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NASSAU COUNTY LEGISLATURE

RULES COMMITTEE

NORMA GONSALVES, Chairwoman

1550 Franklin Avenue
Mineola, New York

Monday, September 26, 2016
4:23 P.M

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2 A P P E A R A N C E S :

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4 NORMA GONSALVES ,
 Chairwoman5 RICHARD NICOLELLO ,
 Vice Chairman

6

HOWARD KOPEL

7

DENNIS DUNNE

8

9 KEVAN ABRAHAMS ,
 Ranking

10 DELIA DERIGGI-WHITTON

11 CARRIE SOLAGES

12 MICHAEL PULITZER
 Clerk of the Legislature

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2 CHAIRWOMAN GONSALVES: Would you
3 please call the roll for the Rules
4 Committee, Mr. Pulitzer?

5 CLERK PULITZER: Yes, Madam
6 Chair, I will. Rules Committee, Carrie
7 Solages?

8 LEGISLATOR SOLAGES: Here.

9 CLERK PULITZER: Delia
10 DeRiggi-Whitton?

11 LEGISLATOR DERIGGI-WHITTON:
12 Here.

13 CLERK PULITZER: Ranking Member
14 Kevan Abrahams?

15 LEGISLATOR ABRAHAMS: Here.

16 CLERK PULITZER: Alternate Deputy
17 Presiding Officer Howard Kopel?

18 LEGISLATOR KOPEL: Here.

19 CLERK PULITZER: Legislator
20 Dennis Dunne?

21 LEGISLATOR DUNNE: Here.

22 CLERK PULITZER: Vice Chairman
23 Richard Nicoletello?

24 LEGISLATOR NICOLELLO: Here.

25 CLERK PULITZER: And Chairwoman

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2 Norma Gonsalves?

3 CHAIRWOMAN GONSALVES: Present.

4 CLERK PULITZER: We have a
5 quorum, ma'am.

6 CHAIRWOMAN GONSALVES: Thank you
7 very much. We begin with Item E-206, a
8 resolution authorizing the County Executive
9 to execute an amendment, a personal services
10 agreement between the County of Nassau
11 acting on behalf of the Nassau County
12 Department of Parks, Recreation and Museums
13 and Smith & DeGroat Real Estate.

14 Motion, please.

15 LEGISLATOR KOPEL: So moved.

16 LEGISLATOR DUNNE: Second.

17 CHAIRWOMAN GONSALVES: Moved by
18 Legislator Kopel, seconded by Legislator
19 Dunne. Who is here to speak on this item?

20 MS. KRIEB: Eileen Krieb,
21 Department of Parks.

22 This is a contract between Nassau
23 County and Smith & DeGroat who oversees our
24 historic real estate portfolio and it's
25 merely to extend the term from October 2016

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2 to December.

3 We have issued an RFP and we're
4 under the process of evaluation in going
5 back for clarification to three bids that we
6 received.

7 CHAIRWOMAN GONSALVES: Any
8 questions of Ms. Krieb regarding this? Yes,
9 Legislator DeRiggi-Whitton.

10 LEGISLATOR DERIGGI-WHITTON: Hi
11 Eileen. Was the RFP already sent out?

12 MS. KRIEB: Yes, it's already
13 been sent and we received three proposals
14 some time maybe in July the due date was.
15 Not sure. It was during the summer it came
16 back and we met as an evaluation committee
17 and now we sent out a group of questions for
18 clarification.

19 LEGISLATOR DERIGGI-WHITTON: So
20 there are follow up questions that you sent
21 out?

22 MS. KRIEB: Yes.

23 LEGISLATOR DERIGGI-WHITTON: So
24 you don't know the anticipated date that the
25 new vendor would be selected then?

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2 MS. KRIEB: Soon, because we are
3 doing this extension along with the Navy
4 property because they have two different
5 contracts within one. It will all be done
6 before the end of the year.

7 LEGISLATOR DERIGGI-WHITTON: Do
8 you have an RFP committee or do you oversee
9 it?

10 MS. KRIEB: No. This one was
11 done by real estate because its under their
12 purview.

13 LEGISLATOR DERIGGI-WHITTON: Do
14 you have an approximate idea of how much has
15 been spent on the repairs of these
16 properties, like in the last ten years or
17 so?

18 MS. KRIEB: Because I'm in the
19 Parks Department, we work with them on the
20 historic properties which is the management
21 of all of the accessory buildings on estates
22 and their capital for this year is \$200,000
23 and incidentals was almost 500. That's how
24 much was spent and they have taken in \$1.3
25 million in revenue.

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2 LEGISLATOR DERIGGI-WHITTON:

3 They've taken 1.3?

4 MS. KRIEB: Yes.

5 LEGISLATOR DERIGGI-WHITTON: In
6 rent basically?

7 MS. KRIEB: Yes.

8 LEGISLATOR DERIGGI-WHITTON: Just
9 for the record, do you know how many units
10 they're managing?

11 MS. KRIEB: Again, this is just
12 historic properties. I think it's like 62
13 or something like that. I have a list.
14 Then there is the Navy property at Mitchell
15 that they manage but that's a different
16 portfolio.

17 LEGISLATOR DERIGGI-WHITTON: So
18 thank you.

19 CHAIRWOMAN GONSALVES: Minority
20 Leader Kevan? Okay. No other questions?
21 No other comments?

22 (No verbal response.)

23 There being none, all those in
24 favor of E-206 signify by saying aye.

25 (Aye.)

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2 Any opposed?

3 (Nay.)

4 The item passes four to three.

5 The next item is E-209, a
6 personal services agreement between the
7 County of Nassau acting on behalf of the
8 Nassau County Department of Human Services,
9 Office of Mental Health, Chemical Dependency
10 and Developmental Disability Services and
11 Richard Remauro.

12 Motion, please.

13 LEGISLATOR DUNNE: So moved.

14 LEGISLATOR NICOLELLO: Second.

15 CHAIRWOMAN GONSALVES: Moved by
16 Legislator Dunne, seconded by Legislator
17 Nicolello. Who do we have?

18 MR. HALL: Brian Hall, Human
19 Services. This is a personal services
20 contract between the Department and Richard
21 Remauro. He is providing services which are
22 mandated by the New York State Department of
23 Mental Health working out of our courts.

24 It is 50 percent reimbursable by
25 the New York State Department of Mental

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2 Health.

3 CHAIRWOMAN GONSALVES: Any
4 questions or comments?

5 (No verbal response.)

6 Is there any public comment?

7 (No verbal response.)

8 There being none, all those in
9 favor of E-209 signify by saying aye.

10 (Aye.)

11 Any opposed?

12 (No verbal response.)

13 The item passes I believe six to
14 zero.

15 Item E-210, a personal services
16 agreement between the County of Nassau
17 acting on behalf of the Nassau County
18 District Attorney and Adelphi University
19 Institute for Parenting.

20 Motion, please.

21 LEGISLATOR DUNNE: So moved.

22 LEGISLATOR KOPEL: Second.

23 CHAIRWOMAN GONSALVES: Moved by
24 Legislator Dunne, seconded by Legislator
25 Kopel. Who do we have?

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2 MR. MCMANUS: Bob McManus,
3 District Attorney's Office. This is an
4 agreement with Adelphi University Institute
5 for Parenting to provide administrative and
6 clinical case management for a new program
7 called Closer to the Crib.

8 Closer to the Crib is a program
9 that will provide services for children up
10 to age three who have a parent or two
11 parents that are either incarcerated or
12 otherwise involved in the criminal justice
13 system.

14 These services include referrals
15 to mental health professionals, medical
16 professionals and social service
17 organizations.

18 When parents are involved in
19 criminal cases, it obviously has a huge
20 impact on children who are really blameless.
21 This program is intended to reduce the
22 effects of this type of situation on young
23 children so that as they grow up they have a
24 better chance of succeeding in school and
25 avoiding intergenerational involvement with

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2 criminal activity.

3 CHAIRWOMAN GONSALVES: Legislator
4 Solages.

5 LEGISLATOR SOLAGES: Thank you,
6 Presiding Officer. Good afternoon. I just
7 want to know, who handled the procurement on
8 this contract?

9 MR. MCMANUS: The District
10 Attorney's Office.

11 LEGISLATOR SOLAGES: Thank you.
12 I just wanted to make sure.

13 CHAIRWOMAN GONSALVES: Any other
14 questions or comments?

15 (No verbal response.)

16 Is there any public comment?

17 (No verbal response.)

18 There being none, all those in
19 favor of E-210 signify by saying aye.

20 (Aye.)

21 Any opposed?

22 (No verbal response.)

23 The item passes six to zero.

24 E-220, a personal services
25 agreement between the County of Nassau

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2 acting on behalf of the Office of the Nassau
3 County Attorney and Jackson Lewis, P.C.

4 Motion, please.

5 LEGISLATOR DUNNE: So moved.

6 LEGISLATOR NICOLELLO: Second.

7 CHAIRWOMAN GONSALVES: Moved by
8 Legislator Dunne, seconded by Legislator
9 Nicolello. Who do we have?

10 MR. LEMOYNE: Chris LeMoyne,
11 County Attorney's Office. This is an
12 amendment to a contract with Jackson Lewis
13 to represent and defend the county in
14 various matters that may develop in areas of
15 federal civil rights, Section 1983 matters,
16 Labor and Employment Law, and Municipal Law.

17 CHAIRWOMAN GONSALVES: Any
18 questions for Mr. LeMoyne?

19 LEGISLATOR DERIGGI-WHITTON:
20 Hello. What amount has the county incurred
21 for work that was performed after the
22 original contract expired in 2015?

23 MR. LEMOYNE: None. We haven't
24 incurred any bills.

25 LEGISLATOR DERIGGI-WHITTON: So

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2 we are renewing it 18 months after it
3 expired?

4 MR. LEMOYNE: Well, it -- the
5 original contract ran through 2015 but the
6 parties under the contract had the right to
7 extend it for four additional one year
8 periods. The parties have agreed based on
9 certain matters that have developed or we
10 think may develop in the future to extend
11 the contract for two years.

12 LEGISLATOR DERIGGI-WHITTON:

13 Thank you.

14 MR. LEMOYNE: Sure.

15 CHAIRWOMAN GONSALVES: Any other
16 comments or questions?

17 (No verbal response.)

18 Is there any public comment?

19 (No verbal response.)

20 There being none, all those in
21 favor of E-220 signify by saying aye.

22 (Aye.)

23 Any opposed?

24 (Nay.)

25 Four to two.

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2 We have one item that will be
3 untabled. The item is E-207, a personal
4 services agreement between the County of
5 Nassau acting on behalf of the Office of
6 Management and Budget and KPMG, LLP.

7 Motion to untable, please.

8 LEGISLATOR KOPEL: So moved.

9 LEGISLATOR DUNNE: Second.

10 CHAIRWOMAN GONSALVES: Moved by
11 Legislator Kopel, seconded by Mr. Dunne.
12 All those in favor of untabling E-207
13 signify by saying aye.

14 (Aye.)

15 Any opposed?

16 (No verbal response.)

17 207 is now untabled.

