Minutes
Erie County Fiscal Stability Authority
November 3, 2006

Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority ("ECFSA"), which was held November 3, 2006. These minutes will not become final until approved at a subsequent meeting of ECFSA directors, and may be amended before approval.)

Chairman Anthony Baynes called to order the meeting of the Erie County Fiscal Stability Authority ("ECFSA") at 4:07 pm on Friday, November 3, 2006 in the Buffalo Niagara Convention Center. Notice of the meeting had previously been distributed to all Directors by courier and announced to the public and press.

Directors present: Anthony J. Baynes, Chair; Stanley Keysa, Secretary; Kenneth Kruly, Treasurer; Joseph Goodell; Sheila Kee and John Johnson

Also present: Kenneth Vetter, Executive Director

Opening Remarks

Chairman Baynes welcomed his fellow board members and public officials, interested members of the public and press and media in attendance. He stated that the board was there for a report by the finance committee, which was charged at the last meeting with the task of reviewing the current version of the four-year plan submitted by Erie County, as well as the proposed 2007 Erie County Budget.

Approval of the minutes

Chairman Baynes stated that the first order of regular business was to approve the minutes of the last meeting on October 19, 2006, as submitted by Secretary Keysa and circulated to the members in their briefing books prior to this meeting. Director Kruly moved to approve the minutes as presented and Director Kee seconded. Without further discussion the board voted unanimously to approve the following resolution:

Resolution No. 06-48

APPROVING MINUTES AND RESOLUTIONS FROM OCTOBER 19, 2006

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its meeting of OCTOBER 19, 2006 and ratifies and affirms three resolutions numbered 06-44, 06-45, 06-46 and 06-47 which were approved on October 19, 2006.

This resolution shall take effect immediately.

Chairman Baynes stated that, on October 18, 2006, the Erie County Fiscal Stability Authority received Erie County's submission for it four-year plan for 2007-2010, along with the proposed 2007 Erie County budget. The ECFSA board charged the finance committee to review both documents and report back to the full board with its findings.

On October 23, 2006, the finance committee convened to listen to a presentation of both the four-year plan and the proposed 2007 budget by Erie County Executive Joel Giambra and Budget Director Jim Hartman. The finance committee engaged in a thoughtful and deliberate review of the four-year plan and proposed budget, and had severe concerns about the viability of both. After hearing the County's presentation, those concerns were expressed, along with several specific questions about various pieces of the four year plan and the proposed budget.

Chairman Baynes stated a letter with those questions and concerns was delivered to the County on October 26, 2006. The County responded to the finance committee on October 30, 2006. After a review of the County's response, the Erie County Fiscal Stability Authority still has significant concerns about the viability of the four-year plan.

Chairman Baynes stated that the finance committee met on October 31st to discuss those concerns and has prepared with its findings and recommendations.

Chairman Baynes then turned the meeting over to the chair of the finance committee, Joseph Goodell, for the finance committee report.

Director Goodell stated that the finance committee reviewed the proposals and asked Executive Director Ken Vetter to present a summary of the analysis.

Executive Director Vetter stated he would go through a brief presentation on the determinations the finance committee made as it reviewed the proposed budget and the four year plan and how the finance committee came up with their recommendations and some of the issues reported on and provided by the committee. He continued that there was a document prepared from the committee meeting. The committee was comprised of three people, plus other members of the board attending. The committee members are Director Johnson and Director Kruly and the committee is chaired by Joseph Goodell and they have been looking the budget the financial plan since October 18th and it has been a continuous process.

Mr. Vetter continued by stating that the first thing the committee did was to put together evaluation criteria to see if items are real, reasonable and achievable and if they should be included in the plan and balancing that the plan. Also, they sought historical data and to see if there is a trend. For example, if revenues had been going up through the years, then it might be reasonable to assume they would continue to go up. If they are going down 5 percent a year then it might be reasonable to assume they would continue to do so. In the review the committee asked the question: "Has the County done something that supports the assertions the financial plan and looked at the analytical review, so the members of the finance committee and members of the board can have a reasonable assurance that in 2008, 2009 and 2010, that what is in the plan is real? With a new administration and management, are things are happening as planned?"

Mr. Vetter stated that the finance committee also looked at and asked for information on whether the items have been done in other counties and what the history and experience has been elsewhere, under the assumption that if Niagara, Onondaga, Monroe counties have done it, then it can be reasonable and achievable for Erie County. He continued by stating that they are looking at what is real and what can happen. "Wanting it so does not make it so."

He continued by stating that the third issue is that there are a number of initiatives that are cost-savings or revenue items that require support from other officials, such as the County Clerk for additional fees, the state legislature for additional items or the County Comptroller for additional items. "If you are looking at the success of an item, we looked at who stated they could take care of it and who stated that they are for it and moving forward with it. If there is no support, those items need to be discounted significantly. If the support and the will is not there for the change the chance of success is not good."

Mr. Vetter stated that there are some things where structure has been put in place and then there are some things were there is no structure. On October 26th a letter was delivered to the County requesting information on 31 separate items that the committee had concerns with and had questions on. "There are 21 significant items I would like to go through. We want to be very careful with Erie County finances and I can't repeat it enough, wanting it so does not make it so."

Mr. Vetter then moved on to Part I of his presentation, Analysis and Recommendation on the Erie County Four-Year Plan.

Mr. Vetter then moved to the first initiative, which was entitled CLK-B, which stood for Clerk B. Mr. Vetter explained that the total amount of this item, $4.35 million, should be discounted from the plan. "At this point, there is no legislation in-place to support this revenue stream and there is no expressed support from the Erie County Clerk's Office (the office responsible for administering and collecting the fees). The lack of legislation and lack of stated public official support casts doubt on the whether this revenue can be achieved, so the entire amount of $4.35 million was discounted from the plan." Mr. Vetter then stated "wanting something to be true does not make it true."

