time, and that is we got to
24 transfer the risk, we got to have favorable

1 rates, we have to protect the City and the
2 citizens, we have to -- so that's within sort of
3 the sheet they sent out to get financing.

4 Now, what's that going to result
5 into is a document that has to come back to us
6 to review in detail. That would be the detail
7 that we approve and that the City would want to
8 go forward with.

9 Is that what you're planning on
10 doing in the November 13th through 20 time
11 frame?

12 MR. BEITLER: Yes.

13 CHAIRMAN BELL: That's what that date
14 is. Because you are going to see the detailed
15 document once they know what it is, but they
16 have to get out with the lenders and find out
17 what the market would bear so they can
18 incorporate that into the final document.

19 MR. HOFFMAN: And that will be the
20 first time when we see the detailed terms and
21 conditions of this proposed transaction.

22 CHAIRMAN BELL: You'll see all of
23 them.

24 MR. HOFFMAN: Correct.

1 CHAIRMAN BELL: Including the
2 provisions that are in it that are consistent
3 with the ESA structure, which is a lot of it.

4 MR. HOFFMAN: And if we decide not to
5 approve the transaction --

6 CHAIRMAN BELL: Then we don't do it.

7 MR. HOFFMAN: Right. So people will
8 have to bid on it and the bid would be rejected
9 because of the terms and conditions.

10 You know, from the beginning we've
11 talked -- Let me make a process point. This is
12 the first time we're doing one of these, and I
13 don't believe this is the right way to do this
14 going forward. I object to this process.

15 From I think experience of these
16 deals, if we're going to be the authorizing body
17 here, we need to be shown what the proposed
18 terms and conditions are going to be with an
19 understanding of the costs and benefits of it
20 before it's sent out to the marketplace.

21 That shouldn't slow things down.
22 It's just a question of doing the work and then
23 bringing it before the authorizing body in
24 advance, otherwise you're wrapping something up

1 with a bow and saying here, we want you to hurry
2 to approve it.

3 I don't think that's the right
4 process for these. And, you know, it shouldn't
5 be a surprise to anybody. This has been
6 something we've talked about for a year in terms
7 of what the process should be.

8 MR. BEITLER: I think though the
9 marketplace actually sets the terms and
10 conditions of the deal, and so essentially if
11 you want to have the terms and conditions
12 brought forward to you, in essence, I can
13 hypothesize or anybody in the room can
14 hypothesize about what the terms and conditions
15 are, but the marketplace essentially sets what
16 the terms and conditions are, so you're
17 describing to some degree a chicken and the egg
18 conundrum.

19 Basically there is an established
20 methodology as to how the financial community
21 works in terms of doing these types of
22 activities, and you're in some sense asking to
23 change that establishment.

24 MR. HOFFMAN: No. No. I understand

1 your point. Let me clarify. Obviously to the
2 extent that request for quotes or a bid document
3 is sent out that say hey, you bidder, have the
4 discretion about defining these terms that that
5 would change your price term or change your
6 willingness to do the deal.

7 Of course then those are variable
8 terms and we can't know those variable terms
9 until they come in obviously. So those you
10 can't see until the bid comes in.

11 But when you send out a document,
12 it's going to include certain set terms that are
13 part of what the City and the Trust are asking
14 these bidders to bid on, and that document,
15 which is sometimes an RFP or sometimes a term
16 sheet, lays out the terms we want you to use
17 within the definition of your bid.

18 So those aren't variable terms. You
19 can't have the entity come back and change that
20 when you're asking them to bid it on. Those are
21 set terms. That's the document that I'm --

22 MR. BEITLER: So then basically that's
23 my fault. Essentially I could have given you
24 the term sheet that we sent out through Piper

1 Jaffray approximately, I don't know, ten days
2 ago, perhaps seven days ago. I don't remember
3 the exact timing. But that's my fault. I could
4 have given you that particular term sheet
5 earlier. I didn't realize that you wanted that
6 particular term sheet because --

7 MR. HOFFMAN: I don't know how I need
8 to be more clear.

9 MR. BEITLER: I thought it was more --

10 CHAIRMAN BELL: Well, wait a minute. I
11 think we might be talking past each other. I
12 think the term sheet that they had is consistent
13 with what the original RFP -- the RFP we sent
14 out, those same things we approved.

15 I mean, they're just being
16 reformatted for sending to this particular
17 market now that we moved from what we were
18 looking at before to ESA.

19 MR. HOFFMAN: Do you mean the thing
20 back in the spring?

21 CHAIRMAN BELL: Day one. Day one.
22 When we set out the things in terms of terms and
23 conditions, we wanted low cost, we wanted
24 transfer of the risk, we wanted to make sure

1 property wasn't transferred.

2 I mean, essentially it's those
3 things that -- the same Ts and Cs that this
4 current document has. They've just evolved
5 format wise. You want to add to that?

6 MR. FALK: Thank you, James.

7 David, I want to make a corporate
8 governance point because I think David is sort
9 of questioning what approval is being requested
10 of the Board and whether they're competent to
11 make that approval.

12 I think it's important to
13 bifurcate the role between the narrow financial
14 terms that they're getting responses on on
15 November 13th and then the legal terms of the
16 documentation.

17 It was our collective judgment, the
18 advisors and the management team, you know,
19 because I think it's unconventional, that we
20 would not present to the Board the detailed
21 legal provisions of all the contracts.

22 There are at least four separate
23 contracts that are going to make up the package
24 of deal terms that allocate risk and obligate

1 different parties and create rights for parties
2 as between the City, the Trust, the financing
3 parties and the ESCOs.

4 So it was our expectation that what
5 you needed to know as a corporate governance
6 matter was what are the financial parameters
7 that are going to expose the Trust financially,
8 and so that's why the term sheet and the range
9 that is set forth in the draft resolution that
10 are in the Board book identify what we're asking
11 for which is flexibility to price this up to
12 whatever it is, four and a half percent, 4.75,
13 whatever the number is in the Board resolutions,
14 and then if we're within that range, the Board
15 would, in fact, approve going forward on those
16 terms.

17 Understanding that on the legal
18 documentation, the relative rights and
19 responsibilities would be consistent with
20 exactly what James just described, which is the
21 historic term sheets that all the RFPs
22 reflected.

23 Now, if the Board really wants to
24 look at all the legal documents, which we had

1 not anticipated, we can certainly send those
2 out. Typically that wouldn't -- whether in the
3 corporate or nonprofit sector, we wouldn't
4 normally expect the Board to get into those
5 weeds, but if you want it, absolutely, you're
6 entitled to it.

7 MR. HOFFMAN: Well, let me just say,
8 when we say the historic term sheets, the term
9 sheets that were issued earlier looked nothing
10 like the ESA presentation that we're getting
11 today.

12 The presentation we got last week
13 from Kutak Rock that described what the terms
14 and conditions would be of a different structure
15 doesn't bear a resemblance to this. That's not
16 a critique. I think it's good that we've got
17 this new structure.

