ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. [illegible]

METROPOLITAN DADE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Plaintiff,

vs.

PARSONS & WHITTEMORE, INCORPORATED, a New York Corporation; RESOURCES RECOVERY (Dade County), INC., a Delaware Corporation; RESOURCES RECOVERY (Dade County) CONSTRUCTION CORP., a Delaware Corporation, STATE BOARD OF ADMINISTRATION (STATE OF FLORIDA), a body corporate created under Article XII, Section 9, of the Constitution of the State of Florida; FIRST NATIONAL BANK OF BOSTON, a National Banking Association; and BANQUE DE PARIS ET DES PAYS-BAS, a foreign banking corporation,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND RESCISSION

[illegible] 17 [illegible]

The Plaintiff, METROPOLITAN DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, for its Complaint, alleges:

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C.A. Sections 2201, 2202 (1978) (Declaratory Judgments) and 28 U.S.C.A. Section 1332 (1976) (Diversity of Citizenship).

2. The matter in controversy, exclusive of interest and costs, exceeds one million dollars.

3. This is an action for a declaratory judgment to determine the rights, obligations and remedies of the parties under documents, which are attached hereto as Exhibit 1 and are incorporated herein by this reference (The PROJECT AGREEMENT), executed by and between the Plaintiff and the Defendants during the period from September 28, 1976 through January 20, 1979, in Miami, Dade County, Florida, for a rescission of said Agreement and for such other relief as may be appropriate. All documents referred to herein as being attached to this Complaint are attached to the original Complaint filed in the

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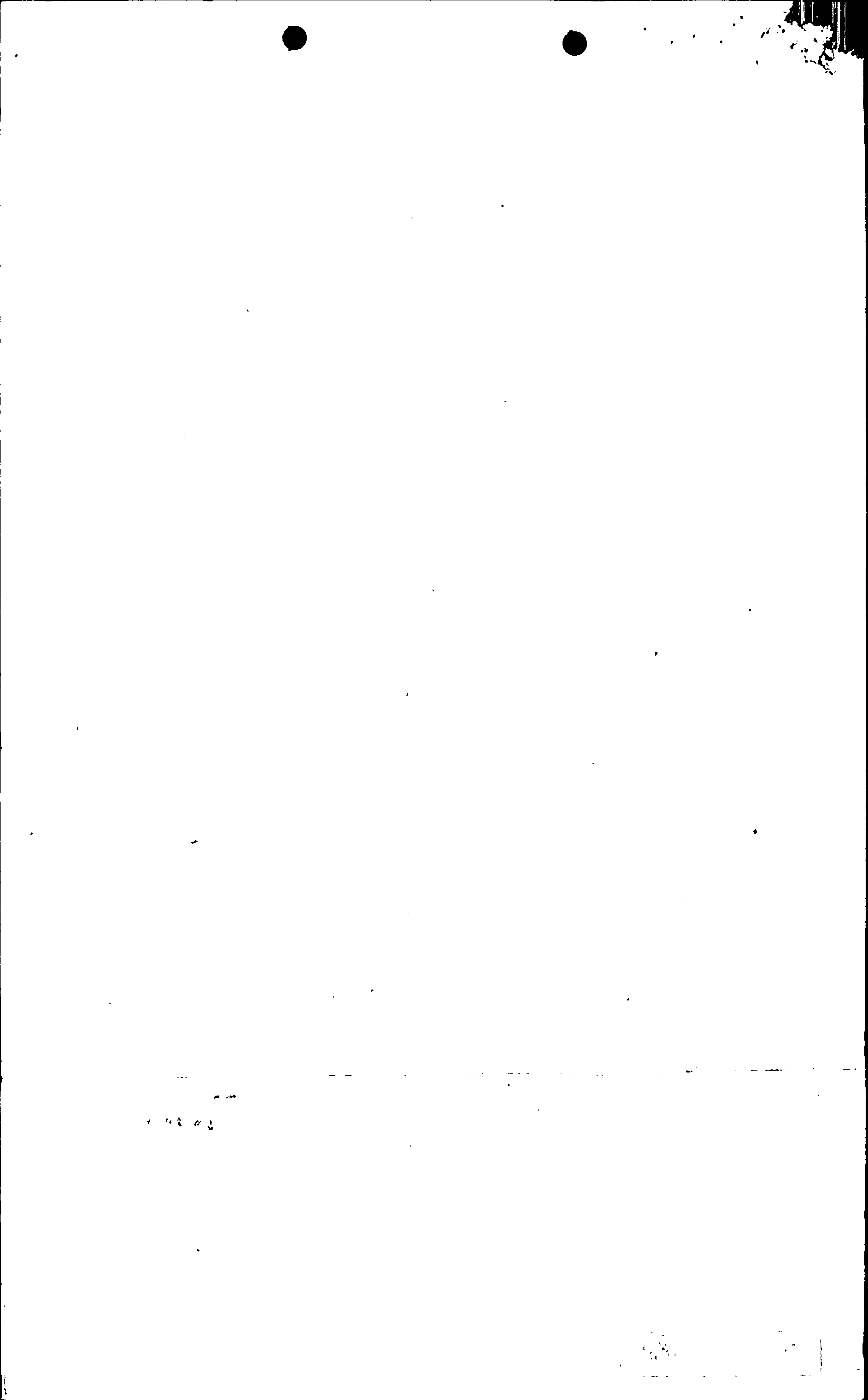


Office of the Clerk of the United States District Court for the Southern District of Florida, 300 N.E. 1st Avenue, Miami, Florida. They are voluminous and are all in the possession of the named Defendants. They have, therefore, not been attached to the copies of this complaint which are to be served on the named Defendants.

THE PARTIES

4. Plaintiff, METROPOLITAN DADE COUNTY, FLORIDA, is a political subdivision of the State of Florida, acting by and through its Board of County Commissioners and is hereinafter referred to as "The COUNTY".