18 MR. BECKER: Madam Chair, the
19 assessor is on his way. He will be here in
20 about 15 to 20 minutes. So I think between
21 this presentation and a few other things you
22 have to do he should be here I'm thinking,
23 but he is on his way here.

24 CHAIRWOMAN GONSALVES: Did he
25 take a bicycle?

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2 MR. BECKER: He's got a jet plane
3 or something.

4 CHAIRWOMAN GONSALVES: At this
5 point in time E-207 requires an amendment in
6 the nature of a substitution. I want to
7 read it. The amendment changes the
8 resolution to limit the authorization
9 granted by the resolution to authorization
10 to proceed with task one as set forth in the
11 agreement.

12 This amendment also removes the
13 sentence task one through four, do not have,
14 to be completed in chronological order from
15 Section 3 payment.

16 Now, a motion to amend Item
17 E-207.

18 LEGISLATOR NICOLELLO: So moved.

19 LEGISLATOR KOPEL: Second.

20 CHAIRWOMAN GONSALVES: Moved by
21 Legislator Nicolello, seconded by Legislator
22 Kopel. All those in favor of the amendment
23 in the nature of a substitution signify by
24 saying aye.

25 (Aye.)

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2 Any opposed?

3 (No verbal response.)

4 The amendment passes.

5 Now, for the item as amended.

6 You are going to speak about it, Mr. Kopel.

7 LEGISLATOR KOPEL: Thank you,

8 Madam Presiding Officer. Eric, are you

9 still willing to talk to me after last time?

10 As you recall, I had some issues with this
11 item.

12 Those issues primarily concerned
13 the fact that we would have been spending or
14 authorizing close to -- going on a million
15 dollars on several phases of a project which
16 seemed at that point, I thought, relied too
17 much on savings purported to come from
18 bonding.

19 Subsequent to that, you and I and
20 Mr. Walker had some meetings and you
21 explained something to me and I understand
22 that you have a presentation ready for this
23 body where you're going to clarify the fact
24 that the savings are really hoped for
25 elsewhere rather than from the bonding, and

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2 that we're not going to lose money in the
3 bond. You have that presentation?

4 MR. NAUGHTON: Yes, we do.

5 LEGISLATOR KOPEL: The other
6 objection and, when we moved to table, was
7 that I suggested that subsequent to the
8 initial analysis which would establish
9 presumably the efficacy of proceeding with
10 this entire concept, the administration
11 would come back to this body and present
12 that analysis so that we could once again
13 decide whether or not we agreed and we'd
14 proceed with the project. That's what this
15 amendment was.

16 Finally, we should clarify that
17 even should we go ahead, this body go ahead
18 and approve the entire full ride with KPMG,
19 ultimately in the other sections, beyond
20 Section 1, it would still come back to the
21 entire legislation for approval of any
22 contract that might ultimately be negotiated
23 by the administration, right?

24 MR. NAUGHTON: That is accurate.

25 LEGISLATOR KOPEL: So, on that

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2 basis, I would ask you to please go ahead
3 with your presentation. I may have a
4 question or two after that.

5 MR. NAUGHTON: Sure thing and
6 thank you for the opportunity because I
7 think it is very important that we clarify
8 and better explain this process and what we
9 are hoping to accomplish by hiring KPMG and
10 perhaps ultimately going through a
11 concessionaire process.

12 I think everyone has a copy of
13 the presentation and it's on the screen.
14 Just looking, we are exploring the
15 possibility of entering into a public
16 private partnership transaction involving
17 our sewer system which is expected to
18 continue to improve the efficiency of
19 service delivery while transferring capital
20 investment risk and environmental risk from
21 the county to a concessionaire.

22 I just want to talk a little bit
23 about some of the things the administration
24 has worked on for the last few years. I
25 don't want you to think we haven't tried to

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2 minimize our losses or improve operations at
3 the sewer system.

4 So, the major accomplishment, of
5 course, has been the \$830 million FEMA grant
6 that we are getting to renovate Bay Park
7 Sewage Treatment Plant.

8 We have a commitment of \$150
9 million from the state that will help
10 mitigate the environmental impact of
11 nitrogen in the western bays.

12 We hired SUEZ Water United to
13 take over the management of the sewer system
14 and that is achieving great savings and
15 improving operations for the system.

16 In 2014 we refinanced the debt of
17 the Sewer and Storm Water Finance Authority.
18 That's produced savings for the system.

19 We've also of course attempted to
20 build a non profit. Unfortunately that's
21 still in litigation. There is a TRO, is
22 that correct, Conal? Preliminary junction.
23 Thank you. That's preventing us from
24 gaining revenue there.

25 But there was a time I believe in

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2 2009 NIFA had projected that the sewer
3 system was going to run out of money in
4 2013. I'm here to say that through our
5 efforts we have extended the balance of
6 funds that we have available to the sewer
7 system, but it looks like we will run out of
8 money in 2018, and I will talk a little bit
9 about that more later.

10 LEGISLATOR KOPEL: You're going
11 to talk about why we're running out of
12 money, why is that happening?

13 LEGISLATOR KOPEL: Sure. If you
14 look at this graph, you will see back
15 starting in 2008, slide three, the county
16 has been drawing down the fund balance to
17 help pay for the operations of the sewer
18 system.

19 We have not had sufficient
20 revenue to cover the high cost that we see
21 there. Fortunately in 2014 we did have a
22 deficit of \$3.6 million.

23 In 2015, because we were able to
24 close out some incumbrances we actually
25 didn't have to drawn down the fund balance.

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2 But, this year, even with
3 everything in place, we are expecting to
4 lose about \$20 million, and, in 2017, our
5 proposed budget expects a loss of \$23.2
6 million leaving no money left in 2018, a
7 deficit of about \$28.7 million, and unless
8 there is some type of other revenue
9 introduced to the sewer system, we are
10 looking at a possible rate increase of about
11 24.9 percent to cover that deficit.

12 LEGISLATOR KOPEL: Do you have
13 any idea what that would be averaged per
14 homeowner?

15 MR. NAUGHTON: Roughly I would
16 say that we're talking approximately \$70 per
17 the average homeowner. That's just to
18 balance that one year and then obviously
19 there would have to be increases in the
20 taxes after that.

21 So we're really trying to avoid
22 such a shock to the system. We think
23 there's a better way to manage the system
24 and to take care of the infrastructure needs
25 that we have there.

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2 About a year ago, NIFA hired its
3 own financial advisor to take a look at what
4 we were proposing. They hired Lamont
5 Financial Services Corporation and I believe
6 most of you have read the Lamont report but
7 just to give you some of the highlights on
8 the report, they said that they felt that
9 there would be several bidders if the county
10 issued an RFQ/RFP for the concession
11 agreement, meaning they think that we have a
12 realistic opportunity to succeed with this
13 project.

14 Also, appears that a P3 after the
15 initial year may result in somewhat lower
16 sewer assessments than a status quo. In
17 other words, they think that the P3 deal
18 will be cheaper than the initial year's
19 status quo.

20 In general they thought other
21 private equity investors are looking for
22 larger projects and that the Nassau County
23 Project is attracting a lot of attention.

24 Steve will tell you that going
25 back to 2011, 2012 when the county did issue

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2 its own RFQ, there was tremendous interest
3 in the system, and we feel that that is
4 still quite viable.

5 Now, the investors will make the
6 return by controlling costs and making the
7 system more efficient and resilient and
8 making capital investments to help them
9 achieve these savings.

10 LEGISLATOR KOPEL: Could you
11 elaborate on that? Why can they do it and
12 the county perhaps cannot do it?

13 MR. NAUGHTON: Well, the key
14 ingredients that they're willing to make
15 investments that will improve operations and
16 create efficiencies. I think that most of
17 us who have been involved with government
18 over a number of years realizes that our
19 processes tend to lead to higher costs to
20 actually get work done.

21 Whereas, we recognize that over
22 the next 40 years there's going to have to
23 be an investment of the sewer system of
24 anywhere from \$1.6 billion to \$2.6 billion.

25 I'm pretty unfortunately

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2 comfortable in saying that if the county
3 maintains the system, the cost is going to
4 probably closer to the \$2.6 billion whereas
5 the private sector probably be closer to the
6 lower side.

7 So, whereas, our cost to borrow
8 may be cheaper, we would be borrowing more
9 dollars which would actually make the cost
10 higher than what the private sector would
11 do.

12 LEGISLATOR KOPEL: That's where
13 the return would come?

14 MR. NAUGHTON: Correct.

15 LEGISLATOR KOPEL: Presumably.
16 And considering an even tax level, that
17 would come out better?

18 MR. NAUGHTON: Yes. Clearly this
19 is still something that we're looking at and
20 exploring and that's one of the things that
21 KPMG will be looking at for us. But from
22 all the experts that we have talked to and
23 we looked at projects nationwide, the
24 private sector has been able to complete
25 capital project in less time and less

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2 dollars than the public sector.

3 LEGISLATOR KOPEL: That's the
4 experience for myself, anyone in private
5 business.

6 MR. NAUGHTON: Right. So the
7 Lamont report recommended to the NIFA board
8 that they allow the county to rebid the
9 advisory RFP which is what we've done and
10 that's what's before you today.

11 So the approval of this contract
12 with KPMG will provide the county with the
13 opportunity to explore P3 to improve service
14 to the county residents and the systems
15 infrastructure assets.

16 As I stated previously, we are
17 currently projecting a revenue shortfall of
18 \$28.7 million in 2018. Once again, to state
19 that if doing nothing could result in a tax
20 increase of 24.9 percent.

21 We have chosen KPMG as it is an
22 undisputed expert in the field with
23 extensive knowledge on how to best structure
24 a P3 transaction to ensure that the county's
25 goals are achieved.

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2 KPMG's engagement team has
3 significant P3 strategic advisory and
4 buy-side advisory experience with deals
5 valued over a billion dollars.

6 As you can see on the graph, the
7 numerous projects that have been involved in
8 and that's why we are very comfortable that
9 we have chosen the best team for this
10 project.

11 Since Steve Conklin was on the
12 evaluation committee, I'm going to let him
13 just talk a little bit about KPMG's role as
14 a financial advisor.

15 MR. CONKLIN: Thanks, Eric.

16 LEGISLATOR KOPEL: Would you
17 identify yourself for the record.

18 MR. CONKLIN: Steve Conklin,
19 County Debt Manager.

20 During this process, the question
21 has come up, why do we need an advisor, why
22 can't we do it on our own, and, I'll tell
23 you clearly we need an advisor. These are
24 very complicated transactions beyond all the
25 work that has to go into managing this.

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2 There are a lot of points that we just don't
3 have the expertise to manage a deal like
4 this.

5 There are several areas, and a
6 lot of these points here will touch upon
7 what many can relate on in the process and
8 we do understand that that we're only asking
9 for authority to start task one which is
10 just a subset of this list, but there is a
11 lot of areas that KPMG would help us on.

12 First, in just determining the
13 whole scope of the project, what exactly do
14 we want to achieve, what's the best way to
15 achieve that. Who should they be contacting
16 in terms of potential investors, those are
17 areas we don't know about. They will be
18 contacting potential investors throughout
19 the world and in all industries to make sure
20 that we get the best bids possible and that
21 KPMG will generate what they call
22 competitive tension to drive up the price
23 that we would receive.