18 But let's be clear. It's a new
19 structure. So the terms and condition that
20 relate to it are going to be different. And all
21 we got until midnight last night was this chart
22 that's up here that provides --

23 MR. FALK: I'm sorry to interrupt you.
24 The RFP that went out on the ESA structure alone

1 I think as Addendum No. 1 or Addendum No. 2,
2 that is exactly what's going to be in the ESA.
3 That was posted on the website and it was sent
4 to the Board. So that does contain the legal
5 terms. It's consistent. I mean, I can tell you
6 for --

7 MR. HOFFMAN: So that's not an answer
8 that I've heard from either meetings with Steve
9 or otherwise. So that document is the terms and
10 conditions that the public can scrutinize and we
11 can scrutinize to figure out risk?

12 MR. FALK: Yes. To be clear, we're
13 going to have inches of paper.

14 CHAIRMAN BELL: Much more detail.

15 MR. HOFFMAN: But that's an important
16 point you're making, Scott, which I haven't
17 heard before which is that when we are asked to
18 authorize something that's consistent with the
19 terms and conditions, it's consistent with what
20 is in that addendum to the RFP?

21 MR. FALK: Yes.

22 MR. HOFFMAN: Okay. Is that in the
23 Board book?

24 MR. FALK: Not this Board book, but it

1 was in --

2 MR. HOFFMAN: It wasn't because it was
3 since the last Board meeting.

4 MR. FALK: It was on the website and I
5 think it was emailed around.

6 MR. HOFFMAN: You're right. Okay. So
7 you're asking us to approve something that's
8 consistent with that specific document, that RFP
9 addendum in August or September?

10 MR. BEITLER: Well, I mean --

11 MR. FALK: The resolution asks you
12 approve on the basis -- on the terms consistent
13 with both the term sheet that was emailed out
14 last night and the presentation made today.

15 There's some elements of the
16 documentation that are in this slide book, but
17 they are all consistent with the RFP addendum.

18 MR. HOFFMAN: It makes it very hard I
19 think to -- you know, last time we got an email
20 very late at night the night before the Board
21 meeting with information about the structure
22 last time, and this time we got this one page
23 term sheet, you know, at midnight last night,
24 and, you know, it's hard to -- with a new

1 resolution, it's hard to ask us to do a decent
2 job of assessing costs and benefits and risks
3 when so much information is coming in at the
4 last minute which is what the last two Board
5 meetings have been.

6 So I think -- you know, look, I
7 would feel very differently about this if this
8 wasn't a new structure the first time we're
9 doing one of these and so on. I think this is
10 going to get smoother as we go forward.

11 CHAIRMAN BELL: Okay.

12 MR. HOFFMAN: So I've suggested -- I
13 mean, James, however you want to proceed, but I
14 still feel the same way that I did earlier in
15 terms of I think the -- I don't have any
16 objection to the schedule, but I do think that
17 the November 13th through 20th CIT board
18 decision, if necessary, should be part of the
19 structure in that you should come back to us
20 with a discussion that's going to include a
21 discussion of what the actual terms and
22 conditions are of the governing documents and
23 then, of course, the -- you know, whatever
24 terms, price terms are coming back from the

1 recommended deals.

2 TREASURER NEELY: Just to add to that,
3 according to Alderman Thomas the minority
4 participation has to be figured out, as you
5 said, Chairman, before it goes to the City
6 Council. Will that be decided between the 13th
7 and 20th?

8 CHAIRMAN BELL: What's the schedule?

9 MR. BEITLER: We're working on the
10 minority participation now and everything has to
11 be in the ordinance as well, so basically that
12 will all be cited at that point.

13 CHAIRMAN BELL: So it's either got to
14 be wrapped together or it's going to move, the
15 timetable is going to move. It's that simple.

16 I don't think there's any doubt in
17 anybody's mind now that -- and, by the way,
18 there was doubt as to all that needs to be done
19 up until last week and so late breaking news,
20 minority participation was one of those issues.
21 We sent out the RFP initially and no minority
22 firms responded so --

23 ALDERMAN THOMAS: One.

24 CHAIRMAN BELL: And, of course, they

1 weren't selected so now we have to go back and
2 figure out how to carve out a role. Late
3 breaking news. So we're trying to get all of it
4 together.

5 David, I'm sorry, I thought you
6 realized that we were still operating under the
7 same principles in the attachment to the RFP in
8 terms of what they have been authorized to
9 negotiate, and even though we move from
10 instrument to instrument or structure to
11 structure, those haven't changed. That's what
12 we want out of the deal.

13 So we need to figure out how to
14 pull all that together in that November time
15 frame or the timetable moves. So that's the
16 commitment.

17 Okay. Can you tell us anything more
18 about this?

19 MS. TRAMM: Bring it on, yeah.

20 CHAIRMAN BELL: So I think we need to
21 make sure we have the wording and the resolution
22 consistent with what we've just said here to
23 make sure we include that we're going to have --
24 we clearly want to come back and review in

1 detail the finals Ts and Cs and the final result
2 of what the market is giving us back before we
3 actually approve this thing.

4 And we have to have the other
5 components that talk to the minority
6 participation so we can have a complete package.
7 And we're going to shoot for that sometime in
8 the week of November 13th through 20th.

9 David, could you help us with the
10 resolution? I think you've made some notes.

11 MR. HOFFMAN: Sure. I think consistent
12 with what you just said, James, I have some --
13 I'll make a motion to edit the language of the
14 resolution I think in the most minimal fashion
15 to state that point.

16 So in the first resolution paragraph
17 now therefore be it resolved that Trust is
18 hereby authorized, I would add at the end of the
19 paragraph after the word therewith "if so
20 approved in the future by the Trust and the
21 City."

22 In the -- two paragraphs further,
23 the paragraph that says further resolved that
24 the Executive Director of the Trust be in hereby

1 is authorized to approve the energy performance
2 contracts, I would change the word approved to
3 develop the energy performance contracts.

4 It goes onto say consistent with
5 those described herein, and the summary of --
6 terms and conditions consistent with those
7 described herein, and the summary of terms
8 presented herewith and such other documents
9 necessary to appropriate in connection
10 therewith, and I would add "and to return to the
11 Board for approval of those agreements" at that
12 point.

13 CHAIRMAN BELL: Okay.

14 MR. HOFFMAN: There's a next part of
15 that paragraph that says the signature of
16 Executive Director upon such documents shall be
17 deemed conclusive evidence, and at the end of
18 that phrase I would just add, "once authorized
19 by the Board."

20 And we haven't talked about a new
21 independent financial advisor, but this says
22 that executive -- the last paragraph says the
23 Executive Director is authorized to select and
24 approve the terms of the engagement of one or

1 more parties to act as the Trust's independent
2 financial advisor for Retrofit One, and I would
3 add "and shall report promptly to the Board
4 regarding that selection."