5. Defendant, PARSONS & WHITTEMORE, INCORPORATED, is a New York corporation having its principal place of business in a State other than Florida and is hereinafter referred to as "PARSONS".

6. Defendant, RESOURCES RECOVERY (Dade County), INC., is a Delaware corporation having its principal place of business in a State other than Florida and is a wholly owned subsidiary of the Defendant, PARSONS. (Hereinafter referred to as RESOURCES RECOVERY).

7. Defendant, RESOURCES RECOVERY (Dade County) CONSTRUCTION CORP., is a Delaware corporation having its principal place of business in a State other than Florida and is a wholly owned subsidiary of the Defendant, PARSONS. (Hereinafter referred to as RRDC).

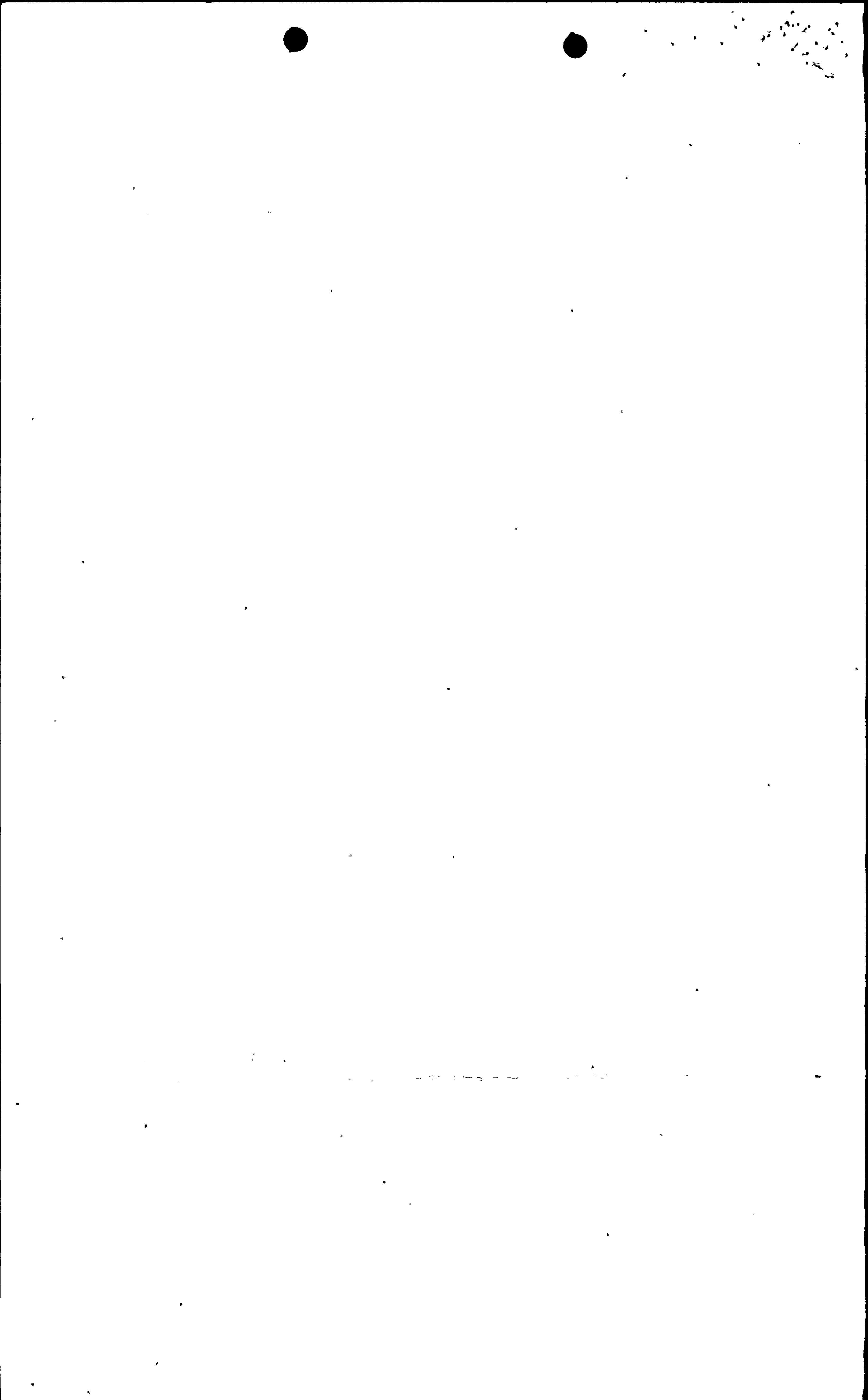
8. The Defendant, STATE BOARD OF ADMINISTRATION, is a body corporate created under Article XII, Section 9, of the Constitution of the State of Florida.

9. The Defendant, FIRST NATIONAL BANK OF BOSTON, (hereinafter "FNB"), is a national banking association located in a State other than Florida, and is sued in its capacity as agent for certain banks under a loan agreement defined in the Project Agreement documents, Exhibit A hereto.

10. Defendant, BANQUE DE PARIS ET DES PAYS-BAS, is a foreign banking corporation not chartered by or localized in the State of Florida and is hereinafter referred to as "PARI-BAS".

FACTUAL BACKGROUND

11. During the early 1970's DADE COUNTY reached a crisis with respect to treatment or disposal of solid waste.



12. The COUNTY's procedure of landfilling solid waste did not provide an adequate solution since COUNTY landfills could not meet recently enacted solid waste regulations and standards. Consequently, the COUNTY entered into consent agreements with the Florida Department of Environmental Regulations providing for cessation of waste intake at two of the COUNTY's landfill areas and transfer of their functions to the Resource Recovery Facility upon its completion.