Mr. Vetter explained that the next initiative, generating $1.35 million dollars in revenue from investment managing, does not have any specific data behind to support it. "The finance committee believes that the Comptroller's Office will invest in a prudent manner and will continue (with market forces allowing) to maximize interest earnings. However, the committee has no evidence that the Comptroller either supports the investment management revenue assumption or believes that it can be achieved. Consequently, the entire $1.35 million should be discounted from the plan."

Mr. Vetter then stated that the next initiative, adding a surcharge to support the E-911 system, is supposed to generate $8 million dollars in revenue. Mr. Vetter stated that there is a lack of historical data supporting the suggested increase in 2007 E-911 surcharge revenues. "Without historical data to establish the reasonableness E-911 surcharge revenue potential for 2007 and beyond, the committee believes that it is prudent to keep this revenue at a steady state in the forecast. Consequently, $1.2 million dollars should be discounted from the plan."

Mr. Vetter stated that the next two initiatives, numbers 125 and 128, have to do with Erie County's vehicle and equipment fleet. Mr. Vetter stated that both initiatives have potential savings, but one of the first priorities of the reinstated fleet department was to compile a detailed plan on how savings would be achieved, including specific activities and milestones. "The ECFSA finance committee has seen no evidence of progress and has therefore discounted potential savings by 50% on both initiatives."

In the next initiative, Mr. Vetter stated that the concept of a productivity bank was included in the September 2005 four-year plan submission. "In the year since the original plan was unveiled, the County has not formulated an action plan for achieving savings. Without specific program initiatives, the committee believes it is imprudent to assume savings, and there fore discounted the full $3 million dollars from the plan." gain, Mr. Vetter stated "wanting something to be true does not make it true."

In the next initiative, Mr. Vetter commented that the report from Valmark Associates submitted to the Authority on 10/30/06 lists a number of potential opportunities for Erie County. However, the report appears to hedge its own revenue estimates for the County, indicating on page 5 "Valmark Associates, LLC makes no explicit recommendation with regard to any of the revenue opportunities identified in this investigation." The finance committee believes there is some opportunity for the County to generate revenues through the market-based revenue program initiative, but lacks confidence in the estimates provided. As a result, it has discounted plan estimates by 50% to $450,000."

In the next slides, Mr. Vetter stated that Erie County is one of 12 counties participating in a pilot program to reduce provider fraud. Erie County is working with NYSAC in using its contracted "Verify New York" program to assist in identifying potential provider fraud. Mr. Vetter stated that the initial announcement of this program occurred in the fourth quarter of 2006. Subsequent to that announcement, negotiations commenced with the NYS Inspector General's Office to define county and state responsibilities under this program. The county has indicated that those negotiations were recently concluded. Given the lack of historical data and the lag-time in establishing the program, Mr. Vetter stated the Finance Committee has discounted potential revenue estimates by 50%, to $875,000.

Mr. Vetter indicated that the County anticipates savings of $1.499 million for 2006 will be achieved and exceeded in the next initiative, revision of residential treatment. Mr. Vetter went on to say however there is no indication of how future, incremental savings will accrue and that there is a concern by the finance committee that the residential treatment program may reach a saturation point, at which significant incremental savings may not be. Mr. Vetter said that half of the $12.2 million dollar figure should be discounted from the plan.

In the next slide, Mr. Vetter stated that there has been no evidence provided by Erie County that the integrated case management program, which is a key to the "Blueprint for Change" initiative, will actually save County dollars. The finance committee agrees that this program could enhance services for those in need, but is not convinced that Erie County would generate any savings as a result. Mr. Vetter stated that the entire $7.2 million should be discounted from the plan.

Mr. Vetter commented that the next initiative was designed to generate money through county testing of sexually-transmitted diseases (STD's). Mr. Vetter explained that there has been no evidence of a marketing and operational plan to expand STD testing in Erie County and that there is also a concern by the finance committee that there may be significant competition from existing laboratory providers in the private sector that would make it difficult for the County to build a significant customer base. He stated that therefore, the committee believes that any net revenues from this item be held constant at the 2007 level, and $900,000 should be discounted from the plan.

For the next slide, Mr. Vetter commented that the stated revenue generated in the Federal Part D initiative is not justified by any specific historical data. He further stated that the finance committee understands that there will be some continuing revenue stream, but believes that such revenues, given the lack of historical data, should be kept at the 2007 budgeted amount of $1.08 million for the duration of the plan.

Mr. Vetter stated, regarding the next slide, that the finance committee, in its review, believes that there are significant obstacles to the continued collection of supervision fees for probationers, including the potential of a legal challenge that could impact both future and existing revenues. He also mentioned that the committee also has a significant concern regarding the doubling of revenues between 2007 and 2008, and the incremental increases thereafter. The committee believes that planning for significant increases in this fee is unsubstantiated and recommends that revenues be held constant at the 2007 level of $252,000.

As to the next initiative, Mr. Vetter stated that there is no evidence of a marketing plan to bring the census of the Youth Detention Facility to its capacity of 64 residents. The County indicates that there are potential areas of opportunity, yet there is no written commitment from other counties that could be used as the basis for projecting revenue growth. Because of this, the committee recommends that the total amount, $1.90 million be discounted from the plan.

Showing the "Improved Contract Competition" slide, Mr. Vetter stated that Erie County indicated that the purchasing reforms related to this item were defeated in the Assembly. Mr. Vetter continued that in addition, the justification provided by the County for this and other purchasing initiatives is the reduction in departmental request lines in the budget, which does not show evidence of purchasing reform, or even purchasing savings. The committee believes it is prudent to retain annual plan savings at the 2006 budgeted level - $20,000.

Mr. Vetter stated that initiatives 115 and 116 do not demonstrate any evidence of savings within the purchasing department of Erie County. He stated that both dollar amounts have been discounted from the plan.