5 CHAIRMAN BELL: Okay. The general part
6 of that resolution, do we still need given what
7 we've just said at the top?

8 MR. HOFFMAN: At the very end?

9 CHAIRMAN BELL: Yes.

10 MR. HOFFMAN: General, resolved that in
11 order to fully carry out the intent and
12 effectuate the purposes of the foregoing
13 resolutions, any of the Trust's officers be, and
14 each hereby is, authorized to take all such
15 further actions.

16 I think this is standard -- Scott,
17 can you help me with this? This the standard
18 proforma language at the end of any board
19 resolution.

20 MR. FALK: Yeah, it applies to the
21 budget resolution also.

22 CHAIRMAN BELL: That's fine. And then
23 the budget, anything on that that you need
24 addressed so we can do both at the same time?

1 MR. HOFFMAN: No.

2 CHAIRMAN BELL: We are okay with the
3 budget resolution. All right.

4 MR. FALK: Mr. Chairman, I'm sorry, I
5 just want to get a clarification.

6 So as a corporate governance matter,
7 I'm not sure that you actually need any of those
8 resolutions now then because you're proposing
9 that nothing get approved until --

10 CHAIRMAN BELL: But are we going to
11 give something to the Finance Committee of the
12 City Council?

13 MR. FALK: Well, I think you're hitting
14 the exact issue I was going to address which is
15 the chicken or egg issue. I think your Trust
16 needs authority to negotiate these contracts,
17 and it needs to know that its Executive Director
18 has the ability to sign it.

19 So, you know, I think your advisors
20 expected that the Board would get comfortable
21 today with the parameters outlined but give the
22 management team and their advisors flexibility
23 to negotiate terms consistent with those.

24 CHAIRMAN BELL: Is that what you said?

1 MR. HOFFMAN: No. Well, I think the
2 key point is that, you know, if you're thinking
3 that Steve should be able to sign and execute a
4 contract before coming back to us, I think
5 that's inconsistent with my understanding of how
6 we are to proceed.

7 TREASURER NEELY: Are we trying to get
8 this done next week, the 13th, so a week from
9 today?

10 CHAIRMAN BELL: Yeah, in other words
11 gets what we have here to move it to introduce
12 it to the City Council knowing that we still
13 have work to be done.

14 ALDERMAN THOMAS: They can introduce
15 it.

16 CHAIRMAN BELL: It just goes to the
17 Finance Committee as I understand it.

18 ALDERMAN THOMAS: You can introduce it
19 and it can be changed.

20 CHAIRMAN BELL: Absolutely. We got to
21 final approve based on what comes back from the
22 market.

23 The issue is what needs to be
24 negotiated that you're alluding to, Scott?

1 What contracts specifically are you talking
2 about?

3 MR. FALK: There's the Energy Services
4 Agreement. There's the Performance Guarantee
5 Contract with the ESCO. There's a loan
6 agreement with the financing sources. Steve
7 said the ordinance with the City, but I think
8 there may be a forth commercial agreement as
9 well.

10 CHAIRMAN BELL: And they need to be
11 negotiated before we finalize the terms of the
12 agreement, is that what we're saying?

13 MR. FALK: Well, I think that's one in
14 the same thing. I'm not sure if David is
15 suggesting that he wants to see those documents
16 fully negotiated before he authorizes the deal.
17 I think that's what creates the chicken and egg
18 problem. We can do it that way but it's --

19 CHAIRMAN BELL: The negotiation is
20 consistent with the terms that we've gone
21 through today and that we're okay with?

22 MR. FALK: That would be our proposal,
23 yes.

24 MR. HOFFMAN: When you say gone through

1 today, I mean, again, you know, we didn't go
2 through the RFP addendum terms and conditions
3 which have been developed since the last Board
4 meeting and then we have this -- the only thing
5 that we have --

6 CHAIRMAN BELL: The term sheet is what
7 I meant. The term sheet.

8 MR. HOFFMAN: But, you know, to say
9 that the agreement will be consistent with the
10 term sheet is --

11 MR. FALK: I don't mean to interject or
12 not, but if it would helpful to give a three or
13 four or five minute summary of the key terms of
14 the legal documents orally, we can certainly do
15 that right now.

16 I didn't mean to suggest to take up
17 anymore of your time, but if you would like
18 that, between Michael Dow and Jerry Wallack and
19 me, we can certainly do that.

20 MR. RAMIREZ: I think you're still
21 going to need to see it.

22 MR. HOFFMAN. No. No.

23 MR. RAMIREZ: What they're questioning
24 here as well is the (unintelligible) of it.

1 This could certainly be introduced at City
2 Council before the Finance Committee. The
3 question then becomes whether or not we give the
4 authority to the Executive Director to execute a
5 contract.

6 You can execute a contract
7 contingent upon whatever you want, maybe it's
8 coming back to the Board or whatever. If you
9 have a genuine issue, then we can say we got an
10 issue with it as long as the people entering
11 into it on the other end know that it still has
12 to come to this layer of approval. That way we
13 can still honor the timeline. There's different
14 ways of doing it, that's all I'm saying, to move
15 forward.

16 MR. HOFFMAN: Yeah, I certainly would
17 like to put Steve in the best possible position
18 to have these discussions and do what he thinks
19 he needs to do to get to the right place, and,
20 you know, the way Jorge described it makes
21 perfect sense to me in terms of a contingent
22 approval.

23 You know, look, I think it's up to
24 you guys to figure out the right way to set up

1 the ordering of this so that in my view we get
2 the chance to hear about the details, and again
3 which we, you know, in my view haven't heard
4 about today and deliberate and make a decision
5 about it.

6 MR. FALK: Right. And if we did take
7 time to describe to you the legal terms, they
8 would be unnegotiated documents. The lenders
9 haven't been selected, right? The performance
10 guarantee contract hasn't been presented to the
11 ESCOs.

12 We know what we want in those
13 contracts. We know what would satisfy the City
14 and the Trust, but as for the third parties to
15 those contracts, we haven't had those
16 negotiations.

17 MR. HOFFMAN: Sure. Sure. That's the
18 variable terms. I understand. As I said,
19 there's some fixed terms which as you described
20 are apparently the ones in the RFP addenda and
21 then there are some variable terms that are
22 being negotiated, right?

23 MR. FALK: Yes.

24 MR. HOFFMAN: Well, is there an issue

1 with the process of, you know, according to this
2 timeline coming back for a CIT Board decision
3 between November 13th and 20th which presumably
4 is a decision about here's what we recommend
5 regarding these agreements, and here are the
6 terms and here is the interest rate and the
7 price.

8 MR. FALK: I think the answer is it
9 depends on whether you want to see absolutely
10 fully buttoned down documents between the 13th
11 and the 20th.

12 MR. HOFFMAN: What do you anticipate
13 showing us again?

14 MR. FALK: I think negotiations are
15 unpredictable. I think if you want we can show
16 you whatever state they're in, you can see them.
17 Whether they will be all ready for signature and
18 approval by the Board --

19 MR. HOFFMAN: Let me try to make this
20 easy I think. I think there's an easy solution.
21 I don't feel that we need to see every jot and
22 tittle and every single thing finished. That's
23 not it.