13. In response to the solid waste crisis, the COUNTY, in 1974, requested bids for proposals for facilities that could effectively solve the solid waste problem.

14. By 1976 the field had been narrowed to two competing proposals, one of which was that submitted by the Defendant, PARSONS.

15. As a result of and in reliance upon the representations made by the Defendant, PARSONS, in its bid proposal, the COUNTY entered into negotiations with said Defendant which resulted in the Project Agreement, Exhibit 1.

16. The Project Agreement provides for the design, construction, equipping, operation and management of a single facility in Dade County with the ability to process solid waste, to recycle some of the materials contained therein and to produce steam for the generation of electrical power. The project also includes a landfill area for disposition of unreclaimable waste.

17. The COUNTY contracted to buy a solid waste treatment system which, after the initial start-up and testing period, would, process three thousand (3,000) tons of solid waste per day at a cost to the County of a tipping fee of twenty-five cents ($ .25) per ton and debt service of approximately twelve dollars and fifty cents ($12.50) per ton. These costs are subject to a contractually defined adjustment over the twenty (20) year term of the Project Agreement.

THE PROJECT AGREEMENT

18. The purchase contract, defining the basis upon which the Defendant, RESOURCES RECOVERY, as seller, would design, construct and sell to the COUNTY the building and associated equipment, was originally executed between the COUNTY and RESOURCES RECOVERY on September 28, 1976. (Item A to Exhibit 1)

19. On January 15, 1978, RESOURCES RECOVERY assigned its rights and obligations under the said purchase contract to RRDC. The purchase contract was first amended on March 22, 1978, again on May 5, 1978, for a third time on July 5, 1978, and finally on January 20, 1979. (Items B - F)

20. On September 28, 1976, contemporaneously with the execution of the purchase contract, the COUNTY and RESOURCES RECOVERY executed a management contract. (Item G)

21. The purpose of the management agreement was to define the basis upon which the facility equipment and landfill area would be operated to process solid waste, to recycle materials contained therein, to produce steam and to dispose of unreclaimable and unprocessed waste.

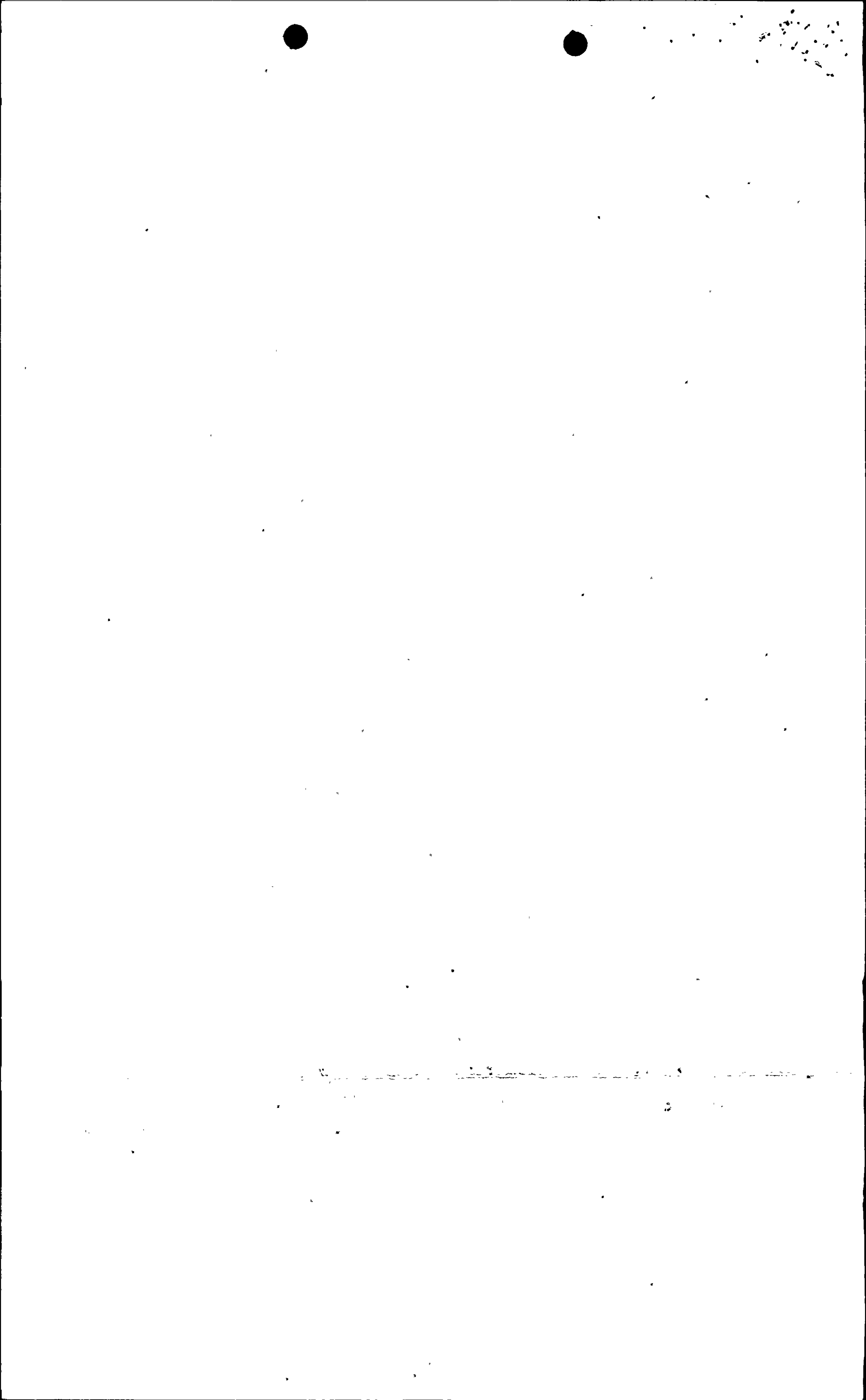
22. The management contract was first amended by the COUNTY and RESOURCES RECOVERY on March 22, 1978, amended a second time on May 5, 1978; a third amendment was made on January 20, 1979. (Items H - J)