24 LEGISLATOR KOPEL: Forgive me. I
25 want to stop you there for a moment. When

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2 you say drive up the price that we will see,
3 are you referring now to the up front
4 payments?

5 MR. CONKLIN: I am. And how we
6 receive that, it could be a mixture of an up
7 front payment, we may have some revenue
8 sharing over time or payments over time.

9 LEGISLATOR KOPEL: See, that's a
10 very complex thing and I think you need to
11 explain that a little better. In other
12 words, clearly you have got an interplay
13 between the amount that we receive whether
14 it's up front or later, and the amount of
15 taxes going forward that are used to
16 support, in other words, basically,
17 everything else being equal, I would expect
18 that, everything else equal, you would
19 expect that the larger the up front payment,
20 the more taxes down the line. That might be
21 to some extent offset by lower interest
22 payments on our debt. How do you balance
23 that all out?

24 MR. CONKLIN: Sure. And what
25 everybody needs to keep in mind, and there's

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2 been some concern, and I think Conal will
3 touch upon this later, it's not going to be
4 a situation where the concessionaire can
5 just determine arbitrarily what rate
6 increases will be going in the future.
7 People are concerned that they'll just raise
8 them. There will be a decision by the
9 administration on what the cap is on rate
10 increases, as Eric has touched upon.

11 LEGISLATOR KOPEL: I understood
12 that. I was referring specifically to the
13 up front payment that we contemplate getting
14 which would be used to the fees for sewer
15 debt and maybe some other debt.

16 MR. CONKLIN: Right. I think
17 that those are issues that we have to
18 address and work on with KPMG.

19 LEGISLATOR KOPEL: That's what
20 they need to establish; in other words, the
21 optimum level of savings to the taxpayers?

22 MR. CONKLIN: Right. I mean,
23 we're not set on how we would like to
24 structure this in terms of what we'd get up
25 front.

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2 MR. NAUGHTON: Also, in the RFP,
3 we stated that we must clear at least \$600
4 million of a payment that will take care of
5 our outstanding sewer debt. If we cannot
6 achieve that then we will not move forward
7 with this deal.

8 LEGISLATOR KOPEL: Well, as I
9 said, explain that, please, because if we
10 stayed with the current sewer debt and
11 didn't get an up front payment, would that
12 not depress the level of tax increases
13 necessary to support the deal?

14 MR. NAUGHTON: Right. When you
15 look at the expenses for the county, our
16 annual debt service is roughly about \$55
17 million just for the sewer system, so our
18 thought process is right now we have
19 outstanding long term debt in the sewer
20 system of roughly over a little over \$500
21 million.

22 So, our initial thought process
23 was, we should retire all that debt and save
24 the taxpayers money by retiring that debt.
25 That is debt that currently we cannot

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2 refinance just due to the term of it but,
3 through this process, we can't economically
4 difease it, meaning put in the money in an
5 escrow account to pay the debt as it comes
6 due and that will provide those long term
7 savings.

8 LEGISLATOR KOPEL: In other
9 words, even considering the fact that the
10 investor would have to make a return, they
11 or their lender would have to make a return
12 on that money, that they advanced to us up
13 front.

14 MR. NAUGHTON: Correct.

15 LEGISLATOR KOPEL: That would
16 ultimately come from taxes. See, you are
17 expecting that even given that and the
18 differential and the cost of borrowing, you
19 would, nonetheless, achieve a savings?

20 MR. NAUGHTON: That is accurate.
21 Steve will talk a little bit more about
22 that.

23 LEGISLATOR KOPEL: Please do.

24 MR. CONKLIN: Just moving on to
25 the next line, talking about some of the

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2 goals of the transaction, as you can see
3 listed down here, the key thing is to make
4 sure we retain ownership of the system, it
5 would be at least we're not selling the
6 system and then we would want to improve the
7 safety and environmental performance but at
8 the same time transfer a lot of the risk
9 that we currently have with the system.

10 So it's not just what rate
11 increases would be, but the county has a lot
12 of risk in terms of future environmental
13 risk, complying with new regulations which
14 the county, that's a huge concern for the
15 county.

16 Eric also mentioned the capital
17 investment risk in terms of the overall
18 dollars, Eric mentioned anywhere between
19 \$1.6 billion up to \$3 billion.

20 LEGISLATOR KOPEL: Sounds like a
21 risk. Do you expect that a private investor
22 might be better able to judge that better
23 than we can or is it simply an insurance
24 type of concept?

25 MR. CONKLIN: I don't know if

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2 they'll be able to judge it better than us
3 but based on any engineering reports they're
4 going to have to make their judgements, but,
5 as Eric said, I think they can make capital
6 improvements with less dollars, but they
7 will be willing to take some risk when they
8 make their assumptions.

9 LEGISLATOR KOPEL: But you're
10 assuming will prove to be beneficial to the
11 county and will that be currently in the
12 KPMG analysis?

13 MR. NAUGHTON: The initial
14 analysis won't have all of that. The
15 initial analysis task one is a -- they're
16 looking at different types of revenue
17 assumptions and what the assumed rate of
18 return will be for the investor and to say
19 how that matches up and how much revenue the
20 county will generate from the transaction.

21 But, just to jump ahead to slide
22 nine. If you see on the left what we call a
23 traditional project, the way this county and
24 lots of other governments tend to finance
25 projects, the asset condition gradually

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2 declines until there is a major capital
3 works improvement project at which point you
4 end up paying more to get the work done.
5 Those peaks of major capital investment can
6 be costly and disruptive to implement.

7 Whereas, with the concessionaire,
8 they'll recognize that it's better to have
9 constant investment in the system. You
10 won't get the peaks and valleys which would
11 lead to lower costs and they will understand
12 that putting -- investing money leads to a
13 return for them and that will have long term
14 savings, whereas, our profits tend to be
15 more hit and miss and there are also factors
16 that factor into when we are actually able
17 to do bonding.

18 LEGISLATOR KOPEL: And your
19 contract would provide for a level of
20 performance?

21 MR. NAUGHTON: Yes. And we don't
22 want to get too much into the ultimate
23 concessionaire contract, but there will be
24 some type of provision that says what
25 condition the system has to be returned back

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2 to the county. I'm assuming some type of
3 capital improvements made over time and that
4 will protect our interest.

5 LEGISLATOR KOPEL: What I was
6 concerned about as well is that, towards the
7 end, that would -- that the investor kind of
8 would let things slide.

9 MR. NAUGHTON: And that's
10 something that we've talked about internally
11 with some of our attorneys is that it's
12 possible for them to have some of their
13 payments escrowed so that the money will sit
14 into a fund for future capital investment.
15 So that's a possibility of how you would
16 address that issue.

17 LEGISLATOR KOPEL: I wish that
18 that we would have -- presumably that the
19 county would have some sort of influence.
20 When I say "we" 30 years, it ain't going to
21 be me.

22 MR. NAUGHTON: Yes, the
23 importance, the lawyering work that has to
24 be done on this future deal, is going to be
25 extremely important, and it's going to --

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2 because we want to make sure we protect our
3 future interests.

4 But now I'm going to skip over
5 eight for now Conal, I'm sorry, to stay on
6 Legislator Kopel's questions we will go to
7 slide ten.

8 MR. CONKLIN: So, the next two
9 slides are addressing a lot of the points
10 that we have been discussing here this
11 afternoon which basically is, how can a
12 concessionaire achieve the required returns
13 that they're looking for while providing the
14 county with a reasonable payment for the
15 revenue stream that they will receive at the
16 same time having rate increases that would
17 in the sewer system that are less than what
18 the rate increases would be if we do
19 nothing, especially considering the fact
20 that you pointed out that their borrowing
21 costs, the concessionaire's, would be higher
22 since they borrow on a taxable basis, and
23 the county borrows on a tax exempt basis.
24 Hopefully we will address that in the next
25 two pages.

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2 The first point is the financing
3 cost. Although it's important, it's only
4 one issue in a transaction that has a lot of
5 pieces. There's a lot of areas where a
6 concessionaire can generate value, and I
7 will highlight some of those points,
8 although we do address that point, the
9 financing piece isn't the only piece, which
10 I will get to at the bottom of the page.

11 Their cost is not going to be
12 much higher than what the county's borrowing
13 cost is, even though we borrow on a tax
14 exempt basis. And we will get into that.

15 But in terms of where they can
16 get the extra value and offset the slightly
17 higher financing costs, first point is that
18 Eric addressed earlier, the Lamont report,
19 they highlighted that these investors make
20 their returns by being more efficient,
21 making capital investments more efficiently,
22 so on and so forth.

23 Another area from Lamont is given
24 the scale and the expertise of these
25 concessionaires, they may be able to

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2 negotiate additional concessions from SUEZ
3 that the county hasn't. I believe that the
4 county did a very good job of negotiating
5 the contract.

6 LEGISLATOR KOPEL: Why would that
7 be, that they're able to negotiate
8 something, don't they already have a
9 contract?

10 MR. CONKLIN: There is a contract
11 with SUEZ. We contemplate that that
12 contract would stay in place would just be a
13 sign to the concessionaire, but --

14 LEGISLATOR KOPEL: What is the
15 leverage, doesn't the county have an out?

16 MR. CONKLIN: A five year out.

17 LEGISLATOR KOPEL: So that would
18 be the leverage?

19 MR. CONKLIN: Possibly.
20 Possibly. So these, again, we don't want to
21 get too far ahead of ourselves because this
22 is for the next stage, we would have to
23 discuss that, but this is what these
24 concessionaires do where this is just one
25 focus for the county. This is what they do.

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2 This is what they focus on. They have deals
3 all over the world and they probably,
4 depending on the concessionaire, they may
5 have done transactions with SUEZ because
6 there's a few operators worldwide in this,
7 so because of their leverage and their scale
8 and their expertise in negotiating these
9 types of transactions, they may be able to
10 squeeze a few more dollars out of SUEZ.

11 Again, I don't want to insinuate
12 that the county didn't do a good job, that's
13 not the point, but this is where they make
14 their money, how they do it.

15 Again, these are all a bunch of
16 points, I'm not saying they're going to
17 achieve all of these but that's one area.

18 In terms of the financing costs,
19 again, the county borrows on a tax exempt
20 basis, but we believe the concessionaires
21 all in costs when you combine equity and
22 debt isn't going to be that much higher,
23 maybe about a half of percent to one percent
24 higher than the county.

25 The reason for that is, by some

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2 estimates, there's about \$100 million of
3 equity in these infrastructure funds waiting
4 to be invested.

5 When you consider that they can
6 leverage this with debt four to five times,
7 that means there's four to five billion in
8 money waiting to be invested.

9 There's been very few sewer
10 projects such as this. So this would draw a
11 lot of attention and the people have that
12 much money sitting, they need to invest it
13 somewhere, so there is a good chance that
14 they'd be willing to accept lower returns
15 than they would have a few years ago.

16 The fact that this revenue stream
17 would be very stable and secure, is another
18 reason why they may accept a lower return.

19 As people probably know,
20 borrowing rates are at a historical low so
21 the spread or the difference between taxable
22 and tax exempt has narrowed, so it's not as
23 great as it used to be.