Regarding the Insurance Pooling initiative, Mr. Vetter stated that there is no evidence that there is potential savings resulting from different insurance policies or from greater participation by municipalities which join Erie County in a pooled insurance program. Vetter stated that because of the lack of any evidence of support from other municipalities, the entire dollar amount should be discounted from the plan.

In the next slide, Mr. Vetter stated that pilot programs on the use of procurement cards in the past have yielded negative results. The finance committee is extremely unsure as to how this initiative will save Erie County tax dollars, so the entire dollar amount should be discounted from the plan.

Mr. Vetter presented the next slide, which was an initiative to realign workforce target staffing. Mr. Vetter stated the entire $4.8 million dollars was to be discounted from the plan. Mr. Vetter stated that the Holding Center is under significant pressure for increased staffing due to the influx of defendants stemming from the City of Buffalo's "Zero Tolerance Policy" and from state corrections officials, who have indicated that the facility is significantly understaffed.

Mr. Vetter presented the final initiative from part 1, Alternatives to Incarceration. Mr. Vetter stated that the County's determination that there was a $9 million dollar savings was speculative, and not based on any demonstrative evidence. Because of this, the committee discounted the entire amount from the four year plan.

Mr. Vetter moved on to part two of the presentation, "Additional Concerns".

Mr. Vetter showed the Replenish Road Fund Balance slide and stated that at the end of 2005, the County's road fund ended with a $7.8 million negative unrestricted balance. He went on to say that that the County is continuing its practice of transferring over $9 million from the road fund to the general fund even though the road fund has a deficit. Replenishing the fund would cost the general fund up to $7.8 million. "Actually the $7.8 is wrong, it is worse, it is now $8.6 million."

In the next slide, Mr. Vetter commented that Erie County has budgeted 12 months of .75% sales tax revenue in its 2007 budget despite the fact that the legislation establishing the .75% sales tax sunsets on 11/30/2007. Mr. Vetter commented that the Legislature has passed a super-majority vote to continue the sales tax, so the concern over this issue is not as great as it was a few days earlier.

Regarding the following slide, Mr. Vetter commented that, in the latest version of the plan, Erie County's projected fund balance has been reduced from $75 million to $42 million by 2010. Mr. Vetter stated that currently, a charter amendment has been proposed to establish a 5% minimum fund balance. As a result, he stated that the current plan does not meet the requirements of that potential charter revision and deviates from the original goal that sets out to establish an appropriate rainy day reserve.

As to the same slide, Mr. Vetter noted that, in the original plan there was a $30 million capital debt ceiling. Mr. Vetter stated that the current version of the plan calls for new debt totaling $59.2 million, or double the ceiling. He went on to say that there is significant concern among finance committee members about the significant increase in County debt. To exacerbate matters, the administration is funding "interest only" payments in the year following debt issuance. Therefore, the largest payments related to this debt do not occur until the next administration.

Staying with the same slide, Mr. Vetter stated that earlier versions of the plan called for a potential reduction of between 200-400 budgeted positions, but according to the County Executive's budget message, 364 positions have been added since 2005. Mr. Vetter then repeated: "Wanting something to be true does not make it true."

Turning to the next slide, Mr. Vetter stated that the plan calls for an annual reduction in Holding Center Overtime costs from approximately $11 million to $8.6 million. He commented that, given the impetus from State Corrections on the increased number of posts and positions required at the Holding Center, it is unlikely that this overtime reduction will be realized.

Staying at the same slide, Mr. Vetter added that Erie County is continuing the practice of bonding $6 million in "CHIPS" for capital overlay projects, while receiving the same amount in current revenue from New York consolidated highway funding – a bad and costly financial practice.

Mr. Vetter moved on to the summary slide and stated that there are a significant number of so-called cost-savings and revenue enhancement items in the County's four-year plan and related budget that cannot be substantiated . Mr. Vetter continued that many of the initiatives "ramp-up" after the current administration leaves office, delaying problem-solving to the next County administration.

Mr. Vetter further stated: "In their best assessment, the finance committee has discounted in excess of $51 million from the $132 million in initiatives contained in the four year plan, leaving the plan significantly out-of balance through the year 2010."

Mr. Vetter then stated the year-by-year amounts discounted from the plan:

2007 - $4.62 million	2008 - $10.79 million
2009 - $15.48 million	2010 - $20.13 million

Mr. Vetter stated he also had a few graphs on sales tax, property taxes, employment by Erie County and net bonded debt per capita, and called the numbers “staggering.”

The recommendations from the finance committee to the board are quoted in the slide presentation: “Reduce planned savings/revenues by the stated amounts in 2007, 2008, 2009 and 2010. The reductions place the plan out-of-balance by a total amount of $51.02 million. The ECFSA Board should take appropriate immediate corrective action.”

Director Goodell thanked everyone who worked on the report and the summary of the findings of the finance committee.

Chairman Baynes thanked Executive Director Kenneth Vetter for his summary of the committee’s findings. He added, “Unfortunately, the Authority has received overt threats of litigation from the County Administration concerning the nature and the extent of the Authority’s powers. We strongly desire to avoid spending taxpayer funds in litigation and to work cooperatively with the stakeholders in the best interest of the taxpayers of the County, but, it is necessary at this time to enter an executive session of the board to receive privileged legal counsel concerning the threats made by the Administration.

Chairman Baynes then asked for a motion to enter into executive session with the Authority’s legal counsel to discuss the legalities of any action related to the budget and/or the four year plan. Director Kee moved to enter executive session, seconded by Director Johnson; the motion was then unanimously approved.

The board then moved to an adjacent room with Executive Director Kenneth Vetter, legal counsel David McNamara and counsel’s assistant, Craig Bucki.

After the executive session Chairman Baynes asked Secretary Keysa to report if any votes were taken and Secretary Keysa responded that no votes were taken.