23. On September 28, 1976, the Defendant, PARSONS, for a valuable consideration, executed an unconditional guaranty of the obligations of the seller, its wholly-owned subsidiary, under the purchase contract and an unconditional guaranty of the obligations of the operator, also its wholly-owned subsidiary, under the management contract. (Items K - L)

24. The Defendant, PARSONS, executed a Ratification and Continuing Guaranty securing the purchase and management contracts on May 4, 1978. (Item M)

25. The purpose of the guaranties was to induce the COUNTY to enter into the purchase and management contracts with the Defendants, RESOURCES RECOVERY and RRDC, and was relied upon by the COUNTY in its execution of the said contracts.

26. On October 18, 1977, the COUNTY and Florida Power and Light Company executed an agreement (the EGF contract) controlling the terms and conditions of the establishment of an electrical generation facility at the plant. This contract was amended on July 5, 1978. (Items N - O)



27. On March 22, 1978, by execution of the Assumption Agreement, Defendant, RESOURCES RECOVERY, assumed all the obligations of the COUNTY under the EGF contract with Florida Power and Light Company. A restated and amended Assumption Agreement was executed by the COUNTY and RESOURCES RECOVERY on May 5, 1978. (Items P - Q)

28. Also on March 22, 1978, Defendant, PARSONS, for a valuable consideration, executed an unconditional guaranty of RESOURCES RECOVERY's obligations under the Assumption Agreement. The purpose of this guaranty was to induce the COUNTY to enter into the EGF and Assumption Agreements with FP&L and Defendant, RESOURCES RECOVERY, and was relied upon by the COUNTY in its exeuction of said contracts. (Item R)

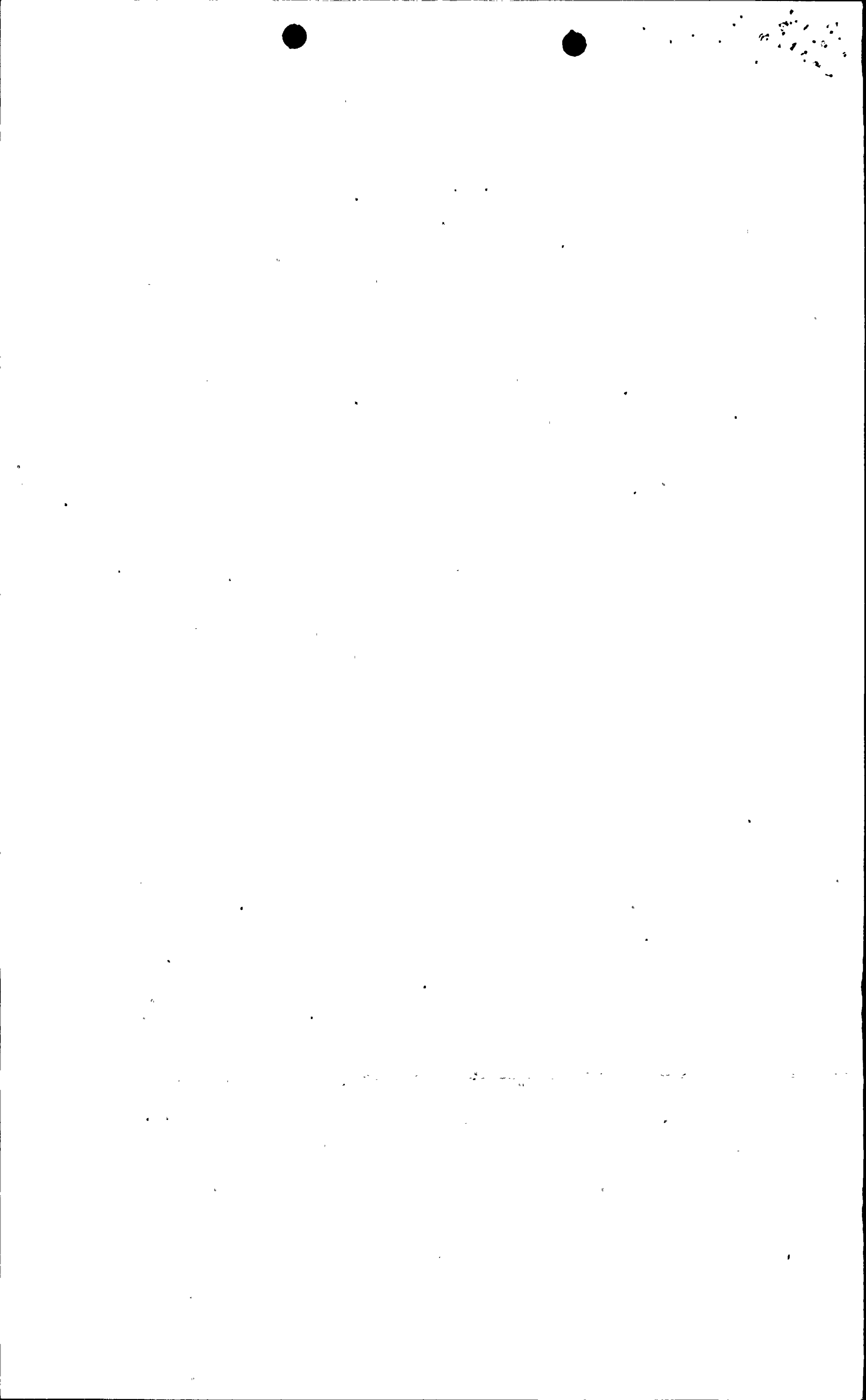
29. On May 4, 1978, Defendant, PARSONS, executed a Ratification and Continuing Guaranty securing the Assumption Agreement. (Item S)