24 LEGISLATOR KOPEL: Which once
25 again points to your assertion that any

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2 savings would not be coming from the
3 differential -- well, certainly would not be
4 related to that, it would have to actually
5 overcome the differential.

6 MR. CONKLIN: Yes. That is
7 correct. But my point is that differential
8 may not be as great as some people think.

9 LEGISLATOR KOPEL: And may not be
10 as hard to overcome you're saying?

11 MR. CONKLIN: Exactly. So, we're
12 thinking, and this is based on conversations
13 with advisors and people that are familiar
14 with this industry, required equity terms
15 may not be much more than seven and a half
16 to eight percent and we combine that with
17 the split, they may find 85 percent debt, 15
18 percent equity, all in, you may be talking
19 about a required return for them of only
20 around five percent which, again, is not
21 much higher than the county's long term tax
22 exempt rate.

23 Here we listed, for comparison
24 purposes, there was a deal recently
25 completed, Pennsylvania Rapid Bridge

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2 Replacement, and the concessionaire's cost
3 of capital, again, all in, was under five
4 percent and that utilized the 92 percent
5 debt, eight percent equity split.

6 LEGISLATOR KOPEL: When was that?

7 MR. CONKLIN: I don't have a date
8 on that.

9 LEGISLATOR KOPEL: More or less.

10 MR. CONKLIN: It was recent.
11 Have to get back to you on that. Recent.

12 LEGISLATOR KOPEL: Not necessary.
13 Recent is good enough.

14 MR. CONKLIN: Yes, within the
15 last year.

16 Just moving on. Again, I just
17 want to make it clear that we are not saying
18 they would be able to take advantage of all
19 these points but these are possibilities.
20 There's a new program, a federal program,
21 the water Infrastructure Financing
22 Innovation Act, and this is modeled on a
23 program that provided low interest rate
24 loans for P3 transportation projects.

25 So there may be an opportunity to

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2 take advantage of this where the
3 concessionaire can get some financing at a
4 lower subsidized rate. No guarantee.

5 LEGISLATOR KOPEL: I wanted to
6 mention though, and I think you and I
7 covered that, Eric, is that disasters would
8 be excluded.

9 In other words, what I am
10 concerned about, what I had been also
11 concerned about is another Sandy which
12 received massive amounts of federal funding
13 and if it were controlled by a private
14 entity would we still get that kind of
15 funding.

16 MR. DENION: Conal Denion, County
17 Attorney's Office. Our goal is to structure
18 the transaction to keep us FEMA and state
19 grant eligible.

20 LEGISLATOR KOPEL: You would do
21 that by retaining a certain amount of --

22 MR. DENION: Retaining ownership
23 is --

24 LEGISLATOR KOPEL: It's an
25 ordinary risk?

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2 MR. DENION: Right. But that
3 would be matched by we believe the usual
4 FEMA and other money --

5 LEGISLATOR KOPEL: Well, FEMA
6 money might not come to fruition if the
7 risks were born by a private entity. If the
8 risk, to that extent, disaster where it came
9 by the county that would potentially still
10 be eligible.

11 MR. DENION: I think we're
12 getting ahead of ourselves but the goal
13 would be to make sure we share in that risk
14 to the extent possible but it's probably
15 standard in the industry that they're not
16 taking on the extreme risks but we believe
17 those risks are typically met by federal
18 grants, disaster grants, which we -- by
19 retaining ownership, we would be able to
20 qualify for still.

21 MR. CONKLIN: Just to finish this
22 page going back to another financing or debt
23 point, whereas, the county, under local
24 finance law, when we borrow, we structure
25 with level debt service meaning that every

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2 year we are paying off principal and
3 interest and it adjusts so that we're pretty
4 much paying the same amount of debt service
5 every year.

6 Obviously, private companies
7 don't have to follow that so that a lot of
8 times they'll structure their borrowings
9 with bullet or balloon maturities meaning
10 they'll just pay interest for whatever ten,
11 15 years until maturity and then they make
12 the large principal payment at the end so
13 that gives them a benefit when they're
14 discounting the cash flows back which
15 follows into the next point.

16 Again, what the county is
17 concerned of, naturally, is from a budgetary
18 standpoint, that investors are more
19 concerned with pre cash flow, that's how
20 they'll value a transaction. What is the
21 pre-cash flow coming to them which would be
22 different than how a county or we would look
23 at that.

24 Another point, again, there is no
25 guarantee, as said before, we would

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2 structure this as lease so we're not selling
3 the system, but, given that it could be a
4 long term lease, there may be certain tax
5 benefits that a concessionaire can take
6 advantage of, certain depreciation, and
7 there are things that we'll find out and
8 explore when we get down the road.

9 So, in summary, the point here
10 is, even though a concessionaire's financing
11 costs would be taxable, higher than the
12 county's, it wouldn't be much higher based
13 on current rates and then factor in all
14 these other areas of how they can generate
15 efficiency savings due to their expertise
16 and there's the other factors I mentioned,
17 we truly believe it is very reasonable that
18 they can achieve their returns, provide the
19 county with fair value for the revenue
20 stream, and have rate increases lower than
21 what we would do if we don't do anything at
22 all while achieving the returns they need.

23 MR. DENION: Going back to slide
24 eight. This slide addresses some of the
25 public concerns about P3s and highlights the

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2 difference between the perception and the
3 reality in this area.

4 First would be the perception
5 that public private partnership equals
6 privatization.

7 The reality is really that public
8 partners have the opportunity to retain
9 ownership and oversight and the public
10 sector can in fact define the project
11 requirements.

12 The second perception, that P3s
13 lead to job losses. The reality, additional
14 investment can help protect and produce more
15 jobs. The new infrastructure can help
16 stimulate economic growth.

17 The next perception is that the
18 quality of service would decline under the
19 P3 model. In fact, the reality is that the
20 agreement would regulate the performance
21 condition of the asset for the term as Eric
22 described earlier and the contractually
23 agreed upon penalty and termination
24 provisions would protect the county and
25 system users.

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2 The next perception is that the
3 public sector loses control over services.
4 The reality is that the public sector can
5 have direct oversight and retain a contract
6 management role with regular reporting
7 requirements to keep the public informed.

8 The next perception is that
9 private investors can earn unlimited
10 profits. Again, rates will be controlled by
11 the agreement, not by the investors. There
12 would be revenue for profit sharing
13 requirements which can protect the county,
14 and if there are any gain sharing by the
15 private sector there can be requirements
16 built into the contract to protect against
17 windfalls and require sharing with the
18 county.

19 The final perception is that P3s
20 lead to increased costs of services. I
21 think as we been talking about here today,
22 that's --

23 LEGISLATOR KOPEL: That's exactly
24 what we're trying to find out.

25 MR. DENION: Exactly. In this

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2 time of governmental budget constraints,
3 alternate sources of funding have to be
4 considered to meet infrastructure needs.

5 I think one thing we don't want
6 to lost track of and it's critical to
7 educate the public that P3s can in fact
8 provide value to residents.

9 LEGISLATOR KOPEL: Are you just
10 about done?

11 MR. NAUGHTON: Yes. So then just
12 looking at slide 12, why KPMG? One, they've
13 worked successfully with the county on the
14 Coliseum project; they served New York State
15 and is accustomed to working in Albany;

16 They have a proven experience in
17 recent multi billion dollar P3 transactions
18 that meet public policy goals. They have a
19 deep familiarity with the global investor
20 community and the factors that drive value;

21 They have significant US and
22 international experience advising public
23 utilities on financial, accounting, and
24 organizational issues;

25 They have a depth of resources to

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2 mobile quickly and meet our needs in a cost
3 effective manner;

4 KPMG has a particularly strong
5 practice in state and local government
6 accounting and tax services;

7 And what was really important to
8 the committee was that they felt that KPMG
9 was an objective financial advisor, they're
10 not underwriters, lenders, or investors.

11 So we felt that they would
12 provide us with an unbiased opinion towards
13 the -- their opinion will be unbiased
14 towards a particular outcome.

15 This slide here just shows
16 various deals that they have worked on,
17 their experience.

18 And with that, just going to the
19 last page, Steve. So, we feel that a P3
20 deal could do many things;

21 One, first thing, retire sewer
22 debt. It's going to be a transparent and
23 stable rate setting process;

24 We're going to transfer the risk
25 of long term capital investment to the

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2 concessionaire to achieve a county agreed
3 asset condition;

4 We will also look for an
5 opportunity to reduce the total county debt;

6 This is not a one shot. We are
7 going to use the proceeds to provide
8 recurring debt service savings, so we are
9 looking at this as a method to provide
10 savings over a 10 to 15 year period;

11 It also gives us an ability to
12 improve our cash liquidity, we will have
13 more cash on hand which will reduce our need
14 to borrow short term;

15 We can reinvest our proceeds in
16 the county;

17 We can come up with strategic
18 investments that will help to further
19 improve the county's finances and lead to
20 our structural balance by 2018.

21 With that, we ask this approve
22 Task 1.

23 LEGISLATOR KOPEL: Thank you. I
24 know that I had some serious concerns and I
25 expressed it last time and you've spent a

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2 lot of time preparing this and addressing it
3 as well as having several meetings with me
4 personally.

5 So I am persuaded to the extent
6 of saying that we ought to at least go ahead
7 and find out if this is real. In other
8 words, if this is going to provide such
9 significant benefits to the county
10 financially, with the understanding
11 obviously that that analysis would be
12 presented to this body which would then
13 determine if we agree with the
14 administration's assessment, assuming the
15 administration determines that it is worth
16 while going forward.

17 So, as long as we reserve our
18 rights, I think that it's probably worth
19 spending the money on phase one and thank
20 you.

21 LEGISLATOR KOPEL: Thank you,
22 Legislator Kopel and thank you for your
23 input, and I think with the amendment that
24 we've made that we are just seeking approval
25 of Task one and we also addressed questions

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2 that were raised by Legislator Bynoe who is
3 not on the committee today where she was
4 concerned about us starting another task and
5 not necessarily doing just task one. This
6 amendment now just clearly states it's just
7 task one that we have to seek an approval
8 for.

9 CHAIRWOMAN GONSALVES: Minority
10 Leader Kevan? Who is going? Legislator
11 DeRiggi-Whitton.

12 LEGISLATOR DERIGGI-WHITTON: I
13 understand that we're starting with phase
14 one, yet the contract addresses all four
15 phases.

16 My first question is, why don't
17 we just change the contract to only be phase
18 one?

19 MR. NAUGHTON: That is not
20 necessary because the resolution clearly
21 states that we're asking the Rules Committee
22 just to approve task one, that we have to
23 come back to you for the other task.

24 We will only encumber -- even
25 though the NIFA form was not adjusted, the

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2 NIFA form will be just to encumber task one,
3 and it's clearly understood that we can't
4 move forward without this legislative body
5 saying it can move forward.

6 LEGISLATOR DERIGGI-WHITTON: So
7 what if hypothetically this company takes a
8 look at it and says, you know what, this
9 doesn't benefit the county financially, will
10 we then go on to task two?

11 MR. NAUGHTON: I think if they're
12 analysis is very clear, that it doesn't make
13 sense to move forward, then we will not move
14 forward.