24 But we're not -- what's been put in

1 front of us is not close to that, right? So if
2 you come back and it's what you're describing,
3 it's been negotiated, we've got a very clear
4 detailed statement of the terms and, you know,
5 there's a small amount of additional drafting to
6 do, that's fine.

7 I mean, I'm not, to be clear, asking
8 that we see it in a completely final form, but I
9 do think we need something more detailed than a
10 one pager.

11 TREASURER NEELY: David, I think we
12 need to -- Mr. Chairman, just a point of
13 clarification.

14 I know this is not the first deal
15 that we're considering and the process hasn't
16 been ironed out yet, but it can't be stop and
17 go, stop and go either.

18 And so, David, I think you need to
19 be clearer on what you need to see because what
20 I'm hearing you saying is a lot of well, I don't
21 need that, but I do need this, I don't know if I
22 need that.

23 I agree with you in terms of getting
24 a term sheet at midnight the day before you make

1 a decision probably is not a good process, but
2 it would probably be helpful to staff to outline
3 what you do need to make a decision.

4 MR. HOFFMAN: Well, I think a more
5 detailed --

6 TREASURER NEELY: What does that mean,
7 more detailed?

8 MR. HOFFMAN: Well, all I can say is
9 that I don't know how to answer that because I
10 don't know what --

11 CHAIRMAN BELL: Well, let me try it.
12 Typically in a big corporation we give them a
13 two-page term sheet authorizing them to go
14 negotiate a big deal, meeting those --

15 MS. FERGUSON: Right.

16 MR. HOFFMAN: I would feel very
17 differently about this if this wasn't the Trust
18 doing its very first deal for the first time on
19 a type of project -- type of structure --

20 CHAIRMAN BELL: Yeah, all I'm saying is
21 there's no way to get to a deal until you
22 negotiate it. I mean, that's my point.

23 MR. HOFFMAN: Sure.

24 CHAIRMAN BELL: That's the issue.

1 MR. HOFFMAN: You tell me what you do
2 envision coming back with.

3 ALDERMAN THOMAS: The parameters of the
4 term sheet.

5 CHAIRMAN BELL: That's what these are,
6 the parameters under which we were authorizing
7 them to negotiate.

8 MS. FERGUSON: Also keep in mind as a
9 trust -- I mean to James' or Chairman Bell's
10 point, in a normal corporate governance
11 standpoint, this would be exactly what you would
12 see, absolutely no more detail than this at a
13 board level to commence the negotiations and
14 finalize a commercially viable transaction that
15 meets the parameters that have been outlined in
16 and approved by this Board.

17 That is why, precisely why we have
18 retained these extremely competent experts in
19 the form of counsel and financial advisors, et
20 cetera, and competent staff to negotiate on our
21 behalf. Right?

22 I think we can exercise our
23 fiduciary duties of oversight given the
24 parameters that we have -- the boundaries we've

1 given them to operate under.

2 CHAIRMAN BELL: They're met.

3 MS. FERGUSON: And if they come back
4 with documents that are somehow outside that
5 then, of course, they have breached their
6 duties.

7 CHAIRMAN BELL: Well, they have to come
8 back and get authority.

9 MR. HOFFMAN: I'm not sure I'm saying
10 anything that different. When you have in the
11 schedule that you're going to come back to us
12 for a decision, and when you say, Stephanie,
13 what more detail, I guess I'm throwing the
14 question back to you.

15 What did you have in mind when
16 you're going to come back to us for a decision?
17 What did you plan to present to us? I think I
18 was on board with that schedule of your coming
19 back to us.

20 MR. FALK: If necessary meant or means
21 if we can't negotiate a deal within the
22 parameters presented to you.

23 CHAIRMAN BELL: That we've authorized.

24 MR. FALK: But we were not going to

1 come back to you regardless. So the plan was if
2 we had your authority to get the deal done on
3 the terms as you understand them, and granted
4 you don't understand every detailed term, nor do
5 we expect you to, nor does your duty require you
6 to, but if we couldn't get it within the
7 parameters on the term sheets presented to you,
8 then we would have to come back, but short of
9 that, we expected to get final approval today.

10 MR. HOFFMAN: You know, look, if the
11 parameters that we're talking about is this one
12 pager sent at midnight last night, I don't --
13 I'm not --

14 TREASURER NEELY: Let's just say that
15 the problem you had was with the one pager.

16 MR. HOFFMAN: Yeah, part of it.

17 TREASURER NEELY: You can say that.
18 Part of our procedure can be that we can't get
19 documents midnight before a Board meeting. If
20 that's the problem, just say that's the problem.

21 MR. HOFFMAN: Well, that's not --

22 ALDERMAN THOMAS: And this is a two
23 pager. The second page lays out the interest
24 rate parameters. It lays out the payment

1 schedule.

2 TREASURER NEELY: The interest rate
3 parameters aren't realistic because what's
4 relevant on that is just the cap because we
5 don't know what the interest rate is going to
6 be.

7 CHAIRMAN BELL: They can't go over that
8 without coming back to us, that's the point.

9 ALDERMAN THOMAS: And the resolution
10 also says that.

11 CHAIRMAN BELL: Typically, I'm just
12 telling you, David, typically this is what we
13 would give the team to get out and do it.

14 TREASURER NEELY: But not midnight the
15 night before.

16 CHAIRMAN BELL: Well, sometimes it does
17 happen at midnight, but generally my point is is
18 that this is just an evolution of what we're
19 starting with and it gets more specific. It's
20 not -- I know it's coming up late in this, in
21 the midnight, but it is still pretty much what
22 we started with in terms of the key things we
23 had to have in the deal regardless of structure,
24 and now this has been formatted to fit the

1 structure we're at, but I think it's pretty
2 consistent.

3 MR. HOFFMAN: Well, I think you're
4 right that the general statements in this
5 summary are consistent with the goals from the
6 beginning. Look, I don't want to belabor this
7 conversation. I think my view is that I'm not
8 comfortable saying that we should just go ahead
9 and authorize a final document and you may not
10 come back to us at all.

11 As you say, it's only if necessary,
12 only if not within the general parameters laid
13 out here. I am more comfortable with a process
14 where you have to come back to us, and it needs
15 to be something more detailed, and I would
16 expect -- I think that would be normal as part
17 of what you're about to do; and, in fact, given
18 what you described, I think you're going to be
19 at a -- you are now or you soon will be at a
20 very detailed level.

21 So coming back to us would be easy.
22 So, therefore, that's why I think the language
23 of the resolution that I suggested is as far as
24 I'm willing to go, but I don't want to hold this

1 up.

2 MS. FERGUSON: David, as a point of
3 clarification, what's really important in what
4 you stated, it would not be normal. I mean,
5 what you heard from all of us is it's not --
6 that would not be the normal process in a
7 governance context.

8 I respect that it's your view and
9 your belief that it's what you would require,
10 but to imply that it would be normal from a
11 governance practice standpoint is not true.