30. On May 24, 1978, an assignment of the Assumption Agreement was made by RESOURCES RECOVERY to RRDC. (Item T)

31. On July 5, 1978, a first amendment to the Restated and Amended Agreement for Assumption of Rights and Obligations Under Electrical Generation Facility and Steam Delivery Agreement was executed by the COUNTY and Defendant, RRDC. (Item U)

32. On July 10, 1978, the COUNTY, as party of the first part, Defendants, RRDC, FNB and PARI-BAS, parties of the second part, and Defendant, STATE BOARD OF ADMINISTRATION, as escrow agent, executed an Escrow Agreement setting forth the terms and conditions for the holding and dispersal of the escrow funds pertaining to the Project Agreement. This Escrow Agreement was amended by the parties on July 20, 1979. (Items V - W)

33. Pursuant to this Project Agreement, one hundred twenty-eight million dollars ($128,000,000.00) representing the purchase price of the facility and equipment, was raised by the COUNTY and placed into an escrow account according to the terms of the Escrow Agreement. The COUNTY is at all times prepared to pay this money to RRDC, FNB and PARI-BAS so long as it has received adequate assurance of performance by said Defendants of the terms and conditions of the management and assumption contracts.



34. Upon information and belief, the building has been under construction for some time now and will be physically complete within two (2) weeks from the date of filing of this complaint.

35. Pursuant to the Project Agreement, upon the physical completion of the building, the Defendant, STATE BOARD OF ADMINISTRATION, as escrow agent, will become contractually obligated to pay to the Defendants, RRDC, FNB and PARI-BAS, seventy percent (70%) of the net purchase price, so long as:

> "no default by RESOURCES RECOVERY or RRDC exists under the Escrow Agreement, the Purchase Contract, Management Contract, or the Assumption Agreement, or (2) if a default exists under this Agreement, the Purchase Contract, the Management Contract, or the Assumption Agreement and (a) said default can be cured within thirty (30) days that RRDC will cure said default within thirty (30) days, or (b) if said default cannot be cured within thirty (30) days, that RRDC has commenced to cure said default and is proceeding diligently to cure said default; . . . "

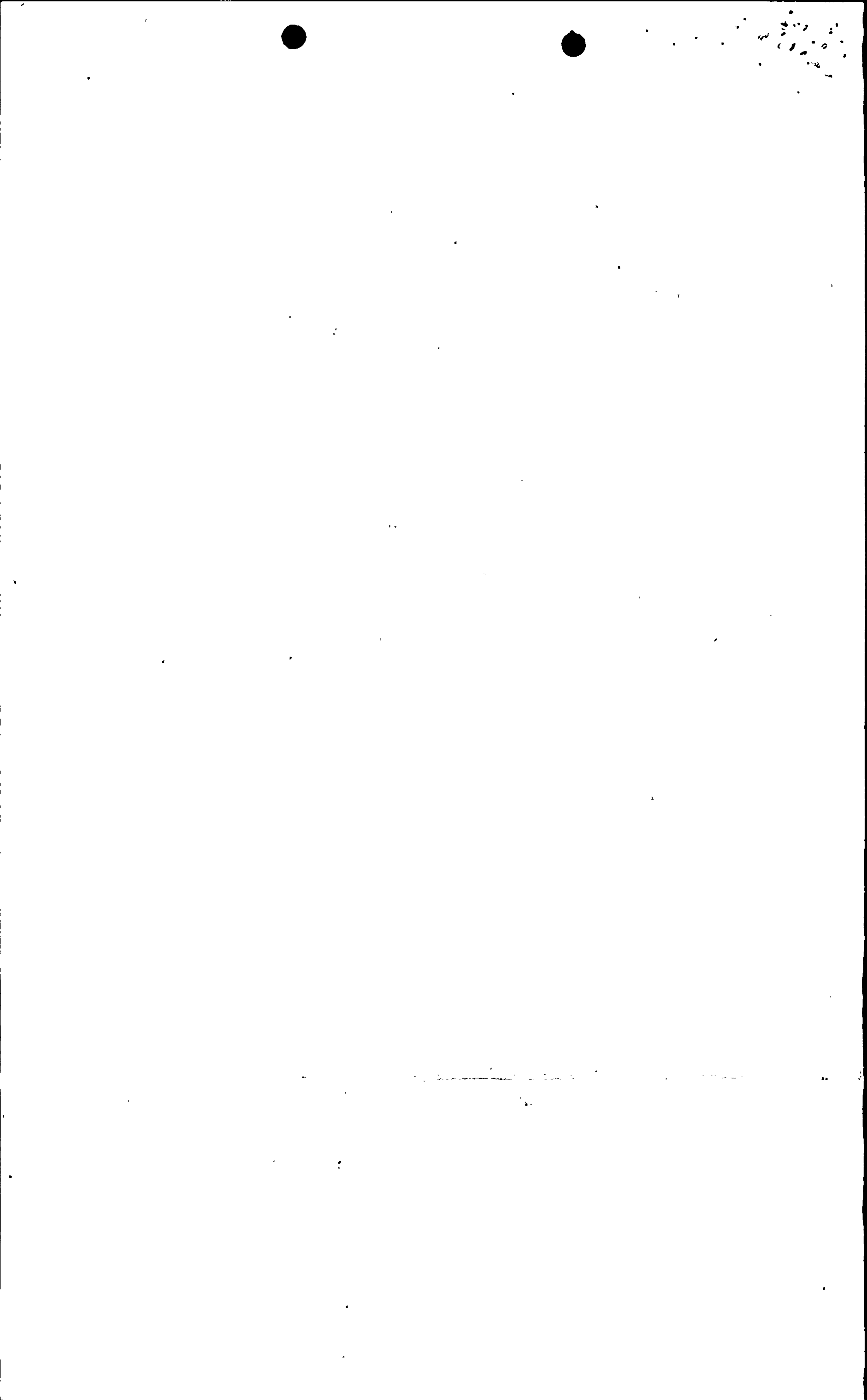
36. If such payment is made, the COUNTY will have no adequate remedy at law.