15 LEGISLATOR DERIGGI-WHITTON: So
16 they have a financial benefit in saying that
17 this will be beneficial to the county. For
18 instance, if they say no, we'll just stop at
19 phase one and we would never go to phase
20 two.

21 MR. NAUGHTON: No. I think if
22 you understand more the work that the vendor
23 has to do, the number of hours, they don't
24 want to waste their time on a project that
25 they know can't possibly work.

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2 LEGISLATOR DERIGGI-WHITTON: But
3 they're getting a good amount of money for
4 phase one. I would take phase one as a
5 business. I'm sure they're a business.
6 They want to make money. They're getting a
7 good amount of money just for phase one.

8 MR. NAUGHTON: While you may
9 think it's a good amount of money, I'm not
10 sure if they think it's a great amount of
11 money.

12 LEGISLATOR DERIGGI-WHITTON: I'm
13 sure they think it's worth their time.
14 Listen, the bottom line is, we're not going
15 to phase two, phase three or phase four
16 unless they tell the county that this
17 project is worth doing financially for the
18 county.

19 MR. NAUGHTON: I think something
20 that needs to be clarified is, they're not
21 making a recommendation to us. They're
22 saying to us, based on certain scenarios,
23 this is how much money county can earn.
24 They're not saying, move forward or not.
25 They're saying, based off of this type of an

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2 assumption of let's say a two percent rate
3 increase, this is how much revenue someone
4 will be willing to pay. That's not a
5 recommendation. That's evaluate, doing a
6 financial analysis.

7 LEGISLATOR DERIGGI-WHITTON: But,
8 again, let's say that their findings are
9 that the county will not benefit from this,
10 phase one, that's it, it's over, there's no
11 more money for them. No more phases. So in
12 opinion, that's a real conflict of interest.
13 They're getting paid per recommendation.
14 It's almost worth giving them all four
15 phases. Because, at least then, if we give
16 them all four phases, we can trust them to
17 be more honest.

18 Right now they are not getting
19 phase two unless they advise us that this is
20 a good deal. That's really the long and
21 short of it, Howard. I respected the fact
22 that --

23 LEGISLATOR KOPEL: It's a little
24 bit of a conspiracy theory.

25 LEGISLATOR DERIGGI-WHITTON: No.

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2 It's a little bit of a situation that we're
3 giving a company --

4 LEGISLATOR KOPEL: They're one of
5 the largest CPA firms in the world and all
6 we're doing is hiring, doing an analysis,
7 and we have the right to say, no go. For
8 that matter, I don't know if this is a fact,
9 but if we were to decide to ask for someone
10 else to do the rest of it, we probably could
11 do it legally.

12 LEGISLATOR DERIGGI-WHITTON: No.
13 We're approving the contract that has all
14 four phases in it today.

15 LEGISLATOR KOPEL: No.

16 LEGISLATOR DERIGGI-WHITTON: Yes,
17 we are. They're starting with phase one,
18 but they have all four phases in the
19 contract. They ever not amended the
20 contract, Howard. If they amended the
21 contract I would feel better.

22 LEGISLATOR KOPEL: We have an out
23 after phase one, correct?

24 MR. NAUGHTON: We can cancel this
25 contract at any time.

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2 LEGISLATOR KOPEL: We can cancel
3 after phase one.

4 LEGISLATOR DERIGGI-WHITTON: My
5 opinion is, this is not --

6 LEGISLATOR KOPEL: But, Delia,
7 forgive me, with what you're suggesting,
8 this can't be done ever with anyone because,
9 locked in to phases two, three and four, but
10 we're not.

11 LEGISLATOR DERIGGI-WHITTON: I
12 think we should have separate contracts.
13 Howard, though, what I'm concerned about is
14 getting an objective decision from this
15 company and if their future earnings are
16 dependent upon it being a good deal for the
17 county, I'm not saying they're not a
18 reputable company, but the temptation there
19 is so real, it's so blatant.

20 LEGISLATOR KOPEL: But it happens
21 with virtually every engineer --

22 LEGISLATOR DERIGGI-WHITTON: Not
23 unless we have contractors that we can keep.

24 LEGISLATOR KOPEL: No, no. Every
25 engineering contract that has multiple

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2 phases, if they do phase one and say this
3 ain't going to fly --

4 LEGISLATOR DERIGGI-WHITTON: You
5 know, Howard, this is such an important
6 thing for our residents.

7 LEGISLATOR KOPEL: We can always,
8 as I say, do we have the option after phase
9 one to cancel the contract and then decide
10 we want to move forward with someone else?

11 MR. NAUGHTON: The answer to that
12 is no. But after phase four, Task four, we
13 can choose someone else.

14 The whole idea is that task one
15 is just a scenario analysis. The next phase
16 is to do an RFQ, a market sounding.

17 It would not be feasible or make
18 sense to then say to someone else, okay, now
19 that we have this analysis, can you now take
20 their analysis and now figure out what you
21 think --

22 LEGISLATOR KOPEL: Be more
23 expensive.

24 MR. NAUGHTON: Definitely.

25 LEGISLATOR KOPEL: Delia,

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2 consider that this is for a company for a
3 firm the size of KPMG, what is the full
4 value, 800 something?

5 MR. NAUGHTON: The first four
6 phases is a little over \$800,000.

7 LEGISLATOR KOPEL: It's invisible
8 to them in terms of their annual billings.
9 It really is.

10 LEGISLATOR DERIGGI-WHITTON:
11 Howard, honestly, from you, I'm surprised to
12 hear that.

13 LEGISLATOR KOPEL: I'm simply
14 saying that in terms of their annual
15 billings it's --

16 LEGISLATOR DERIGGI-WHITTON:
17 Howard, it's almost a million dollars of our
18 taxpayers money that we are paying to a
19 company that the percentage that they get is
20 contingent upon how positive they make a
21 major major deal for the county.

22 LEGISLATOR KOPEL: With respect,
23 I think you are being unrealistic.

24 LEGISLATOR DERIGGI-WHITTON: I
25 don't think so. They are getting rewarded

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2 for advising us that this is a great deal.

3 MR. NAUGHTON: No, they're not.

4 LEGISLATOR DERIGGI-WHITTON: Yes,
5 they are, because then we're going to phase
6 two. If they say it's a bad deal, then
7 we're not going to phase two, as you said
8 before.

9 MR. NAUGHTON: Again, they have
10 not offered an opinion. They are giving you
11 a financial analysis.

12 For example, if you ask the
13 Office of Budget Review to do an analysis,
14 they will tell you, here's how much you can
15 get, they're not saying whether you should
16 move forward or not.

17 LEGISLATOR DERIGGI-WHITTON:
18 Correct.

19 MR. NAUGHTON: That's what a
20 financial analysis is.

21 LEGISLATOR DERIGGI-WHITTON: And
22 their future salary is not based upon their
23 opinion which is why we would like the
24 contract idea for any independent person in
25 our county.

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2 This company will not get their
3 next paycheck from our county unless --

4 MR. NAUGHTON: They will move on
5 to the next deal.

6 LEGISLATOR DERIGGI-WHITTON:
7 Unless they go to the next phase, which
8 would be that this is something that is
9 beneficial to the county.

10 So, in my opinion, they have to
11 give a positive image of what is going to
12 happen, sort of like with the bus, with the
13 route cuts, you know, no rate increases, you
14 know, they'll have to give a positive thing
15 to get to the next step.

16 So, if they do that, they get
17 another paycheck from the county. You can
18 say a million dollars or \$800,000 is nothing
19 but I think it's a lot. Again, I understand
20 why we stopped it from going from one to
21 four to three, but we really are putting
22 ourselves in a very vulnerable situation.

23 LEGISLATOR KOPEL: Does KPMG or
24 does any of these firms, do they ever
25 recommended or not recommend that something

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2 does not pay?

3 MR. NAUGHTON: Yes. I believe,
4 actually, Indiana, they actually did a
5 recommendation to not move forward.

6 LEGISLATOR DERIGGI-WHITTON: Did
7 they have it broken down this way, where
8 they only got the first phase?

9 MR. NAUGHTON: I believe they
10 were actually on a contingency fee basis.

11 LEGISLATOR DERIGGI-WHITTON: Yes,
12 that would be good to see because I want to
13 see if they only got the first phase and
14 then cancelled in the first phase.

15 MR. NAUGHTON: I believe they
16 probably didn't get anything because the
17 deal didn't go forward.

18 If you recall last year we
19 presented a contract where they would have
20 been on retainer for six months at a cost of
21 about \$270,000, but after several venues
22 looked at this, we are now presented with a
23 deal where we are going to be paying more,
24 but that's where we are and we are willing
25 to live with that.

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2 LEGISLATOR DERIGGI-WHITTON:

3 Willing to live with that?

4 MR. NAUGHTON: Because

5 unfortunately others, such as yourself,

6 criticized the previous deal which was a

7 success fee base where they would have

8 gotten just \$270,000 to do all first four

9 phases, and your side thought that was a

10 very bad idea.

11 So, instead, we're going to pay

12 them potentially \$870,000 to do the same

13 work.

14 LEGISLATOR DERIGGI-WHITTON: Is

15 that negotiable?

16 MR. NAUGHTON: No. Because we

17 went through the RFP process.

18 LEGISLATOR DERIGGI-WHITTON: I'm

19 not talking to you because you're not

20 actually the one who decides it, unless you

21 represent the company.

22 MR. NAUGHTON: No. Because we

23 went through the RFP process and based off

24 the input of the Legislature, the input of

25 NIFA, we laid out a transaction that was

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2 task based because people felt the so-called
3 success fee was a bad model so we came here.

4 LEGISLATOR DERIGGI-WHITTON: You
5 know what, Eric, I don't think that's really
6 a bad idea. I think it's worth \$800,000 if
7 we get an honest opinion. I don't think
8 it's set up the right way though to get an
9 honest opinion. I really honestly feel that
10 way. I feel if we got a proper analysis
11 with all four layers being addressed, that's
12 fine, but each layer is contingent upon them
13 telling us it's a good deal and I don't
14 think that's the right way to do it.

15 CHAIRWOMAN GONSALVES: Legislator
16 DeRiggi-Whitton, do you have another
17 question?

18 LEGISLATOR DERIGGI-WHITTON:
19 Thank you for asking, but, no.

20 CHAIRWOMAN GONSALVES: Legislator
21 Solages.

22 LEGISLATOR SOLAGES: Presiding
23 Officer, just a point of inquiry, is it
24 possible that you could swear the witnesses
25 in as per the County Charter because there

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2 are inherent conflict of interest issues
3 here very similar to when the wife of the
4 sheriff came to testify, and I have a hard
5 time just relying upon the word of those
6 testifying because I find it to be self
7 serving.

8 MR. NAUGHTON: I will show you
9 that I'm not married to anyone at KPMG if
10 that's a concern.

11 CHAIRWOMAN GONSALVES: They are
12 independent of KPMG. Come on. There's no
13 conflict -- they're doing the of the county
14 not the job of KPMG.

15 Let me say something to you,
16 Mr. Naughton, is it my understanding that at
17 some point in time that they have to come
18 back to us and give us a congress report of
19 some kind as to where they're at or do they
20 have to finish with phase one?