12 MR. HOFFMAN: But I don't think that
13 what is happening here for the Trust doing its
14 first deal when there's not much precedent for
15 this kind of trust, and when the structure is
16 not a structure that's been presented to us
17 before calls for just standard board governance
18 transactions where it's more, you know, really
19 run of the mill type of transactions that
20 boards have seen before or have seen this type
21 before.

22 So, look, I don't want to, you know,
23 stand in the way if --

24 CHAIRMAN BELL: Here's what I want to

1 say. What do we need in order to keep moving
2 forward? That's what I'm trying to say.

3 MR. RAMIREZ: Mr. Chairman, if I could,
4 I think part of it was what I said. In order to
5 respect the timeline, we have to let the
6 Executive Director do his job and his team do
7 their job within the parameters that concerns
8 that some of our Board Members have spoke to.

9 If the deal is not done and they
10 can't negotiate the deal within those
11 constraints, then we have to come back to the
12 Board. There are additional layers put in place
13 that have to survive the scrutiny of the City
14 Council, let's remember that, and the Finance
15 Committee.

16 So, you know, there are other layers
17 and ways in which we can get this thing done.
18 There are more hurdles. This isn't the last
19 one.

20 So I would think in order to move
21 forward we would need to say all right, we can
22 get this thing going, go get the deal done with
23 the parameters, at the same time introduce it to
24 the City Council.

1 You're not saying this is the end
2 all at City Council. We still have the
3 opportunity to change it depending upon what we
4 can negotiate and execute on their end in
5 negotiations.

6 CHAIRMAN BELL: And we can ask the
7 staff to bring back the detailed negotiated deal
8 to us before we decide to go forward with it,
9 right? There's nothing that prevents us from
10 doing that, even though we have given the
11 authority to negotiate.

12 MR. BEITLER: No.

13 CHAIRMAN BELL: Once we negotiate a
14 deal with lenders and with ESCOs, we can still
15 decide not to do the project, right?

16 MR. COAN: Yes

17 MR. BEITLER: I think from a resolution
18 standpoint there is either the providing of
19 authority or there isn't the providing of
20 authority.

21 CHAIRMAN BELL: Authority to negotiate
22 within the parameters we lay out.

23 MR. HOFFMAN: That's fine.

24 CHAIRMAN BELL: That's what we're going

1 to give you.

2 MR. BEITLER: Then the question is if
3 we negotiate a deal within parameters that are
4 laid out, what are you suggesting happens next?

5 CHAIRMAN BELL: You bring back that
6 deal so we can look at it.

7 MR. HOFFMAN: And explain how it's
8 within the parameters.

9 MS. BARRETT: Mary Sue Barrett.
10 Clarification. Is that in your view, James, to
11 advise or for approval by the Board?

12 CHAIRMAN BELL: In my view it's not
13 necessary. Let's be clear. I'm working with a
14 Board though that has different views.

15 MS. BARRETT: Do you want to have
16 filed with the Board for their individual
17 review or do you want to have a meeting to
18 discuss it?

19 CHAIRMAN BELL: I think we want to
20 satisfy the issue David has brought up and that
21 is I want to see what the deal looks like once
22 you guys finally get down to what the deal is,
23 and you can't do that until you negotiate, I
24 understand that, and that's why I'm trying to

1 understand what -- how -- what happens when you
2 do negotiate, and if we come back and you come
3 back and we don't like the deal, can we stop the
4 project or if you guys are saying that's bad
5 form, say it.

6 TREASURER NEELY: But procedurally does
7 this Board have to approve it before it goes to
8 City Council? Can City Council approve
9 something you haven't approved?

10 CHAIRMAN BELL: No. No. So we're
11 not -- the whole point is that that's why the
12 thing goes to City Council, to the Finance
13 Committee to start their process on the 13th.
14 We get to look at it between the 13th and the
15 20th before the project says it's completed in
16 December, and if we see something in there that
17 we don't like, we change it or we pull it.

18 ALDERMAN THOMAS: And amend it before
19 the Council.

20 CHAIRMAN BELL: And amend it before
21 the Council approves or we say we're happy with
22 it and let the process continue.

23 MR. HOFFMAN: That's all I'm asking
24 for.

1 CHAIRMAN BELL: That's it. I think we
2 can get there as long as -- I guess the issue I
3 want to be sure I'm clear on is we go through
4 and negotiate with lenders and we negotiate it
5 with the ESCOs and all those people that are
6 involved in this, and if we turn around and say
7 we're not going to do the deal subsequent to
8 that, even though they are within the parameters
9 we've laid out to you, is that bad form?

10 Is that going to cause us problems
11 going forward in terms of credibility with the
12 same audience we're going to be dealing with
13 from now on?

14 So we need to know that. Say it.
15 So we got to give them authority to negotiate
16 within these parameters or we can't give them
17 authority.

18 MR. FALK: Mr. Chairman, my suggestion
19 on the resolutions is to have a slight enodation
20 on what David suggested so let me read something
21 to see if it would be satisfactory.

22 On the now therefore be it resolved,
23 at the end of the paragraph, David, I think you
24 said something like if so approved in the future

1 by the Trust and the City. What I propose
2 instead is to say at the end "subject to the
3 Board's review and satisfaction with definitive
4 documentation."

5 MR. HOFFMAN: Okay. I don't want to
6 mince words. I mean, if satisfaction means we
7 need to approve it, that's fine.

8 CHAIRMAN BELL: If we're not satisfied,
9 we get to amend it or deal it.

10 MR. RAMIREZ: I would think it would
11 mean if it was within the parameters, we get as
12 much clarification as we want up to our
13 satisfaction with the clarification.

14 MR. HOFFMAN: Sure, but we might have,
15 you know --

16 CHAIRMAN BELL: They got to ask us
17 anyway.

18 MR. RAMIREZ: That's exactly right, if
19 it's outside the parameters. The whole thing
20 here is not to move the goalpost with the people
21 we have to establish credibility with in the
22 financial community, you know, in the banking
23 community and wherever else.

24 CHAIRMAN BELL: I guess I would sum it

1 up that we got to have confidence in our team to
2 negotiate this deal or not. I mean, we're at
3 that point now. I think we've given them enough
4 perspective of what we want to see in the deal
5 and what it has to be before we're going to be
6 comfortable with it.

7 I think we've done that. I think
8 the RFP does that. I think this does it, the
9 term sheet. Granted it came last night, but I
10 think the general mindset of what this Trust
11 has been put together to do has been
12 incorporated in the RFPs since day one. You
13 don't think that?

14 MR. HOFFMAN: No, I think that things
15 have changed. I think I agree with you that the
16 general principles have stayed the same.

17 CHAIRMAN BELL: That's it. That's all
18 I'm saying.

19 MR. HOFFMAN: But I think in terms of
20 what the structure is going to look like or what
21 the terms are going to be, that has changed.
22 Only since the last board meeting has there been
23 an explanation --

24 CHAIRMAN BELL: I got you, David. I

1 got you. Because of the way the structures are,
2 those things have to be dealt with differently,
3 those general principles have to be dealt with
4 differently.