COUNT I

37. The Plaintiff realleges and reavers paragraphs 1 through 36 and incorporates them herein by reference as if fully set forth verbatim.

38. Since the execution of the Project Agreement between the Plaintiff and the Defendants, certain agents, officers and/or duly authorized representatives of one or all of the Defendants, RRDC, RESOURCES RECOVERY and PARSONS, indicated by words, writings and actions that the said Defendants cannot and do not intend to perform their obligations under the provisions of the assumption and operation and management portions of the Project Agreement because to do so would bankrupt them.

39. In addition, certain agents, officers and/or duly authorized representatives of the Defendants, RRDC, RESOURCES RECOVERY and/or PARSONS, have indicated by words, writings or actions that they would not operate the electrical generation facility in accordance with the terms of the EGF and Assumption agreements.



40. These verbal pronouncements, written pronouncements and actions of the agents, officers and/or duly authorized representatives of the Defendants, or all of them, constitute an anticipatory breach of the management and assumption portions of the Project Agreement.

41. The parties agreed that each portion of the project (i.e., design and construction, management, electrical generation) would be considered related to and dependent upon each and every other portion of the project, and the parties specifically bargained for a facility and equipment which the Defendants, RESOURCES RECOVERY and PARSONS, would operate throughout the twenty (20) year life of the Project Agreement.

42. This agreement was incorporated into the Escrow Agreement, which states that a breach of any portion of the Project Agreement would be considered a breach of all, sufficient to relieve the COUNTY from the obligation to allow the payment over of any of the funds presently held in escrow.

43. The parties further agreed that risk of loss is on the Defendants, RRDC, RESOURCES RECOVERY and PARSONS, until acceptance by the COUNTY of the facility.

44. Should the money which is held in escrow be paid over to the Defendants without a workable operating agreement, it would prevent the COUNTY from implementing alternative waste treatment strategies which are now absolutely necessary for the public health, safety and welfare of the residents of DADE COUNTY.

45. An anticipatory breach of the Project Agreement has occurred and this breach constitutes just cause to deny payment from escrow to any of the Defendants and warrants rescission of the Project Agreement.

46. WHEREFORE, upon the foregoing facts, a controversy has arisen between the Plaintiff and the Defendants, relating to their legal rights, duties, liabilities, responsibilities and legal relations under said contract, Exhibit 1 hereto, and therefore the Plaintiff desires a declaration of its rights, duties, responsibilities and legal relations with the Defendants in the premises, including,

if the Court declares that there has been an anticipatory breach of the operating agreement, rescission of the contract and any such other relief as may be appropriate.

COUNT II

47. The Plaintiff realleges and reavers paragraphs 1 through 46 and incorporates them herein by reference as if fully set forth verbatim.

48. The Project Agreement is a contract for sale of specialized equipment such as boilers, incinerators, shredders and turbo-generators, for the scientific processing and treatment of solid waste and the resulting generation of electrical power.

49. The Defendants', RESOURCES RECOVERY and PARSONS', anticipated costs of operating such equipment are so much higher today than they were represented by said Defendants when the parties reached their bargain that, according to the President of the said Defendants, they would lose more than seventy million dollars ($70,000,000.00) in the first five (5) years of operation and more than four hundred million dollars ($400,000,000.00) over the full twenty (20) year term of the Project Agreement.

50. Further, said Defendants sustained a large loss due to a substantial construction cost overrun incurred by them at a similar RESOURCE RECOVERY Plant located in Hempstead, New York, and more fully described below at paragraph 52.

51. The COUNTY is therefore insecure with respect to the ability or the willingness of the said Defendants to sustain such operating losses as those described by their President and to perform as they have agreed in the Project Agreement.

52. Additionally, the Defendants, PARSONS, RESOURCES RECOVERY and RRDC, prior to entering into the Project Agreement with the COUNTY, arranged for and commenced the equipping of a similar resource recovery plant in Hempstead, New York, which was to be a prototype and model for the Dade County plant.

53. The project in Hempstead, New York, although physically complete, has been shut down since March 1980. Even when in operation, that plant operated way above the represented cost.

54. The failure of the Hempstead, New York plant to operate properly constitutes reasonable grounds for and has given rise to insecurity on the part of the COUNTY that the facility and equipment purchased by the COUNTY from the Defendants, RRDC, RESOURCES RECOVERY and PARSONS, will similarly fail to perform its intended function in substantial compliance with the Project Agreement.

55. Moreover, the verbal and written pronouncements and actions of the agents, officers and/or duly authorized representatives of the said Defendants, or all of them, expressing their intention not to perform under portions of the Project Agreement, constitute further reasonable grounds for the COUNTY's insecurity with respect to the performance of the said Defendants under the Project Agreement.