Chairman Baynes then welcomed everybody back and stated “Since May, we have been directing the County to present to us a sound four-year plan, as directed by the state law creating the ECFSA, that would put the County on long-term stable fiscal ground. As recently as yesterday, we were still giving the County officials every opportunity to address our concerns and provide us with information that showed the four-year plan was sound and realistic.

Chairman Baynes continued: “We have seen more jobs, increased debt, using fiscal gimmicks that include transferring money from a fund that is already deficient by millions of dollars. After more than six months of back and forth, the conclusion is that the County for whatever reason is not capable of making the necessary decisions required to submit a balanced four-year plan.”

Chairman Baynes asked the finance committee Chair Goodell if he had a proposed resolution on the committee’s findings.

Director Goodell replied yes and that it had previously been circulated to members of the board as draft Resolution 06-49, with findings and resolving to impose a control period, adding: "I move to adopt Resolution 06-49." Director Kee seconded the motion. Director Kruly asked for a roll call which Chairman Baynes called as follows:

Director Keysa	"Yes"
Director Kruly	"Yes"
Director Goodell	"Yes"
Director Kee	"Yes"
Director Johnson	"Yes"
Chairman Baynes	"Yes"

Chairman Baynes declared that the resolution was unanimously approved.

Resolution No. 06-49

IMPOSING A CONTROL PERIOD UPON THE COUNTY OF ERIE

I. <u>The Authority of the Erie County Fiscal Stability Authority to Impose a Control Period</u>

WHEREAS, Chapter 182 of the New York Laws of 2005, as amended, created the Erie County Fiscal Stability Authority ("ECFSA"), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to "oversee [Erie County's] budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward financial stability"; and

WHEREAS, the ECFSA has functioned in an advisory capacity since its creation on July 12, 2005; and

WHEREAS, New York Public Authorities Law ("Public Authorities Law") section 3959 enumerates circumstances that mandate the ECFSA to impose a control period upon the County of Erie; and

WHEREAS, pursuant to Public Authorities Law section 3959(1)(e), the ECFSA "*shall* impose a control period" (emphasis added) in the event that Erie County has "violated any provision" of the Erie County Fiscal Stability Authority Act ("ECFSA Act");

II. <u>Requirements for the Erie County Executive's Submission of a 2007-2010 Financial Plan</u>

WHEREAS, Public Authorities Law section 3957(1) requires the Erie County Executive to "prepare and submit to the [ECFSA] a four-year financial plan and the county executive's proposed county budget, not later than the date required for submission of such budget to the [Erie County] legislature pursuant to the county charter"; and

WHEREAS, the four-year financial plan, as defined by Public Authorities Law section 3951(14), is a "financial plan of [Erie County] and [its] covered organizations"; and

WHEREAS, pursuant to Public Authorities Law section 3957(2)(b), "[n]ot more than twenty days after submission of a financial plan . . ., the [ECFSA] shall determine whether the financial plan . . . is complete and complies with the provisions of [section 3957] . . ."; and

WHEREAS, the Erie County Executive duly submitted his proposed budget for fiscal year 2007, and a four-year financial plan ("Plan") for fiscal years 2007-2010, to the ECFSA on October 18, 2006; and

WHEREAS, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine whether the 2007-2010 Plan complies with the provisions of section 3957 on or before November 7, 2006; and

WHEREAS, Public Authorities Law section 3957(1) requires that the 2007-2010 Plan "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for each fiscal year";

III. The 2007-2010 Plan's Unreasonable Projections of Revenues Assuming an 8.75% Sales Tax Rate

WHEREAS, the 2007-2010 Plan's operating revenue projection "assumes continuation of the 8.75% [sales tax] rate throughout the four-year period"; and

WHEREAS, the 8.75% sales tax rate consists of:

(1) a 4% sales tax levied by New York State;
(2) a 3% Erie County sales tax that needs no further authorization;
(3) an extra 1% sales tax ("extra 1% sales tax") levied by Erie County before 2005, and whose authorization shall expire on February 28, 2007;
(4) an extra 0.25% sales tax ("extra 0.25% sales tax"), enacted by Erie County in 2005 upon New York State authorization, which shall expire on November 30, 2007; and

(5) an extra 0.5% sales tax ("extra 0.5% sales tax"), enacted by Erie County in 2005 and authorized by New York State in 2006, and whose authorization shall also expire on November 30, 2007; and

WHEREAS, Erie County may continue to levy the extra 1% sales tax beyond February 28, 2007, only after:

(1) the New York State Legislature introduces a bill to reauthorize the extra 1% sales tax;
(2) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;
(3) the New York State Legislature votes in favor of the reauthorization bill already introduced; and
(4) ten (10) Erie County legislators subsequently vote to enact the extra 1% sales tax; and

WHEREAS, Erie County may continue to levy the extra 0.25% sales tax and the extra 0.5% sales tax beyond November 30, 2007, only after:

(1) the New York State Legislature introduces a bill to reauthorize the extra 0.25% sales tax and the extra 0.5% sales tax;
(2) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;
(3) the New York State Legislature votes in favor of the reauthorization bill already introduced; and
(4) ten (10) Erie County legislators subsequently vote to enact the extra 0.25% sales tax and the extra 0.5% sales tax; and

WHEREAS, the legislative actions necessary to re-enact the extra 1% sales tax, the extra 0.25% sales tax, and the extra 0.5% sales tax have not yet taken place;

IV. The 2007-2010 Plan's Unreasonable Projections of Revenues from New Fees

WHEREAS, the 2007-2010 Plan has also budgeted growth in revenue "because of proposed fee increase [sic] in the Clerk's Office, Parks, and Health"; and

WHEREAS, an increase in fees charged by the Erie County Clerk and the Erie County Department of Health may take effect only after:

(1) the New York State Legislature introduces a bill to authorize the increase in fees;
(2) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;
(3) the New York State Legislature votes in favor of the authorization bill already introduced; and