5 MR. HOFFMAN: Yes.

6 CHAIRMAN BELL: But if we give them the
7 authority to negotiate but staying consistent
8 with that in this new format, anything outside
9 of that they have to come back to us.

10 MR. HOFFMAN: Well, sure, but, you
11 know, look, I think as part of that what would
12 be required is them to come back and explain how
13 a document is within the parameters.

14 CHAIRMAN BELL: I got it.

15 MR. HOFFMAN: We can have a discussion
16 of that. And if we are all satisfied that it is
17 within the parameters, I absolutely am
18 comfortable with that, but I would like to have
19 that discussion and hear that explanation and be
20 given the chance to ask questions. I think
21 that's part of an approval process.

22 CHAIRMAN BELL: Yes. Correct.

23 MR. HOFFMAN: We have not be given that
24 opportunity.

1 CHAIRMAN BELL: But we got to give them
2 the authority to negotiate.

3 MR. HOFFMAN: Of course. I'm all in
4 favor of that.

5 CHAIRMAN BELL: We're all in favor of
6 that.

7 Stephanie, what was your question?

8 TREASURER NEELY: I just was confused.
9 The parameters have been set for the last
10 several months you're not comfortable with?

11 MR. HOFFMAN: There aren't parameters
12 that have been set. We had a Board meeting
13 three months ago and we were talking about a
14 completely different thing.

15 What we're talking about are terms
16 and conditions that are either set out in this
17 term sheet that were sent last night or in the
18 RFP addendum. Those are the parameters.

19 And we haven't really had any
20 detailed discussion today or previously about
21 the RFP addendum that was issued in August. We
22 haven't discussed that.

23 So it's fine. I think that if those
24 are the parameters and if you're going to

1 develop and negotiate a document that is
2 consistent with that, great. Come back, explain
3 that to us, show us how it's within the
4 parameters. I think if that's the case then I'm
5 confident that we will approve it. That's what
6 I have in mind.

7 And we're -- I'm happy to do
8 whatever I need to do or we need to do so that
9 that moves in a quick process, and if that means
10 it's next week, that's fine.

11 CHAIRMAN BELL: So what's the
12 resolution we need now?

13 MR. FALK: I think before we finalize
14 this, Mr. Chairman, we should just make sure
15 with the City lawyers and ask them that the
16 timeline as adjusted as you're proposing doesn't
17 do damage to the ability to get this approved
18 through the Council. I just want to make sure
19 we've touched base with folks who know the
20 internal processes.

21 Treasurer Neely had some good
22 insights because she's very familiar with that
23 process. I just want to make sure that Jim
24 McDonald and David Winters and others have given

1 us their insights on whether this is going to
2 impair our ability to get this done.

3 CHIEF FINANCIAL OFFICER SCOTT: I would
4 just say that any amendment to an ordinance is
5 at the discretion of the Chair of the Committee.
6 They don't have to accept the amendment.

7 So I can't speak for how the Finance
8 Committee would -- because we're supposed to
9 give them a full month of time to review it so
10 if we change it, they wouldn't necessarily have
11 the time.

12 CHAIRMAN BELL: So if we pull it --

13 MR. HOFFMAN: What would they have?
14 When you say a month to review it, they would
15 have the full documentation in front of them?

16 CHIEF FINANCIAL OFFICER SCOTT: We've
17 introduced an ordinance which has same
18 parameters that you've seen.

19 MR. HOFFMAN: This one pager?

20 CHIEF FINANCIAL OFFICER SCOTT: Right.

21 If there were changes to those --

22 ALDERMANT THOMAS: The term sheet.

23 MR. HOFFMAN: The term sheet.

24 CHIEF FINANCIAL OFFICER SCOTT: I'll

1 ask the legal team to answer.

2 CHAIRMAN BELL: Yeah, and we wouldn't
3 intend that because then it's a different deal.

4 MR. McDONALD: I'm Jim McDonald. I'm
5 Chief Assistant Corporation Counsel with the
6 City's Law Department.

7 The current expectation is the
8 City's ordinance would attach the Energy
9 Services Agreement. It wouldn't simply be a
10 term sheet. And the expectation would be that
11 that agreement would be a substantially final
12 form.

13 At introduction, as the Chief
14 Financial Officer said, that is an introduction,
15 that is not necessarily a final package, but to
16 have a substitute ordinance with a different set
17 of terms in the ordinance itself or a
18 substantially different exhibit, as Chief
19 Financial Officer said, would be up to the
20 Committee of the Council to decide whether or
21 not to accept it.

22 So it is in my experience working in
23 the Law Department at the very least not
24 preferable to introduce an ordinance with an

1 expectation that it would change. It is
2 preferable to have a substantially finished
3 package that is introduced.

4 As a legal matter, if the Committee
5 and the Council decided to adopt -- to take a
6 substitute ordinance and adopt the substitute
7 ordinance, that would be legally valid.

8 So as a legal matter, the substitute
9 ordinance is fine, but as a matter of Council
10 practice, it has been my experience that the
11 Council prefers -- it has not been preferred to
12 introduce an ordinance unless there's
13 substantial expectation that that is the final
14 agreement that is expected to be approved.

15 Now, again, just to be clear, the
16 ordinance would set out parameters, and the
17 exhibit would be substantially final, it would
18 not have to be final per se. That's not -- the
19 usual practice has been substantially final and
20 allow delegation to the Executive Branch to
21 negotiate the final terms of the transaction --
22 of any transaction, the ones I work on, within
23 the defined parameters of the ordinance. That's
24 been the practice.

1 MR. HOFFMAN: That was very helpful
2 James. You know, one of my reactions to that is
3 the City Council quite understandably is going
4 to have in front of it attached to the draft
5 ordinance a substantially final form of the
6 agreement. If we went forward today and never
7 saw them again, we wouldn't.

8 MR. McDONALD: Just to be clear, I'm
9 sorry to interrupt, we have current plans not to
10 attach to the ordinance agreements that the City
11 is not a party to.

12 So the Guarantee Energy Performance
13 Contract between the ESCOs and the Trust is
14 not --

15 MR. HOFFMAN: Just the ESA, exactly.

16 MR. McDONALD: Just the ESA.

17 MR. HOFFMAN: Fine. They would be
18 getting a final form of ESA and if we don't see
19 any of this again and it goes to City Council,
20 and they say to the Trust Board, hey, what did
21 you guys think of agreement, and we say we
22 haven't seen it.

23 CHAIRMAN BELL: I agree with you. We
24 can't do that.

1 MR. HOFFMAN: That would be strange.
2 I'm glad the City Council is going to have a
3 certain amount of reasonable time to see the
4 documents. That's not something we've been
5 given. That's all I'm trying to set up in a
6 relatively quick fashion.

7 CHAIRMAN BELL: I got it. So when can
8 we have a reasonably final form package that
9 we're planning to send to the City so we can
10 review it before it goes to the City? That's
11 the question.