21 MR. NAUGHTON: After phase one
22 they will come back and provide an analysis
23 of, based off the scenarios of what they
24 think we can achieve, and that information
25 will be shared with the Rules Committee.

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2 We will probably ask that it be
3 done in executive session so it does not
4 impact the potential transaction, but that
5 information will be shared.

6 CHAIRWOMAN GONSALVES: Is there a
7 time frame in which they are to complete
8 what they are set out to do?

9 MR. NAUGHTON: We have not given
10 them a time frame as to how fast that should
11 be done, but I think a best guess is
12 probably like a three month window. Three
13 months it would take them to finish task
14 one.

15 CHAIRWOMAN GONSALVES: And at
16 that time?

17 MR. NAUGHTON: At that time we
18 would come -- if the findings suggest that
19 we should move forward, we would come back
20 to the Legislature with phases two through
21 four and ask you to approve that.

22 CHAIRWOMAN GONSALVES: What is
23 the cost of the first phase to the county?

24 MR. NAUGHTON: The first phase is
25 I believe \$187,000.

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2 CHAIRWOMAN GONSALVES: Now,
3 Legislator Solages, I'm not going to swear
4 them in, I'm sorry. You have a question?

5 LEGISLATOR SOLAGES: Yes, I do.
6 In light of all the P3 issues with the jail
7 which directly relates to performance
8 management, we believe it is crucial to get
9 the answers to questions regarding the
10 current P3 in the sewer system before the
11 county explores yet another P3 with the
12 sewer system.

13 I respect that you provide
14 information regarding KPMG but it could be
15 that firm, Morgan Stanley, a firm run by
16 Bernie Madoff, who cares, it just -- I need
17 to have confidence that there's going to be
18 a recommendation that looks out for hard
19 working residents. I mean, is there any
20 guarantee that there will be no rate
21 increases?

22 MR. NAUGHTON: I think it's very
23 clear and I stated this last year, there is
24 going to be a rate increase if it stays in
25 the county, there's going to be a rate

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2 increase if it's with the concessionaire.

3 LEGISLATOR SOLAGES: Which one
4 will be less?

5 MR. NAUGHTON: We will determine
6 that with the analysis, but I think
7 initially, as I stated when the Lamont
8 Financial Services looked at this, they felt
9 initially it would be cheaper with the
10 concessionaire.

11 LEGISLATOR SOLAGES: But if
12 there's a rate increase either way we go
13 forward and one scenario involves at least
14 having elected officials having a say rather
15 than another scenario where it's a private
16 interest that really doesn't care much for
17 the interests of those that they serve,
18 which scenario would be better for county
19 residents?

20 MR. NAUGHTON: I don't know if
21 maybe -- what we try to make very clear is,
22 the rate that's set with the concessionaire
23 is going to be determined by this body.

24 The contract will say what the
25 future revenue will be for the

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2 concessionaire. They cannot raise revenue
3 on their own. This is something that we
4 would have to agree to as a collective group
5 by your vote before we move forward.

6 LEGISLATOR SOLAGES: But wasn't
7 that the same scenario with the take over
8 for the bus system? And what explanation is
9 there for the constant rate increases, the
10 consistent rate increases there?

11 MR. NAUGHTON: Again, I think I'm
12 making it very clear. There are going to be
13 rate increases over the next 40 years. We
14 can not maintain a sewer system over the
15 next 40 years without raising rates.

16 LEGISLATOR SOLAGES: Let's talk
17 about the next four years.

18 MR. NAUGHTON: As I outlined for
19 you in the slide, at 2018 we're faced with a
20 deficit of roughly \$28 million. That's not
21 going away. There is one source of revenue
22 for the sewer system. That's property taxes
23 right now.

24 If perhaps we are successful with
25 charged non profits, that would help. Right

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2 now, we have been waiting for that for over
3 three years.

4 LEGISLATOR SOLAGES: I
5 understand. I reserve my questions. Thank
6 you.

7 CHAIRWOMAN GONSALVES: Minority
8 Leader Kevan.

9 LEGISLATOR ABRAHAMS: Thank you,
10 Madam Presiding Officer.

11 How are you, Mr. Naughton?

12 MR. NAUGHTON: Good. And
13 yourself?

14 LEGISLATOR ABRAHAMS: There's
15 been a lot said on the floor, and I just
16 want to make sure I'm clear. What we are
17 considering today is the entire contract or
18 just the first phase of the contract?

19 MR. NAUGHTON: We're asking the
20 Legislature to approve us to allow KPMG to
21 complete task one.

22 LEGISLATOR ABRAHAMS: What is
23 before us?

24 MR. NAUGHTON: I don't have the
25 resolution before me, but from what I read

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2 before --

3 LEGISLATOR ABRAHAMS: The only
4 reason I ask, Eric, is I have the entire
5 contract in front of me, has everything.

6 MR. NAUGHTON: I will let the
7 County Attorney's Office, Conal Denion,
8 speak.

9 MR. DENION: Correct. It's the
10 first of four tasks which are in the
11 contract but the approval is limited to the
12 first task.

13 LEGISLATOR ABRAHAMS: So the
14 first four tasks is in the contract,
15 E-207-16, in there today?

16 MR. DENION: Correct.

17 LEGISLATOR ABRAHAMS: I know
18 there has been a lot of back and forth
19 whether the phases, whether we are
20 appropriating enough money for phase one
21 versus not the phases two through four.

22 I just want to make sure for a
23 point of clarity, what provision and maybe I
24 might need Gerry for this, what provision in
25 the Charter gives us the power by a

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2 resolution to do this?

3 I can't find anywhere in the
4 charter that allows to us do this. To do
5 part of a contract. I'm looking at, Gerry,
6 I'm looking at Section 103 that speaks to
7 specific powers, so if you can elaborate on
8 the section that the County Attorney is
9 looking at.

10 MR. PODLESK: Let me put it this
11 way, the contract doesn't follow the
12 resolution. The resolution follows the
13 contract. So if the resolution says that it
14 is only for task one approval, even though
15 it might be before you as containing two,
16 three, and four, it is only approving task
17 one.

18 LEGISLATOR ABRAHAMS: I
19 understand that, Gerry, but, again, where
20 does it say in Section 103 that we have the
21 power by resolution to only do part of the
22 contract?

23 MR. POSDLESK: You're not doing
24 only part of the contract as far as the
25 resolution is concerned. You are only doing

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2 -- your task one is the contract.

3 LEGISLATOR ABRAHAMS: No. But
4 the contract 207-16 includes all four
5 phases.

6 MR. PODLESAK: Correct, but the
7 contract follows the resolution. It doesn't
8 go the other way around. If the resolution
9 says it's only for task one, task one is the
10 contract.

11 LEGISLATOR ABRAHAMS: We're going
12 around in circles. But what gives the
13 Legislature the power to do this by
14 resolution? That's what I'm driving at.

15 Because then we could do that for
16 all contracts. Shoot, I would like to start
17 doing that a lot.

18 MR. PODLESAK: You could very
19 well.

20 LEGISLATOR ABRAHAMS: If there
21 are contracts that I can start breaking up,
22 all I got to do is get a majority of the
23 votes, let's start breaking them up.

24 MR. PODLESAK: Well, that's not
25 what's happening here. This is being

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2 submitted by the administration and what is
3 task two, three and four is just superfluous
4 to the resolution. So whatever you have in
5 front of you, it is only task one that is
6 being approved. That is the resolution.

7 LEGISLATOR ABRAHAMS: It just
8 seems like we are starting a very messy
9 precedent.

10 I do believe that if what we're
11 doing is the actual resolution, then we
12 should consider having the contract amended
13 to reflect what the resolution states.

14 MR. PODLESAK: You don't have to
15 do that for the simple reason that the
16 contract is following the resolution.

17 LEGISLATOR ABRAHAMS: I
18 understand that but there is nothing from
19 what I can read, and our counsel, that gives
20 this legislative body the ability to do this
21 where we are only voting on part of a
22 contract. It's not like the contract has
23 changed. It's still the same contract, a
24 point of clarity, I can say to the folks on
25 the committee, the contract is the same

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2 exact contract that this legislative body
3 considered two weeks ago; yes or no?

4 MR. PODLESACK: I would assume yes
5 but the resolution has been changed.

6 LEGISLATOR ABRAHAMS: But the
7 resolution has been changed, yes. So what
8 I'm saying is, I don't see anything in
9 Section 103 that gives this Legislative body
10 the authority by resolution to do part of a
11 contract.

12 MR. PODLESACK: Let me do this
13 another way.

14 LEGISLATOR ABRAHAMS: But is
15 there a precedent that basically -- I'm
16 giving him two thoughts to think about. Are
17 we establishing a precedent where this
18 Legislature, if the Presiding Officer and I
19 come to an agreement that we can start to
20 make resolutions to amend contracts and only
21 do parts of them, parts that we like?

22 MR. PODLESACK: This becomes a
23 much more complicated question because I
24 have no idea what the communication has been
25 with KPMG.

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2 If this is a situation that they
3 are willing to live with, then it's not a
4 partial contract. The contract itself is
5 only task one. What other additional
6 verbiage that might be included is not
7 relevant. There may be a further contract
8 going forward.

9 LEGISLATOR ABRAHAMS: It just
10 sounds like we should amend the contract and
11 do that, so I don't know who spoke to KPMG,
12 I don't know who talks to them on a daily
13 basis, it really doesn't matter, actually.

14 I just want to make sure of two
15 things that; one, that what I believe
16 Legislator Kopel tried in good faith tried
17 to negotiate, whether we agree with it or
18 not, gets actually done that way;

19 And, two, I just hate to think we
20 are establishing a precedent where, by
21 resolution, if contracts come to us in parts
22 we can support what parts we like. That's
23 what it seems like to me because the
24 contract 207-16 has not changed one iota
25 from two weeks ago. All four phases are

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2 still int his contract agreement.

3 The only thing, and I agree with
4 you, Gerry, that's changed is now we have a
5 resolution before us that indicates -- the
6 only thing that I can see that has changed
7 is the actual resolution that's before us
8 today.

9 Gerry, I'm sorry, I just want to,
10 one, obviously if this Legislature decides
11 to proceed even in light of this, I just
12 want a written opinion from the County
13 Attorney that indicates that their
14 interpretation of Section 103, or maybe
15 they're looking at some other section, that
16 indicates that we have the actual authority
17 to do this.

18 MR. PODLESACK: I will pass your
19 request along to the County Attorney.

20 LEGISLATOR ABRAHAMS: This is for
21 the other gentleman. The other question is
22 actually tied to KPMG, I'm sorry, AJ
23 Consulting Services, LLC contract, E-90-16.

24 I don't know if you are familiar
25 with it. In one of the provisions of the

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2 contract, in that contract it talks about
3 explore privatization and concession
4 alternative scenarios for various county
5 assets including the sewer and storm water
6 resources district. Are you familiar with
7 that provision?

8 MR. NAUGHTON: Yes.

9 LEGISLATOR ABRAHAMS: Just
10 elaborate on that section and how it
11 pertains to what we are considering today.

12 MR. NAUGHTON: Okay. I think, if
13 you recall, this concept has been in the
14 county's plan since 2011.

15 So, when the county first hired
16 AJ Consultants, looking at various ideas on
17 saving monies, there were discussions back
18 there on that. They have not done any work
19 in the last two years regarding that issue.
20 But that was in their initial contract to
21 help us come up with ideas.