(4) ten (10) Erie County legislators subsequently vote to enact the proposed fee increase; and

WHEREAS, in a letter to the Erie County Budget Director dated October 26, 2006 (the "Finance Committee Letter"), ECFSA finance committee chairman Joseph Goodell asked "whether the opinion of any of the members of the Erie County Legislature concerning whether to increase registrar fees in the Erie County Clerk's Office [had] been sought and obtained"; and

WHEREAS, the Finance Committee Letter sought a response to the inquiries therein on or before October 30, 2006; and

WHEREAS, in response to the Finance Committee Letter, Erie County could not indicate whether ten (10) Erie County legislators planned to support a fee increase in the Erie County Clerk's Office; and

WHEREAS, in response to the Finance Committee Letter, Erie County could not indicate whether any members of the New York State Legislature favor this fee increase; and

WHEREAS, absent the support of ten (10) Erie County legislators, the 2007-2010 Plan does not reasonably assume an increase in registrar fees charged by the Erie County Clerk's Office or the Erie County Department of Health; and

WHEREAS, a majority of Erie County legislators also must approve the imposition of parking fees upon patrons to Erie County parks; and

WHEREAS, the Finance Committee Letter also asked "whether the opinion of any of the members of the Erie County Legislature concerning whether to impose parking fees upon visitors to Erie County parks [had] been sought and obtained"; and

WHEREAS, Erie County has failed to answer the Finance Committee Letter's request whether a majority of Erie County legislators planned to support the imposition of parking fees upon visitors to Erie County parks; and

WHEREAS, Erie County has failed to address whether visitors to Erie County parks would leave their vehicles along nearby streets, and thereby purposely avoid paying the proposed parking fees; and

WHEREAS, absent the support of a majority of Erie County legislators, the 2007-2010 Plan does not reasonably assume the imposition of new parking fees at Erie County parks;

V. <u>The 2007-2010 Plan's Unreasonable Matrix Initiative Projections</u>

WHEREAS, the 2007-2010 Plan also includes "proposed actions to close the [Erie County] budget gaps as forecast for fiscal years 2008, 2009, and 2010"; and

WHEREAS, the summary of 2007 matrix initiatives includes projections of the revenues or savings that each of these proposed actions shall create over the duration of the Plan; and

WHEREAS, the ECFSA has encouraged and supported Erie County's development of the Matrix Initiatives as tools for reducing projected deficits and re-engineering governance; and

WHEREAS, the Summary of 2007 Matrix Initiatives must nonetheless base its projections for revenues and savings upon reasonable and appropriate fiscal projections substantiated in fact; and

WHEREAS, the Finance Committee Letter sought fiscal data, trends, and supporting documentation underlying the budgeted revenues for 2007, and the projected revenues in 2008, 2009, and 2010, that shall result from implementing the following Matrix Initiatives:

(a) a supervision fee for probationers (Item 12),
(b) a fee for probationer drug testing (Item 13),
(c) an electronic monitoring fee (Item 15),
(d) an increase in the DWI supervision fee (Item 16),
(e) an increase in the revenue potential of the Erie County Youth Detention Facility (Item 19),
(f) development of a regional automated public health laboratory testing program (Item 52),
(g) a $0.30 wireless surcharge to offset 911 costs (Item 68), and
(h) development of a market-based revenue program (Item 90); and

WHEREAS, the Finance Committee Letter also sought fiscal data, trends, and supporting documentation underlying the budgeted savings for 2007, and the projected savings in 2008, 2009, and 2010, that shall purportedly result from implementing the following Matrix Initiatives:

(a) reform of the retiree drug program (Item 32),
(b) improvement of attendance monitoring and payroll controls (Item 33),
(c) improvements at the residential treatment center (Item 50),
(d) a reduction in Medicaid fraud (Item 56),
(e) a comprehensive risk management program (Item 85),
(f) pooled insurance bidding (Item 86),
(g) establishment of a productivity bank (Item 89),
(h) enhancement of contract competition (Item 115),
(i) strategic sourcing (Item 116),
(j) an increase in other government purchasing on Erie County contracts (Item 117),

(k) resumption of the use of procurement cards (Item 118), and
(l) integrated case management (Item 159); and

WHEREAS, the Finance Committee Letter sought disclosure of a purported plan by which Erie County intends to reduce expenses as a result of DISS or fleet management; and

WHEREAS, Erie County has failed to provide sufficient fiscal data, trends, or supporting documentation to substantiate the purported budgeted revenues and savings for 2007, and the purported projected revenues and savings for 2008-2010, as requested in the Finance Committee Letter; and

WHEREAS, Erie County has also failed to provide any plan for the reduction of Erie County's expenses via DISS or fleet management;

VI. <u>The 2007-2010 Plan's Depletion of Erie County's Fund Balance Reserves</u>

WHEREAS, the 2007-2010 Plan acknowledges Erie County's "objective of reaching $75 million of fund balance reserves"; and

WHEREAS, the 2007-2010 Plan nonetheless anticipates that Erie County "will have cumulative fund balance reserves" of only $42 million upon completion of the audit of Erie County's 2006 finances; and

WHEREAS, Erie County cannot ascertain the accuracy of this $42 million projection until completion of the audit in September 2007; and

WHEREAS, funding to subsidize replenishment of Erie County's risk retention fund and a likely contribution to the Buffalo Niagara Convention and Visitors' Bureau shall derive from Erie County's fund balance reserves; and

WHEREAS, Erie County's inability to realize the revenues and savings that the 2007-2010 Plan projects to result from implementation of the Matrix Initiatives shall further compromise the size of Erie County's fund balance reserves; and

WHEREAS, on November 7, 2006, Erie County voters shall decide whether to adopt Erie County Charter revisions that the Erie County Legislature unanimously approved, and that the Erie County Executive signed; and

WHEREAS, one of the recommended revisions to the Erie County Charter mandates the fund balance reserves to equal five percent (5%) of the budget for a given fiscal year; and