12 MR. BEITLER: Well, the issue with the
13 question is the latter clause before it goes to
14 the City, before it's introduced to the City
15 Council or -- because there are 15 people here
16 from the City with whom we've been collaborating
17 and negotiating on the four different agreements
18 that are required in order to make this occur,
19 so I'm not sure I understand --

20 CHAIRMAN BELL: Let me be clear. When
21 can we see the package we intend to send to the
22 City before it goes to the City?

23 MR. FALK: So that's an easier request
24 because the only document that has to be done is

1 the ESA because that's the only document the
2 City signed. That's not -- I don't think that's
3 in full satisfaction of David's requests. He
4 want to see all the documents.

5 So if by November 13th, the day the
6 ordinance is expected to be introduced to the
7 City Council, we need to get the ESA done, we'll
8 get it done.

9 MR. HOFFMAN: That's fine.

10 MR. FALK: Whether we get the full
11 package of documents done by then, I don't
12 know.

13 MR. HOFFMAN: That's fine.

14 CHAIRMAN BELL: I'm just trying to
15 satisfy the first question, that is, I would
16 hate to send something to the City that we
17 haven't send. In fact, we're not going to send
18 something to the City we haven't seen. So that
19 answers that piece.

20 And then if there's work to be done
21 with it and the work to be done is within the
22 boundaries of what's contained in the documents
23 we send to the City that have to take place
24 after we send that document, then that's okay.

1 I think I can live with that.

2 But we just have to have the
3 understanding that the negotiations would have
4 to have those documents be consistent with the
5 things we're already send to the City.

6 MR. HOFFMAN: Jim, can I --

7 ALDERMAN THOMAS: And I would suggest
8 by the time of the Finance Committee hearing
9 that you have substantially negotiated or
10 signed the rest of the documents because
11 questions will be asked about the rest of the
12 documents.

13 CHAIRMAN BELL: I got it.

14 ALDERMAN THOMAS: But it won't change
15 substantially the ordinance that we would be
16 considering.

17 MR. HOFFMAN: And, Jim, on the
18 Alderman's point --

19 ALDERMAN THOMAS: But that's more time.
20 That's a little bit more time.

21 MR. HOFFMAN: That's December 9th I
22 see.

23 But the Guarantee Energy Performance
24 Contract, as you said, while the City is not a

1 party, this sheet says it's between the ESCO
2 contractors and the CIT for the benefit of the
3 City, do you think that, therefore, the City
4 Council would not need to see that substantially
5 completed document?

6 MR. McDONALD: I don't think the City
7 Council would need to see it. We certainly
8 would be interested because we're not
9 authorizing execution of it by a City official,
10 I think it would be something, as the Alderman
11 has indicated, that we would -- speaking on
12 behalf of the City, we would be interested in
13 seeing what those final terms were.

14 It's not going to be -- we certainly
15 wouldn't want to enter into a transaction for
16 the City with an ESA and have a GEPC, a
17 Guaranteed Energy Performance Contract,
18 underlying that. That would be completely
19 inconsistent with it.

20 MR. HOFFMAN: And that's what I would
21 expect that we will hear from the City Council
22 is that if they don't need to see the actual
23 GPEC, they'll want some sort of detailed summary
24 of that, and my guess is that either you got

1 that already or that's going to come.

2 And so I do think that it's
3 important to be -- you know, when the City
4 Council comes back to us and says so what did
5 you guys think of this, we need to have looked
6 it, whatever is going to be in front of them and
7 have a view about it.

8 So, Scott, to your question about
9 the other documents, I think it's fine if we
10 don't have the completed documents, but I do
11 think it would be normal for you to have
12 something that is a detailed summary of the, for
13 instance, the GPEC.

14 The Council is going to want to see
15 that I would think. They're going to want to
16 see our recommendation. Yeah, we looked at this
17 and we recommend it to you. Here is why we
18 recommend it to you.

19 CHAIRMAN BELL: Yep, I agree.

20 ALDERMAN THOMAS: You're going to be at
21 the hearings.

22 MR. HOFFMAN: I suppose we should read
23 the documents. But, look, there seems to be a
24 practical way to get to this, especially if we

1 can get ourselves together quickly by phone, if
2 necessary.

3 UNIDENTIFIED SPEAKER: If you can't,
4 then there's no hope.

5 MR. HOFFMAN: That's part of our job
6 here if everyone wants to move quickly now, we
7 should do that.

8 MR. BEITLER: I just, for a practical
9 point, about getting together by phone, I'm not
10 precisely sure how to do that and meet the
11 public requirement of the open --

12 MR. HOFFMAN: Public access conference
13 line.

14 MR. BEITLER: I'm not familiar with
15 those, if there is such a thing.

16 MR. HOFFMAN: It could be a publicized
17 conference call number. I mean, I'm on a board
18 that meets in Washington regularly, and I
19 participate by conference call and the public
20 can participate in that and the public can ask
21 questions.

22 When I was on the Reform Commission,
23 we had some meetings where public access was
24 provided by phone. I don't think it's ideal,

1 but if you're saying we've got to do a
2 meeting in an expedited time frame that's a
3 special meeting then -- but anyway, I'll let the
4 city lawyers decide whether that's feasible or
5 not. If not, then we can have an in-person
6 meeting.

7 CHAIRMAN BELL: Yes.

8 MS. BARRETT: So I'm looking at the
9 calendar. Sometime between November 15th and
10 December 1st, understanding the uncertainty of
11 the response deadline, but within that two-week
12 window we would be shooting for reconvening
13 either in person or do you want to do it after
14 the responses and before you bring it prior to
15 introduction at City Council?

16 CHAIRMAN BELL: I thought the window
17 was the 13th to the 20th of November. That's
18 the window.

19 MS. BARRETT: Even shorter, okay.

20 CHAIRMAN BELL: So the question is can
21 it all be done by then and what do you have to
22 give today in order to make it happen in terms
23 of authorization from us or do you need
24 anything?

1 MR. SILVERS: Chairman, you might --
2 one other approach you might take here is --
3 convening a meeting seems challenging, is that
4 you could require the staff to provide the
5 documents, the actual legal documents at a
6 certain date or a certain date in advance of
7 some other date, and you could provide the on
8 call to Members of the Board, you would convene
9 in (unintelligible) any other problem that they
10 can go forward.

11 Now, my only experience I think is
12 very much like Diana's is that the board -- the
13 documents come forth that are consistent with
14 the term sheet, nobody is going to have a
15 problem.

16 But the structure I just conveyed
17 ensures that members of the Board see the full
18 documentation, have a chance to review it, and
19 if there is a real problem, you can convene, but
20 you don't have to.

21 MR. HOFFMAN: James, I want to give
22 you the discretion to decide what the most
23 expeditious and efficient way to do this is. I
24 think you have a clear sense of where I'm

1 coming from, whatever -- however you want to
2 exercise your discretion to give us the time to
3 see it, make a determination and then
4 communicate that.

5 CHAIRMAN BELL: Okay. I guess we're
6 running out of time so we do have to make a
7 decision on it. I think we got to continue to
8 do the work, there's no question, but what I'm
9 not certain of is can we meet that timetable
10 with the complete package for the City. That's
11 what I'm struggling with.