22 LEGISLATOR ABRAHAMS: So they
23 haven't done any work with regard to this
24 issue?

25 MR. NAUGHTON: Not in the last

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2 two years.

3 LEGISLATOR ABRAHAMS: How about
4 before that?

5 MR. NAUGHTON: Yes, they did.

6 LEGISLATOR ABRAHAMS: How much
7 work?

8 MR. NAUGHTON: Offhand I can't
9 state because I wasn't here in 2011. I was
10 here for part of 2012. But they did assist
11 the county in helping craft some of our
12 plans.

13 LEGISLATOR ABRAHAMS: Anything
14 that could be utilized today?

15 MR. CONKLIN: No. When you say
16 utilize, it was very tangential. It's not
17 the type of work that KPMG would be doing.

18 LEGISLATOR ABRAHAMS: Do you have
19 that work product?

20 MR. CONKLIN: We can see what's
21 available. That was when Tim Sullivan was
22 here. I am familiar with the contract. I
23 have spoken to the contract in front of this
24 body. But I only get involved with some of
25 the work that AJ Consulting does. I don't

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2 recall personally anything that they did on
3 the P3, any potential P3, but we could check
4 our files.

5 LEGISLATOR ABRAHAMS: If you
6 could check them and get them to our legal
7 and financial staff, I would appreciate it.

8 MR. CONKLIN: I believe it is
9 going to be very limited but we can get that
10 for you.

11 LEGISLATOR ABRAHAMS: Okay. So
12 now obviously we will wait and see what the
13 County Attorney comes back in terms of a
14 written actual statement in regards to --
15 before I do that, I want to also just
16 discuss the crux of the issue that's before
17 us today.

18 Obviously there's been a lot of
19 mention in regards to the deficit that the
20 sewers has incurred as well as the potential
21 for rate increases in the future.

22 In future reference, we can't see
23 that from up there, so you might as well as
24 just give us a hard copy, nobody can see
25 that from here. I've been here for a while

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2 and I've never been able to see it since
3 I've been here, in this chamber the last
4 seven years, eight.

5 Anyway, I digress. So the
6 concept behind what we're talking about is
7 that KPMG would do an analysis and from that
8 analysis we would determine whether or not
9 we want to proceed with the privatization of
10 the sewers; am I correct?

11 MR. NAUGHTON: We would decide to
12 go through at RFQ process and RFP process at
13 that time.

14 LEGISLATOR ABRAHAMS: I think you
15 said it before that rates will go up,
16 whether they go up by the hand of the county
17 or by the hand of an investor, which you
18 said we would have some type of cap in place
19 so they couldn't increase them by a large
20 proportion than what the county would want
21 to see; did I say that correctly?

22 MR. NAUGHTON: I think the better
23 way to say it, under both scenarios, the
24 rates are determined by the county, one way
25 could be a lot higher.

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2 LEGISLATOR ABRAHAMS: Now,
3 explain to me the process of how it would be
4 determined by county.

5 MR. NAUGHTON: In our contract,
6 if we have a concessionaire agreement, that
7 agreement would lay out the revenue stream
8 that would be paid to the concessionaire
9 each year.

10 LEGISLATOR ABRAHAMS: So similar
11 to the agreement that we have with Veolia or
12 NICE Bus?

13 MR. NAUGHTON: If you want to
14 look at it that way.

15 LEGISLATOR ABRAHAMS: Where is
16 exactly the county in determining where we
17 envision that revenue pie being at when this
18 agreement is done because, the problem I
19 have is, I don't believe you will come to a
20 number that this legislative body will feel
21 comfortable with.

22 Have you guys begun the
23 conversations with KPMG, what that would
24 look like?

25 MR. NAUGHTON: No. Because we

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2 have not been able to hire them so we have
3 not had any communication with them in terms
4 of how that would work.

5 LEGISLATOR ABRAHAMS: I
6 understand that you're not able to hire
7 them, but if you get to a point where you
8 spent 250,000 and then \$500,000, and a
9 million dollars, whatever phases you decide
10 to do it in, and if you get to a point of
11 spending a million dollars or half that
12 amount, quite frankly, and you realize that
13 for them to privatize the sewer system, they
14 have to raise rates obviously for the
15 benefits of their investors by a much higher
16 rate than what the county would need to do,
17 I would like to think that we would have
18 those conversations before we even enter
19 into an agreement.

20 MR. NAUGHTON: As part of task
21 one, we will present to them various
22 threshold levels of revenue changes and they
23 will come back and say, based off of that
24 revenue flow and the amount of risk that we
25 may be willing to or that someone may be

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2 willing to take from us, here is how much
3 money someone is willing to pay Nassau
4 County.

5 So during this task one process,
6 there will be scenarios created whereby
7 someone may say, if the county agrees to a
8 two percent rate increase over the next 40
9 years, what does it look like, or they may
10 say three percent or four percent. It's not
11 the other way around.

12 LEGISLATOR ABRAHAMS: You said
13 before, Eric, that the administration or the
14 county would have to consider raising the
15 rates by 24 percent.

16 MR. NAUGHTON: Yes.

17 LEGISLATOR ABRAHAMS: Would the
18 administration accept anything higher than
19 24 percent from a private investor?

20 MR. NAUGHTON: I'm not sure what
21 you mean.

22 LEGISLATOR ABRAHAMS: Let's say,
23 for example, if the private investor came
24 back to you and said that we would like to
25 see the cap higher than 24 percent, which

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2 you said that that's what we would need to
3 do, would the administration accept that?

4 MR. NAUGHTON: I think I need to
5 clarify the process for you a little bit.
6 If the RFP process, we are going to go out
7 and say, we are contemplating a revenue
8 stream of X percent. What are you, the
9 investment community, willing to give us for
10 that rate increase, as opposed to us saying
11 we want a billion dollars, what's the rate
12 increase? It's working in reverse.

13 We're saying, based off of this
14 threshold level, how much can you pay us?
15 That threshold level probably would not be a
16 25 percent increase in year one.

17 LEGISLATOR ABRAHAMS: So you
18 think they'll come in lower?

19 MR. NAUGHTON: More than likely,
20 yes.

21 LEGISLATOR ABRAHAMS: So we think
22 that they will raise rates lower than what
23 you've projected in 2018?

24 MR. NAUGHTON: Clearly, if we do
25 this transaction, just looking at year one,

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2 there is no way year one on the
3 concessionaire salary equals what the county
4 is looking at.

5 LEGISLATOR ABRAHAMS: That would
6 help give a better understanding in year
7 one. Where are we with anything in regard
8 to the out years in terms of controlling?

9 MR. NAUGHTON: The way the
10 process will work is we will sit down with
11 KPMG if they're hired and say, over a 40
12 year time frame, here is a revenue stream
13 that the county could be comfortable with.
14 And then present them with a few scenarios.

15 Then they will come back and say
16 whether or not this could possibly generate
17 X amount of dollars.

18 So what we will be coming back to
19 you with is, pretty much a 40 year pro
20 forma.

21 LEGISLATOR ABRAHAMS: Will this
22 legislature be able to control profits that
23 this P3 would have?

24 MR. NAUGHTON: Again, you're
25 jumping quite a few steps ahead in this

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2 process.

3 LEGISLATOR ABRAHAMS: I'm just
4 saying, before I spend \$250,000 of the
5 county's money, I have to take these steps
6 and ask these questions.

7 To me, I have a hard time
8 wrapping my mind around the fact anyone that
9 would be looking to invest in this sewer
10 system without being able to make a profit
11 for themselves and make money.

12 MR. NAUGHTON: And we quite
13 recognize that and that's why we're doing
14 this. This is a public private partnership.
15 I want to save money for the taxpayers.
16 They want to make money.

17 LEGISLATOR ABRAHAMS: Have we
18 examined where these kinds of P3s are
19 happening throughout the country?

20 MR. NAUGHTON: Yes, I believe we
21 testified, Bayonne, New Jersey and some of
22 the other places.

23 LEGISLATOR ABRAHAMS: What was
24 the deal with Bayonne, where do they see
25 their rates over four, five, seven year

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2 period?

3 MR. CONKLIN: We don't have the
4 rates by year but I think the results are a
5 lot of the things we're talking about that
6 they view as very successful. They got a
7 rating upgrade in large part because of the
8 transaction. They said the rate increases
9 under the concessionaire scenario was less
10 than it would have been if they didn't do a
11 transaction. We can try to get those rates
12 for you but that was done probably 18 months
13 ago, so it's not going to give --

14 LEGISLATOR ABRAHAMS: If you can
15 provide that to my side I would appreciate
16 it.

17 MR. CONKLIN: But it's lot of the
18 same things. It was lower rates than what
19 they would have been able to achieve on
20 their own, and I think the difference was
21 significant. It wasn't really even that
22 close.

23 LEGISLATOR ABRAHAMS: Do you
24 remember in Bayonne, did they charge a
25 separate rate for capital expenditures?

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2 MR. CONKLIN: I'm trying to
3 think, when you say "a separate rate,"
4 there were I believe clauses in the contract
5 who was responsible for what in terms of
6 capital investment was and required from
7 each party, is that your question?

8 LEGISLATOR ABRAHAMS: I'm trying
9 to understand, confirm with counsel, like a
10 charge to the rate payer?

11 MR. CONKLIN: Not to my
12 knowledge. Obviously we can't get all the
13 details of the transaction but I think it
14 was similar. I think there was a cap on how
15 much they could increase rates. They got an
16 up front payment.

17 I don't know if Bayonne got any
18 future payments but we can try to get some
19 of the information but I don't think they
20 broke it down by a separate charge for
21 capital, but I'm sure there were contract
22 guided, how much capital investment was
23 required by the concessionaire each year.

24 LEGISLATOR ABRAHAMS: Okay. I
25 don't have anything further, Madam Presiding

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2 Officer, but I will say just to go back to
3 our point in regards to the resolution
4 versus the agreement that's before us.

5 Without some type of written
6 statement or written opinion, I should say,
7 from the County Attorney, I respectfully
8 request that we table this matter because I
9 believe we are establishing a precedent, and
10 from what I can gather here, the precedent
11 that we are establishing here is that this
12 Legislature can decide to, by resolution,
13 decide what portions of contracts when they
14 come down to us in segments of when they
15 will be paid, this legislative body can
16 suddenly decide by resolution that we're
17 only going to cover AB and not CD.

18 To me, that establishes a very
19 troubling precedent because I have never in
20 my time here been able to pay for only
21 certain portions of a contract. I don't
22 know if I have, in this day and age, I would
23 like to think that we should at least get an
24 opinion from the County Attorney saying that
25 we can actually do this.

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2 Because we have looked at Section
3 103 and I don't see anything here that
4 indicates that we can pay for a certain
5 portion of the contract by resolution.

6 And from what I can gather which
7 counsel has just put before me, Mr. Thomas
8 Mulvahill, the manager and director at KPMG,
9 he signed the agreement that is before us
10 today on 8-29-16, which means there is
11 nothing here that states that he's even okay
12 with providing the services for only phase
13 one and not two through four, unless there
14 was some type of conversation that is not a
15 part of the contract.