WHEREAS, the proposed 2007 Erie County budget plans for total revenues and total expenditures each to equal $1,233,864,711, five percent of which amounts to $61,693,235.55; and

WHEREAS, the 2007-2010 Plan merely expects the fund balance reserves to total “over $50 million” at the end of 2007; and

WHEREAS, this $50 million estimate falls well short of the over $61 million that the fund balance reserves must contain at the end of 2007, provided that Erie County voters adopt on November 7, 2006 the proposed amendments to the Erie County Charter;

VII. <u>Structural Imbalance in the Proposed Erie County Budget for Fiscal Year 2007</u>

WHEREAS, structural imbalance in Erie County’s proposed fiscal year 2007 budget (“proposed 2007 budget”), which forms the basis for the first year of the 2007-2010 Plan, contributes to deficits greater than the 2007-2010 Plan expects in 2008, 2009, and 2010; and

WHEREAS, the proposed 2007 budget “assumes continuation of the 8.75% [sales tax] rate throughout” 2007, yet authorization for the extra 1% sales tax shall expire on February 28, 2007, while authorization for the extra 0.25% sales tax and the extra 0.5% sales tax shall expire on November 30, 2007; and

WHEREAS, if Erie County cannot continue to levy the extra 0.25% sales tax and the extra 0.5% sales tax beyond November 30, 2007, Erie County shall fail to realize approximately $10 million in revenue that it anticipates to receive in December 2007; and

WHEREAS, pursuant to the proposed 2007 budget, Erie County also shall borrow $6 million in order to subsidize the Consolidated Local Streets and Highway Improvement Program (“CHIPS”) fund, and to facilitate payment of operating expenses; and

WHEREAS, such borrowing renders the proposed 2007 budget structurally imbalanced, in that recurring CHIPS expenditures shall exceed recurring CHIPS revenue; and

WHEREAS, the proposed 2007 budget also presumes that the imposition of new fees by the Erie County Clerk, the Erie County Department of Parks, and the Erie County Department of Health, as well as charging new fees to probationers, shall yield Erie County $2,808,000 in revenue; and

WHEREAS, the 2007-2010 Plan does not reasonably assume the establishment of these fees, and does not reasonably project the revenue that they shall allegedly produce; and

WHEREAS, the proposed 2007 budget allots only $8.6 million for overtime in the Erie County Sheriff's Department, even though actual expenditures for Sheriff's Department overtime exceeded $10 million in 2005; and

WHEREAS, in response to the Finance Committee Letter, Erie County declared that it would seek greater reimbursement from New York State for overtime expenditures incurred by the Sheriff's Department's Jail Management Division; and

WHEREAS, given the uncertainty with respect to the New York State Legislature's approval for such enhanced reimbursement, it is unreasonable for Erie County to rely upon such approval in its projection in the proposed 2007 budget; and

WHEREAS, even if Erie County may levy the extra 0.25% sales tax and the extra 0.5% sales tax beyond November 30, 2007, the combination of $6 million of borrowing to subsidize the CHIPS fund, the unreasonable projection of $2.808 million in revenue from the establishment of new fees, and a potential $2 million underestimation of overtime expenditures in the Erie County Sheriff's Department would amount to a deficit of $10.808 million in the proposed 2007 budget; and

WHEREAS, the proposed 2007 budget also permits the Erie County Road Fund to operate at an $8.6 million deficit;

VIII. <u>Resolutions</u>

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Erie County Fiscal Stability Authority accepts the report of its Finance Committee concerning the 2007-2010 Plan; and

BE IT FURTHER RESOLVED that, having reviewed the 2007-2010 Plan submitted by the Erie County Executive, the Erie County Fiscal Stability Authority hereby finds, for the following reasons, that the 2007-2010 Plan does not "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year":

> (1) The 2007-2010 Plan does not reasonably assume that the Erie County Legislature and the New York State Legislature shall reauthorize

through December 31, 2010, the extra 0.25% sales tax and the extra 0.5% sales tax originally levied in 2005.

(2) The 2007-2010 Plan does not reasonably assume that the Erie County Legislature and the New York State Legislature shall authorize the Erie County Clerk's Office and the Erie County Department of Health to increase fees as an added source of revenue.

(3) The 2007-2010 Plan does not reasonably assume that the Erie County Legislature shall impose, as an added source of revenue, parking fees upon patrons at Erie County parks.

(4) The 2007-2010 Plan does not provide sufficient fiscal data, trends, comparisons with other counties or municipalities, or other reasonable and appropriate assumptions based in documentary evidence to justify the revenues and savings that it projects to result from implementation of the 2007 Matrix Initiatives.

(5) The 2007-2010 Plan does not provide for adequate fund balance reserves, particularly in the event that voters adopt the Erie County Charter revisions that the Erie County Legislature and the Erie County Executive have unanimously endorsed.

(6) Notwithstanding possible continuation of the extra 0.25% sales tax and the extra 0.5% sales tax in Erie County beyond November 30, 2007, bonding to subsidize the CHIPS fund, the unreasonable projection of revenue from new fees, and inadequate funding for overtime in the Sheriff's Department create a structural imbalance in the proposed 2007 budget and in the first year of the 2007-2010 Plan.

BE IT FURTHER RESOLVED that, as a consequence, the Erie County Fiscal Stability Authority hereby finds the following:

(1) Because Public Authorities Law section 3957(1) mandates that Erie County's 2007-2010 Plan, as submitted by the Erie County Executive to the ECFSA on October 18, 2006, "*shall* . . . contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year" (emphasis added), the 2007-2010 Plan violates section 3957(1), and hence does not comply with the provisions of section 3957.

(2) In submitting the 2007-2010 Plan, which violates Public Authorities Law section 3957(1), Erie County has violated a provision of the ECFSA Act, as codified by Title 3 of Article 10-D of the Public Authorities Law.