12 MS. BARRETT: Because you receive bids
13 the same day the City Council meeting is.

14 CHAIRMAN BELL: Yes. And we do want to
15 see what those are before it goes to the City,
16 and with that we would want to have a pretty
17 clear understanding of how the other documents
18 come together and the timing of it and that they
19 are going to be consistent with everything that
20 would need to have happen to make the documents
21 we send to the City accurate. That's what I
22 struggle with.

23 MR. HOFFMAN: This all assumes that
24 this, and I think we are all expecting that this

1 calendar through December 19th is -- there's
2 some things set in stone, including a
3 December 19th closing and a December 11th City
4 Council vote. Let me just ask what is the
5 reason for that?

6 CHAIRMAN BELL: This is just to get it
7 in this year, as I understand it.

8 MR. MORSCH: Yes.

9 CHAIRMAN BELL: Either we do or we
10 don't.

11 MR. KOCH: There's some legal
12 significance. There's a lack of exposure to
13 markets. The longer this goes on, the less it
14 may or may have not happen. At some point it's
15 commercially impossible to do.

16 MS. FERGUSON: And rates are
17 perishable.

18 MR. KOCH: James said it in a very
19 articulate way, they are perishable.

20 MR. BEITLER: Additionally, there's
21 actually a penalty in the ESCO contracts that it
22 is exercised at the end of this year, that's a
23 hundred thousand dollar per ESCO as a result of
24 not exercising some sort of contract by the end

1 of the year.

2 The ESCOs have agreed to set aside
3 that penalty if we act in a judicious manner and
4 go forward in some fashion or other with some
5 sort of transaction.

6 CHAIRMAN BELL: Okay. So I guess I
7 would like a motion that we would let these
8 guys, give them the authority to negotiate
9 within the parameters of the term sheet and get
10 these things final as quickly as possible, but
11 we are going to have to see this before it goes
12 to the City Council. We're going to have to see
13 the documents. I don't know if we can make the
14 13th or not. I just don't know.

15 MR. BEITLER: So, Mr. Chairman, counsel
16 has suggested that there's really, outside of
17 the budget and the independent financial advisor
18 components of the resolutions, no need to have a
19 resolution for that purpose.

20 CHAIRMAN BELL: Okay.

21 MR. BEITLER: So --

22 MS. FERGUSON: That presupposes then
23 that we are reconvening, and I thought I heard
24 you saying that we were trying to get to a place

1 where we were authorizing moving forward
2 without having to reconvene but to see the
3 documents.

4 CHAIRMAN BELL: The thing is is that
5 you're saying that you don't need -- the Board
6 doesn't need to give you authority to continue
7 to negotiate and you have been negotiating.
8 That's what you're saying.

9 MR. KARCZEWSKI: That's correct.

10 CHAIRMAN BELL: I think I want to give
11 you some top cover that the Board agrees you
12 should be negotiating because I don't think that
13 you have common understanding across this board
14 that you have had the authority to do what
15 you're doing, and so I want to clear that up by
16 giving you that authority to let you finalize
17 these documents. I do want a motion to that
18 extent.

19 Then I want to make sure it's clear
20 that we want to have a review of the documents
21 before they go to the City. That would be the
22 motion.

23 MR. HOFFMAN: Yeah, I support that
24 motion. I think that --

1 MR. KARCZEWSKI: And that review is
2 approval?

3 MR. HOFFMAN: I didn't hear you.

4 MR. KARCZEWSKI: That review is
5 approval?

6 CHAIRMAN BELL: It would be approval to
7 move the deal to the City Council, let's put it
8 that way.

9 MR. HOFFMAN: That's right.

10 CHAIRMAN BELL: I mean, we've given you
11 the negotiation authority, so if you negotiate
12 within that, I mean, we won't have to reapprove
13 it, but we will want to see that you've done
14 that, and so the review would, in all intents
15 and purposes, would be to move the documents to
16 the City, that we're comfortable that those are
17 the right things to provide to the City.

18 MR. FALK: The issue frankly is that
19 we're going to have to have several law firms
20 write legal opinions that the banks are going to
21 be satisfied with that include authorization.
22 We're going to need to have an air tight
23 resolution that says that the Board
24 authorizes -- either authorizes management to

1 execute whatever documents he darn well pleases
2 or that management is authorized to execute the
3 documents you've shown us.

4 So those are two choices, but we
5 have to have an absolute authorization. So I
6 think authorization to negotiate, we can write
7 that in, but that's not going to be --

8 CHAIRMAN BELL: I mean, you guys tell
9 me what you need. That's what I'm asking. What
10 do we need to move this thing forward?

11 MR. FALK: What is in the Board book.
12 If we can't get, we should get it when you're
13 satisfied enough to give it to us.

14 MR. HOFFMAN: What I hear you saying,
15 Scott, is an outcome that I think we anticipate
16 giving to you once we've seen this package of
17 documents that has been described.

18 And presuming that we say we
19 approve, this is within the parameters,
20 absolutely, then you will have that. There will
21 be a resolution that will be as air tight as
22 either it says here or as you want it, more air
23 tight because we'll have seen the documents.

24 CHAIRMAN BELL: Yes.

1 ALDERMAN THOMAS: At the time that you
2 review the documents, you need to approve or
3 disapprove authorization and that could be --
4 at the time of your review of documents, you
5 have a resolution that has to give approval for
6 them to --

7 MR. FALK: That's right, Alderman.
8 We'll just defer these resolutions until you're
9 ready to sign off on documents, except we do
10 need a motion on the budget resolution and the
11 finances.

12 CHAIRMAN BELL: Can I get a motion on
13 those?

14 MR. HOFFMAN: So moved.

15 MR. MARQUISOS: Second.

16 CHAIRMAN BELL: Passed.

17 Okay. Anything else?

18 (No response.)

19 We are out of time so unfortunately
20 I'm going to have to close the meeting now.

21 MR. HOFFMAN: Do you want to give time
22 for public comment?

23 CHAIRMAN BELL: Is there any pressing
24 public comment before we do that?

1 MR. MELLIS: Not pressing.

2 CHAIRMAN BELL: Thank you. All right.

3 The meeting is adjourned.

4 (Which were all the proceedings
5 had in the above-entitled
6 cause.)

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1 STATE OF ILLINOIS)
) SS:

2 COUNTY OF COOK)
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4 I, MARI BETH KAWULIA, a Certified
5 Shorthand Reporter of the State of Illinois, do
6 hereby certify that I reported in shorthand the
7 proceedings had at the hearing aforesaid, and
8 that the foregoing is a true, complete and
9 correct transcript of the proceedings of said
10 hearing as appears from my stenographic notes so
11 taken and transcribed under my personal
12 direction.

13 IN WITNESS WHEREOF, I do hereunto set my
14 hand at Chicago, Illinois, this 19th day of
15 November, 2013.
16
17

18 _____

MARI BETH KAWULIA

19 C.S.R. No. 084-2873
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