56. Specifically, the COUNTY submits that:

(a) It is now impossible for the Defendants, RRDC, RESOURCES RECOVERY and PARSONS, to deliver to DADE COUNTY the product which they contracted to deliver;

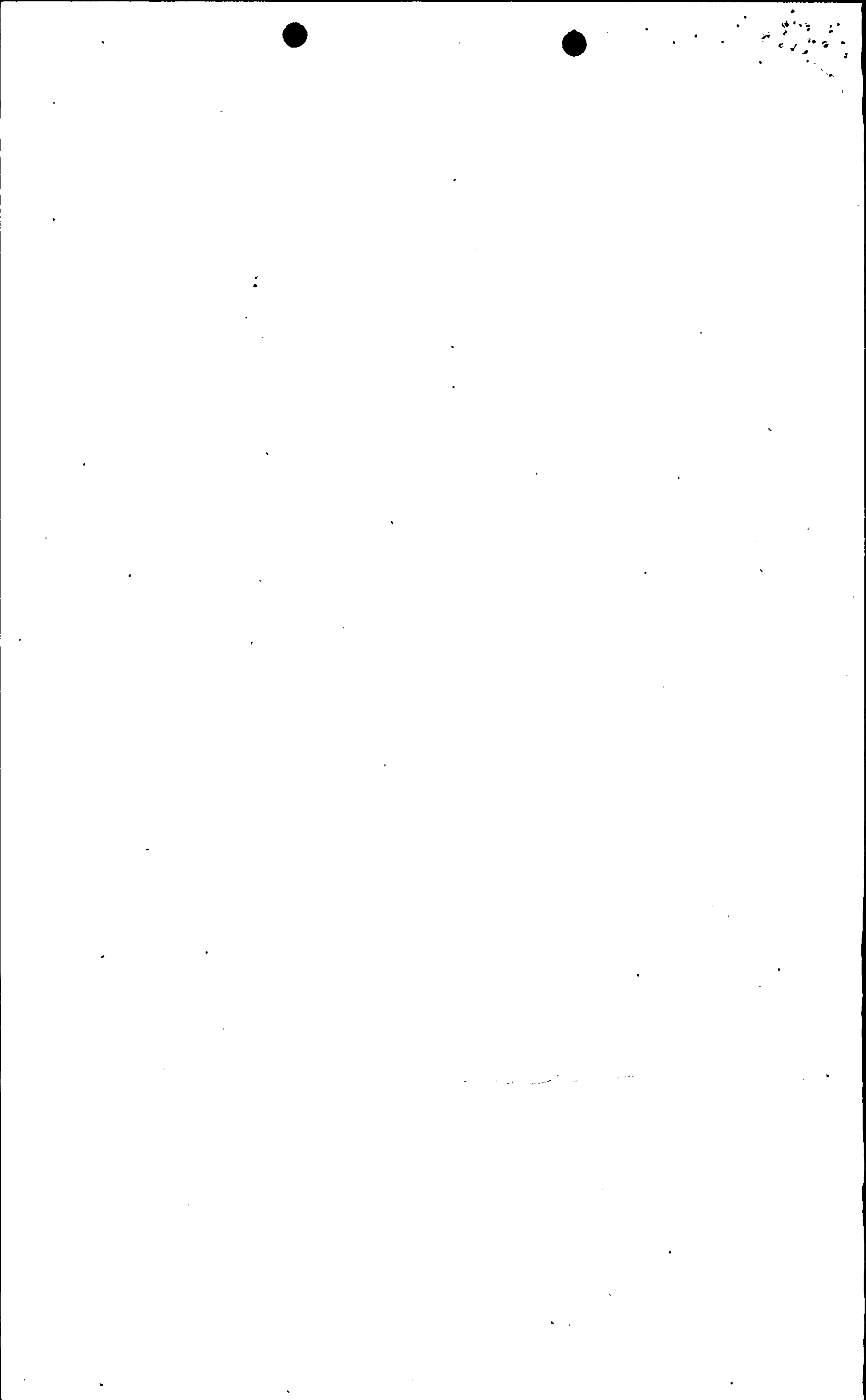
(b) The purpose for which the COUNTY entered into the Project Agreement has been frustrated at no fault of the COUNTY;

(c) The COUNTY will not have solved the problem of waste treatment but instead will see it exacerbated by the passage of so much fruitless time; and

(d) The COUNTY will have exhausted all the funds available and set aside for provision of necessary waste treatment.

57. Based upon the foregoing, the COUNTY has demanded adequate assurance of performance by the said Defendants, RRDC, RESOURCES RECOVERY and PARSONS, of their duties and obligations under the Project Agreement. Specifically, the COUNTY has requested either a letter of credit or a performance bond or a showing of financial information from the said Defendants as would reasonably assure the COUNTY that the said Defendants not only intend, but are in a fiscal position, to carry out the terms of their bargain, regardless of projected operating losses.

58. The Defendants, PARSONS, RESOURCES RECOVERY and RRDC, after receipt of the COUNTY's demand for adequate assurance of performance, have failed and refused to provide within a reasonable time such assurance of performance as is adequate under the circumstances of this case.



59. Said failure to provide adequate assurance of due performance constitutes a repudiation of the Project Agreement.

60. This breach constitutes just cause to deny payment from escrow to any of the Defendants, and further warrants rescission of the Project Agreement at this time.

61. Based upon the foregoing, the Plaintiff demands a declaration of its rights, duties, responsibilities and legal relations with the Defendants in the premises, including, a rescission of the Project Agreement and any such other relief as may be appropriate.

COUNT III

62. The Plaintiff realleges and reavers paragraphs 1 through 61 and incorporates them herein by reference as if fully set forth verbatim.