(3) Because Public Authorities Law section 3959(1)(e) mandates the ECFSA to impose a control period at any time that Erie County "shall have violated any provision" of Title 3 of Article 10-D of the Public Authorities Law, the ECFSA must impose a control period upon the County of Erie.

BE IT FURTHER RESOLVED that the Erie County Fiscal Stability Authority imposes a control period upon the County of Erie, as Public Authorities Law section 3959(1)(e) requires; and

BE IT FURTHER RESOLVED that the ECFSA regards imposition of this control period, and the careful scrutiny of Erie County's finances that shall result, to be in the best interests of the citizens of Erie County; and

BE IT FURTHER RESOLVED that the ECFSA pledges to work cooperatively with Erie County's elected officials toward returning fiscal stability to Erie County government; and

BE IT FURTHER RESOLVED that the ECFSA shall terminate this control period when it ascertains under Public Authorities Law section 3959 that "none of the conditions which would permit the [ECFSA] to impose a control period exist"; and

BE IT FURTHER RESOLVED that, if this control period remains in effect as of one year from the date of this resolution, then within sixty (60) days thereof, the ECFSA shall determine the circumstances that justify continuation of a control period, and enumerate those circumstances in writing.

This resolution shall take effect immediately.

Chairman Baynes noted the passage of resolution 06-49 imposing a control period and asked if there were any more motions.

Director Goodell moved to adopt draft resolution 06-50, previously circulated to the directors imposing a hiring freeze on the County. Director Kruly seconded the motion. Chairman Baynes called the role, and the directors responded as follows:

Director Keysa	"Yes"
Director Kruly	"Yes"
Director Johnson	"Yes"
Director Kee	"Yes"
Director Goodell	"Yes"
Chairman Baynes	"Yes"

Chairman Baynes declared that resolution 06-50 imposing a hiring freeze had been passed by a unanimous vote.

Resolution No. 06-50

ORDERING A HIRING FREEZE UPON THE COUNTY OF ERIE

WHEREAS, section 3957 of the New York Public Authorities Law ("Public Authorities Law") requires the County of Erie to develop a four-year financial plan for 2007-2010 for submission to the Erie County Fiscal Stability Authority ("ECFSA"); and

WHEREAS, the County of Erie presented its 2007-2010 four-year financial plan ("2007-2010 Plan") to the ECFSA on October 18, 2006; and

WHEREAS, the ECFSA Finance Committee questioned Erie County Executive Joel Giambra and Erie County Budget Director James Hartman about the 2007-2010 Plan on October 23, 2006; and

WHEREAS, upon subsequently reviewing the 2007-2010 Plan, the ECFSA Finance Committee determined that it failed to project revenues and expenditures on the basis of reasonable and appropriate assumptions;

WHEREAS, on November 3, 2006, the ECFSA accepted this determination of its Finance Committee, and found that the Erie County Executive, acting as an agent of the County of Erie, violated Public Authorities Law section 3957(1) upon submitting the 2007-2010 Plan, which did not "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year"; and

WHEREAS, pursuant to Public Authorities Law Section 3959(1)(e), the ECFSA consequently imposed a control period over the County of Erie on November 3, 2006; and

WHEREAS, Public Authorities Law Section 3959(2)(c) authorizes the ECFSA, upon finding a hiring freeze essential to the adoption or maintenance of an Erie County budget or a four-year financial plan, to impose such a hiring freeze upon the County of Erie during a control period; and

WHEREAS, Public Authorities Law Section 3959(2)(n) further permits the ECFSA to issue binding orders to Erie County officials during a control period, to the extent that the ECFSA deems necessary or desirable in order to accomplish the purposes of the Erie County Fiscal Stability Authority Act ("ECFSA Act"); and

WHEREAS, such purposes of the ECFSA Act include, but are not limited to, timely and satisfactory implementation of an approved four-year financial plan;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA finds that the immediate imposition of a hiring freeze upon the County of Erie is essential and necessary to accomplish the purposes of the ECFSA Act, particularly to achieve the adoption, timely implementation, and maintenance of a compliant four-year financial plan; and

BE IT ORDERED that the County Executive of the County of Erie shall immediately impose a hiring freeze on all positions in the County of Erie; and

BE IT FURTHER ORDERED that the County Executive may request the Chairman of the ECFSA to waive the hiring freeze on a case-by-case basis; and

BE IT FURTHER ORDERED the County Executive shall seek waiver of the hiring freeze only upon certifying in writing the necessity of filling a position in order to protect the health or safety of the County of Erie and its citizens, to comply with the Erie County Charter, to prevent the use of excessive overtime by County of Erie employees, or to produce revenue in excess of the cost of filling the position; and

BE IT FURTHER ORDERED that the Chairman of the ECFSA, upon reviewing the County Executive's certification and any other pertinent circumstances, may approve waiver of the hiring freeze with regard to one or more positions that he determines necessary and appropriate to be filled; and

BE IT FURTHER ORDERED that the County Executive shall officially notify all Commissioners, Department Heads, and any other employee of the County of Erie who possesses the authority to hire, that the ECFSA has issued this ORDER, which imposes a hiring freeze and retains full force and effect.

This resolution shall take effect immediately.

Director Goodell continued by moving draft resolution 06-51, which had also been circulated to the members of the board, imposing a contract approval process. Director Johnson seconded the motion for approval of the resolution. Chairman Baynes called the role, and the directors responded as follows:

Director Keysa	"Yes"
Director Kruly	"Yes"
Director Johnson	"Yes"
Director Kee	"Yes"
Director Goodell	"Yes"
Chairman Baynes	"Yes"

Chairman Baynes declared that resolution 06-51 imposing a contract approval process had been passed by a unanimous vote.