16 CHAIRWOMAN GONSALVES: Can you
17 answer that, Eric?

18 MR. NAUGHTON: Yes, we have had
19 numerous conversations with Mr. Mulvahill
20 regarding this. They are very comfortable
21 with that. If you like, we can make a
22 statement on the record that would give you
23 a greater comfort.

24 LEGISLATOR ABRAHAMS: No. You
25 need to have him sign something. He can't

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2 do it by phone.

3 MR. NAUGHTON: Well, no, the
4 contract outlines these are the tasks and
5 they are well aware of the fact that this
6 Legislative body is being asked to approve
7 just task one.

8 LEGISLATOR KOPEL: And we have
9 the right to --

10 MR. NAUGHTON: To terminate at
11 any time.

12 LEGISLATOR KOPEL: If the
13 legislative body disapproves after task one,
14 you come back, the administration comes back
15 and asks for money for the rest of it. If
16 we disapprove it, it's dead.

17 MR. NAUGHTON: Right. They can't
18 get paid.

19 LEGISLATOR ABRAHAMS: Look, I
20 total get what Howard believes, and I
21 totally get and understand what you believe.
22 That's not the issue. The fact remains that
23 this legislature is going to consider and it
24 sounds like to me approve an agreement and
25 we have no idea other than, no disrespect to

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2 you, Eric, a conversation that the Deputy
3 County Executive in charge of finance and
4 budget has had, that says he's okay with --

5 LEGISLATOR KOPEL: It doesn't
6 matter if he's okay. The county has the
7 right to cancel the contract. He cannot be
8 okay. He can be adamantly and furiously
9 opposed --

10 LEGISLATOR ABRAHAMS: But,
11 Mr. Kopel, wouldn't you agree that the
12 vendor would have to sign the actual
13 agreement before we approve this.

14 LEGISLATOR KOPEL: No. The
15 actual agreement provides, the actual
16 agreement that was negotiated, if I
17 understand correctly, provides, already
18 provides, for cancellation by the county
19 after any phase.

20 That's a fact. And if indeed
21 that's what it provides, then your
22 objection, with all due respect, doesn't
23 make any sense.

24 CHAIRWOMAN GONSALVES: And it
25 does provide that, correct?

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2 MR. NAUGHTON: That's very clear
3 in the contract.

4 LEGISLATOR ABRAHAMS: But let me
5 make sure I understand this correctly. In
6 the contract, does it indicate, in the
7 contract, not the resolution, in the
8 contract does it indicate that he is coming
9 back to us after every phase?

10 MR. CONKLIN: Not after every
11 phase but coming back after task one. We're
12 not coming back for two then three then
13 four.

14 LEGISLATOR ABRAHAMS: Not in the
15 resolution, in the contract, where does it
16 indicate that in the contract that they have
17 to come back to the Legislature?

18 MR. NAUGHTON: By the
19 resolution --

20 LEGISLATOR ABRAHAMS: Not the
21 resolution.

22 LEGISLATOR KOPEL: The right to
23 cancel.

24 LEGISLATOR ABRAHAMS: You keep
25 saying the right to cancel, but what I'm

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2 harping on is that I want to know in the
3 contract as to what Mr. Naughton just said,
4 where in the contract does it indicate that
5 they have to come back to the Legislature?

6 LEGISLATOR KOPEL: They don't
7 have to anything. The administration has to
8 come back and if the administration doesn't
9 get the legislature's consent, then they
10 have got to cancel. They have no money. No
11 authorization. They have got to cancel.

12 LEGISLATOR ABRAHAMS: So let me
13 make sure I understand this correctly. So
14 the contract does not indicate that it has
15 to come back to the Legislature, the
16 resolution does.

17 But the resolution which was
18 agreed to by Mr. Naughton and this gentleman
19 at KPMG, there is no written signed
20 agreement that indicates that he's okay with
21 this arrangement that's presented to us in
22 the resolution.

23 LEGISLATOR KOPEL: We're going in
24 circles here. The contract doesn't have to
25 say that he's okay. If there's no reason

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2 for him to say okay, he can be adamantly not
3 okay -- totally not okay with it and we
4 don't care. If we don't approve it, then
5 the contract gets cancelled and he can jump
6 up and down and yell, it doesn't matter.
7 He's already agreed. We can cancel it.

8 LEGISLATOR ABRAHAMS: I think
9 we're going around and around.

10 LEGISLATOR DERIGGI-WHITTON:
11 Norma, can I just ask one? Just a quick
12 question. With the bus, and, again, the
13 comparison is similar because it was the
14 last public private partnership that the
15 county entered into.

16 They do come back to us for rate
17 hikes and they do come back to us to cut the
18 routes, yet, their profit goes up quite
19 substantially. It went up almost 100
20 percent, believe it or not.

21 Is there anything in this
22 agreement that basically we can analyze
23 whether or not we can put some kind of
24 control onto the profit of the company, that
25 we might be going into this agreement with?

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2 We can cap it at two or three percent.

3 Like, it's a public private partnership.

4 It's taxpayers that supplement it. So it's
5 not a regular profit. Believe me, NICE is
6 not making a profit, it's the taxpayers that
7 are supplementing it. Therefore, there is a
8 good idea to have oversight.

9 So is there anything that you
10 were asking them to look at as far as
11 anything to do with the profit?

12 MR. NAUGHTON: None of that would
13 be covered under task one. I think as Conal
14 outlined in our presentation, when we
15 actually get to the stage where we're
16 negotiating a contract with a
17 concessionaire, we can put in sharing
18 mechanisms in there so we can share in any
19 efficiencies and any profits that they're
20 generating. That's something that we can
21 include in our contract with the
22 concessionaire.

23 As I stated earlier, the first
24 provision is that we're capping the amount
25 of revenue that goes to them, and I think

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2 that you want to stimulate them to have
3 efficiencies and to come up with savings.
4 But we're -- we will be striving to put in
5 mechanisms so we can share in those
6 efficiencies.

7 LEGISLATOR DERIGGI-WHITTON: So
8 you think that wouldn't be addressed in
9 phase one?

10 MR. NAUGHTON: That is not part
11 of phase one. That's once we get into stage
12 five through seven where we're actually at a
13 concessionaire stage and negotiations.
14 That's not part of the official KPMG
15 analysis.

16 LEGISLATOR DERIGGI-WHITTON: I
17 think it's a really good idea because we
18 have to have some control over the profit
19 especially with this type -- because we
20 can't do anything about it with the bus.

21 They can keep cutting routes and
22 keep raising their profit and we have
23 nothing to say about it. So I think that
24 would be a huge improvement.

25 MR. NAUGHTON: But in terms of

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2 modeling which is essentially what task one
3 is, you take a look at expenses and revenue.
4 You can't say how much money they're making,
5 but there's an assumption on the rate of
6 return, so --

7 CHAIRWOMAN GONSALVES: Legislator
8 Nicoletto.

9 LEGISLATOR NICOLELLO: Just a
10 couple of quick points. Eric, I'm not sure
11 if you were here at the time, but when NICE
12 Bus came on board, so to speak --

13 MR. NAUGHTON: I was not here.

14 LEGISLATOR NICOLELLO: Wasn't the
15 MTA threatening to either charge us 20 to
16 \$30 million more, or massive cuts in their
17 routes; isn't that correct?

18 MR. NAUGHTON: That is my
19 understanding.

20 LEGISLATOR NICOLELLO: Yet
21 somehow it gets lost in translation, every
22 time they talk about it, look what they're
23 doing now.

24 LEGISLATOR DERIGGI-WHITTON: But
25 that's what they say --

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2 LEGISLATOR NICOLELLO: I did not
3 interrupt you once. You have an issue.
4 Every time I speak, you try to interrupt.
5 Just let me finish.

6 CHAIRWOMAN GONSALVES: You're out
7 of order.

8 LEGISLATOR NICOLELLO: Secondly,
9 if we're looking at 2018, a \$28 million
10 deficit which you say will equate to a 24
11 percent increase in taxes in the sewer fund
12 which is obviously a concern to every one up
13 here, but if we can develop a deal in which
14 the operator is increasing the rates at a
15 much lower rate, it's better for the
16 taxpayers, I don't care how much profit
17 they're making.

18 They can make 100 percent profit
19 as far as I'm concerned because if they're
20 saving money for the taxpayers, that's what
21 I'm interested in. I'm not anti profits.

22 So, if someone is in business to
23 make profits, fine. But if they're going to
24 save the taxpayers money, run this more
25 efficiently, then, go ahead, knock

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2 themselves out.

3 Some may feel that if someone is
4 making a profit, it's a bad thing. It's a
5 good thing if they're saving us money.

6 My last question is, has NIFA
7 established a position, not on this specific
8 contract, but on our review of this
9 potential P3?

10 MR. NAUGHTON: Without stating
11 what NIFA will do once this contract goes
12 before them, I think I can clearly state
13 that we have been working with NIFA staff
14 since March to draft an RFP, to draft a
15 contract, to submit something to this
16 legislative body.

17 We are at the point now where
18 they said, you may move forward with this
19 contract. And I will leave it at that.

20 CHAIRWOMAN GONSALVES: I'm going
21 to move on. At this point in time, I think
22 it's important that that we just call the
23 question.

24 LEGISLATOR ABRAHAMS: I will
25 renew. I had a motion to table. It was

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2 seconded by Legislator Deriggi-Whitton.

3 CHAIRWOMAN GONSALVES: All those
4 in favor of tabling E-207 signify by saying
5 aye.

6 (Aye.)

7 All those opposed to tabling
8 E-207 signify by saying nay.

9 (Nay.)

10 Therefore, the motion fails four
11 to three. So it's not tabled.

12 Now we are going to move on the
13 item which is E-207, the resolution
14 establishing a personal services agreement
15 between the County of Nassau acting on
16 behalf of the Office of Management and
17 Budget and KPMG, L.L.P.

18 All those in favor of E-207
19 signify by saying aye.

20 (Aye.)

21 Any opposed?

22 (Nay.)

23 The item passes four to three.

24 That concludes the Rules
25 Committee. Motion to adjourn the Rules

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2 Committee.

3 LEGISLATOR DUNNE: So moved.

4 LEGISLATOR NICOLELLO: Second.

5 CHAIRWOMAN GONSALVES: Moved by

6 Legislator Dunne, seconded by Legislator

7 Nicolello. All those in favor signify by

8 saying aye.

9 (Aye.)

10 Any opposed?

11 (No verbal response.)

12 We are adjourned.

13 (Whereupon, the Rules Committee
14 adjourned at 6:04 p.m.)

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C E R T I F I C A T E

I, FRANK GRAY, a Shorthand Reporter and
Notary Public in and for the State of New
York, do hereby stated:

THAT I attended at the time and place
above mentioned and took stenographic record
of the proceedings in the above-entitled
matter;

THAT the foregoing transcript is a true
and accurate transcript of the same and the
whole thereof, according to the best of my
ability and belief.

IN WITNESS WHEREOF, I have hereunto set
my hand this 12th day of October, 2016.

FRANK GRAY