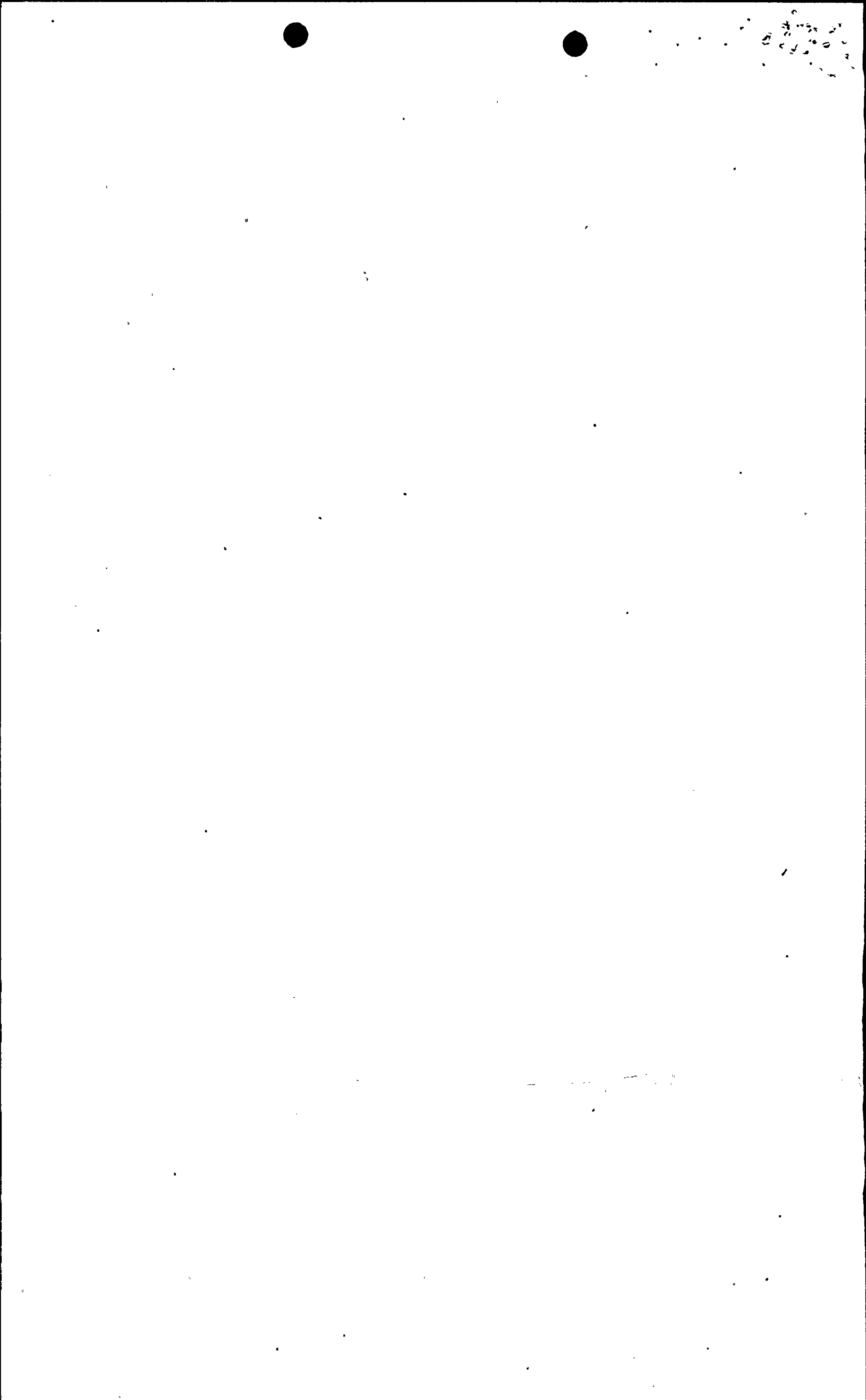
63. At or about the time of the execution of the Project Agreement and before actual construction on the facility began the Defendants, PARSONS, RESOURCES RECOVERY and/or RRDC, knew that operating costs for the facility would in fact be substantially higher than those reflected in the Project Agreement and upon which the Project Agreement was based.

64. At that time, the said Defendants knew or should have known, as a result of their operating experience at the Hempstead, New York plant and otherwise, that due to increased or miscalculated operating costs and otherwise, they could not deliver that which they had bargained to deliver and that which the COUNTY had bargained to receive.

65. In fact, at that time, the said Defendants knew or should have known that they would be unable to operate the plant according to the terms of the management and assumption contracts.

66. In spite of said knowledge, the said Defendants misrepresented and continued to misrepresent to the COUNTY the operating costs for the facility.

67. The said Defendants knew that the COUNTY relied upon the representations made by the said Defendants in entering into the Project Agreement and in undertaking all of its obligations under the Project Agreement.



68. The COUNTY did in fact rely upon the representations regarding operating costs made by the said Defendants and was, under the circumstances, justified in doing so.

69. In misrepresenting the operating costs, and in misrepresenting the Defendants' ability to operate and manage the facility as agreed, the said Defendants induced the COUNTY to enter into the Project Agreement which it would not have executed had the facts been disclosed to it.

70. The circumstances of the transaction imposed the duty of disclosure upon the Defendants.

PRAYER FOR RELIEF

Based upon the foregoing, the COUNTY respectfully requests the following relief:

1. That the court take jurisdiction of the parties and the cause.

2. That the court declare the rights, duties, responsibilities and legal relations of the parties in the premises.

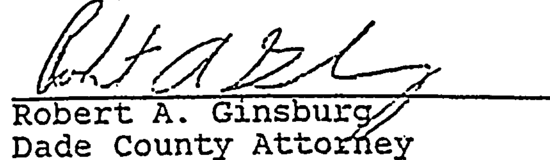
3. That the court order the Defendants, PARSONS, RESOURCES RECOVERY and RRDC, to put up a performance bond, with arrangements to be approved by the court, representing reasonable COUNTY expense in obtaining alternate solid waste treatment.

4. That the court declare that an anticipatory breach of the Project Agreement has occurred.

5. That the court declare a rescission of the Project Agreement.

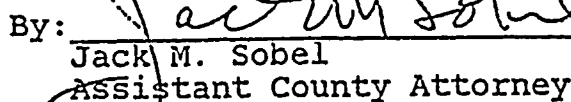
6. That the court grant any and such other and further relief as the court deems appropriate.

ROBERT A. GINSBURG
Dade County Attorney
1626 Dade County Courthouse
Miami, Florida 33130



Robert A. Ginsburg
Dade County Attorney

and

By: 

Jack M. Sobel
Assistant County Attorney