Resolution No. 06-51

AUTHORIZING AN INTERNAL PROCESS FOR APPROVING CONTRACTS, SETTLEMENTS, OR OTHER OBLIGATIONS BINDING OR PURPORTING TO BIND THE COUNTY OF ERIE

WHEREAS, section 3957 of the New York Public Authorities Law ("Public Authorities Law") requires the County of Erie to develop a four-year financial plan for 2007-2010 for submission to the Erie County Fiscal Stability Authority ("ECFSA"); and

WHEREAS, the County of Erie presented its 2007-2010 four-year financial plan ("2007-2010 Plan") to the ECFSA on October 18, 2006; and

WHEREAS, the ECFSA Finance Committee questioned Erie County Executive Joel Giambra and Erie County Budget Director James Hartman about the 2007-2010 Plan on October 23, 2006; and

WHEREAS, upon subsequently reviewing the 2007-2010 Plan, the ECFSA Finance Committee determined that it failed to project revenues and expenditures on the basis of reasonable and appropriate assumptions;

WHEREAS, on November 3, 2006, the ECFSA accepted this determination of its Finance Committee, and found that the Erie County Executive, acting as an agent of the County of Erie, violated Public Authorities Law section 3957(1) upon submitting the 2007-2010 Plan, which did not "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year"; and

WHEREAS, pursuant to Public Authorities Law Section 3959(1)(e), the ECFSA consequently imposed a control period over the County of Erie on November 3, 2006; and

WHEREAS, during such a control period, the ECFSA may "review and approve or disapprove contracts or other obligations binding or purporting to bind" Erie County or any covered organization, pursuant to Public Authorities Law section 3959(2)(h);

NOW, THEREFORE, BE IT RESOLVED, that the ECFSA hereby authorizes the following process for the approval of contracts, settlements of claims, or other obligations binding or purporting to bind the County of Erie or its covered organizations:

1. Any contract, settlement, or other obligation, valued at $50,000 or more, that binds or purports to bind the County of Erie or a covered organization shall be reviewed and approved by the ECFSA before it takes effect.

2. Requests to review contracts, settlements, or other obligations shall be submitted to the ECFSA in writing, and shall consist of a completed standard contract approval request form (“Form”), as the ECFSA Staff (“Staff”) may develop, and any other required authorizations or additional information. The ECFSA shall not consider any request that fails to satisfy these criteria.

3. The Erie County Executive must sign any request by the County of Erie for ECFSA review of contracts, settlements, or other obligations. The President of Erie Community College (“ECC”) must sign any such request made by ECC.

4. The Staff shall review all requests that fulfill the requirements of subdivisions (2) and (3).

5. With regard to a requested contract, settlement, or other obligation valued at greater than or equal to $50,000, but less than $200,000, the ECFSA Executive Director (“Executive Director”), after consultation with the Staff, shall recommend its approval or rejection via written, time-stamped correspondence to each ECFSA Director (“Director”).

   (a) If the Executive Director recommends approval, the requested contract, settlement, or other obligation shall be deemed approved once any two (2) Directors sign the Form submitted with the request.

   (b) If the Executive Director recommends rejection, the requested contract, settlement, or other obligation shall be deemed approved once any four (4) Directors sign the Form submitted with the request.

   (c) If a requested contract, settlement, or other obligation is not approved within one week of the Executive Director’s written recommendation to each Director, it shall be deemed rejected.

6. With regard to a requested contract, settlement, or other obligation valued at greater than or equal to $200,000, the Executive Director, after consultation with the Staff, shall recommend its approval or rejection via written, time-stamped correspondence to each Director.

   (a) If the Executive Director recommends approval, the requested contract, settlement, or other obligation shall be deemed approved once any four (4) Directors sign the Form submitted for the request.

(b) If the Executive Director recommends rejection, the requested contract, settlement, or other obligation shall be deemed approved once any six (6) Directors sign the Form submitted for the request.

(c) If a requested contract, settlement, or other obligation is not approved within one week of the Executive Director's written recommendation to each Director, it shall be deemed rejected.

7. Rejected contracts, settlements, or other obligations, supported by additional information or documentation, may be re-submitted at any time for consideration by the ECFSA Board of Directors ("Board") at its next regularly scheduled meeting, and shall be approved upon the affirmative vote of four (4) Directors.

8. Upon ECFSA approval or rejection of a contract, settlement, or other obligation, the Executive Director shall provide written notice thereof to each Director, and to any person(s) who signed the request. The ECFSA Chairman also shall announce such approval or rejection at the next regularly scheduled meeting of the Board.

9. Notwithstanding any contrary provision of this resolution, all labor-related items, including collective bargaining agreements, memoranda of understanding or agreement, and negotiated settlements to grievances, shall be submitted to the ECFSA for consideration at the next regularly scheduled meeting of the Board, and shall be approved upon the affirmative vote of four (4) Directors.

This resolution shall take effect immediately.

Chairman Baynes continued: "Given Erie County's fiscal reality, we had no choice but to follow the law and impose a control period. Today the members of the ECFSA have voted to enter into a control period. That means we move from merely an advisory role to a more active role in returning fiscal health to the County. We now will approve contracts, settlements, labor agreements, and we can sets limits on spending, we can conduct audits of the County and any subordinate agencies and take other powers consistent with the law as may be in the interest of the taxpayers of the County.

Chairman Baynes continued: "I have spoken to Sheriff Tim Howard, District Attorney Frank Clark, Mr. Swarts and Mr. Poloncarz and Legislature Lynn Marinelli and Dr. Barry Weinstein and would like to thank them for their indications that they would work with the ECFSA". He stated he also spoke to the Governor. He concluded by stating that Comptroller Poloncarz has indicated that he would work with the ECFSA either way, whether it was "soft" or "hard."

Chairman Baynes called for a motion to adjourn, which was offered by Director Kruly, seconded by Director Kee, and unanimously approved at 5:45 p.m.

Respectfully submitted,

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Stanley J. Keysa
Secretary