Erie County Fiscal Stability Authority
Minutes of the May 15, 2008 Directors' Meeting

(Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority ("ECFSA"), which was held May 15, 2008 at 2 p.m. in the Auditorium of the Buffalo and Erie County Library. These minutes will not become final until approved at a subsequent meeting of ECFSA directors, and may be amended before approval.)

Present: Anthony J. Baynes, Chairman, Robert Glaser, Vice Chairman, Stanley Keysa, Secretary, Director John Johnson, Director Kenneth Kruly, Director Joseph Goodell, and Executive Director Kenneth Vetter.

Chairman Baynes: "I would like to call this meeting of the Erie County Fiscal Stability to order. I welcome my fellow Board Members, public officials, interested members of the public and press and media in attendance. Thank you for coming."

"Today's agenda is focused on the Authority's response to the county's four year plan submitter on May 1st. Our first order of business is to approve the minutes of May 2, 2008. They have been submitted by Secretary Keysa and were circulated to the members in their briefing books prior to the meeting. Do I have a motion to approve the minutes?

Director Kruly moved the following resolution, which was seconded by Director Goodell and unanimously approved.

Resolution No. 08-57

APPROVING MINUTES AND RESOLUTIONS FROM THE MAY 2, 2008 MEETING

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its May 2, 2008 meeting and ratifies and affirms five resolutions numbered 08-52, 08-53, 08-54, 8-55, and 08-56 that were approved on May 2, 2008.

This resolution shall take effect immediately.

Chairman Baynes: "Erie County has forwarded a small number of contracts for approval. I would ask Mr. Vetter to cover those items.

Executive Director Vetter: "Yes Mr. Chairman, there are actually two of them that appear in the matrix, one from Mental Health and one from Social Services. There were no comments or questions. The third was brought by the Sheriff today. The staff suggests that on the matrix, 1-1 and 1-2 be considered as a slate at this point in time".

Chairman Baynes: "My I have a motion to approve the contracts 1-1 to 1-2."

Director Kruly moved the following resolution, seconded by Director Johnson and unanimously approved:

Resolution No. 08-58

APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE

WHEREAS, Chapter 182 of the New York Laws of 2005 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 fiscal stability;" and

WHEREAS, the ECFSA first imposed a control period upon the County of Erie (the "County") by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County ("contract approval process"), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than $50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a "Responsible Official," as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA approves the contracts, settlements, and other obligations listed on the attached document.

Department	Description	Amount
EC Mental Health-Service Contract-NYS Office of Mental Health/Housing Options Made Easy	Increase the 2008 Housing Options Made Easy Inc	$1,042,593-No local share
EC Department of Social Services-Service Contract – United Way & WNY United Against Drug & Alcohol Abuse	Outreach specialist function to assist students as needed	$237,768-No local share

This resolution shall take effect immediately.

Executive Director Vetter: "Mr. Chairman, if I could, a recently submitted contract from the Sheriff office indicates an immediate consideration item to purchase 15 marked patrol vehicles. The cover letter says there are significant difficulties if they are not purchased at this time and patrol vehicles are breaking down. Also pricing and availability may be an issue if we do not approve this today, so at this point I ask that the contract that is in front of you for $389,835 for the purchase of patrol vehicle be considered for approval by the board."

Chairman Baynes: "May I have a motion to approved the contract?

Director Keysa moved and Director Glaser seconded the motion. Chairman Baynes abstained to avoid any appearance of a conflict of interest. The resolution was then duly approved.

<u>Resolution No. 08-59</u>

APPROVING CERTAIN CONTRACTS, SETTLEMENTS, AND OTHER OBLIGATIONS BINDING THE COUNTY OF ERIE

WHEREAS, Chapter 182 of the New York Laws of 2005 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 fiscal stability;" and

WHEREAS, the ECFSA first imposed a control period upon the County of Erie (the "County") by adopting Resolution 06-49 on November 3, 2006; and

WHEREAS, incident to and in furtherance of the imposition of the control period, the ECFSA adopted Resolution 06-51, which authorized a process for approving contracts, settlements, or other obligations binding or purporting to bind the County ("contract approval process"), on November 3, 2006; and

WHEREAS, in adopting Resolution 07-04 on January 11, 2007, the ECFSA renewed and continued the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA has adopted Resolution 07-10, which replaces and supersedes the contract approval process authorized by Resolution 06-51; and

WHEREAS, the ECFSA must review and approve any contract, settlement, or other obligation, valued at greater than $50,000, that binds or purports to bind the County or a covered organization, before it takes effect; and

WHEREAS, the County Executive or a "Responsible Official," as defined in Resolution 07-10, has duly submitted a request for review of the contracts, settlements, and other obligations listed on the attached document; and

WHEREAS, the ECFSA Executive Director, after consultation with the ECFSA Staff, has recommended approval of each contract, settlement, or other obligation via written correspondence to each ECFSA Director;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA approves the contracts, settlements, and other obligations listed on the attached document.

Department	Description	Amount
EC Sheriffs Office-Purchase Contract	Purchase of Marked Patrols cars-DeLacy Ford	$389,835-All local share

This resolution shall take effect immediately.

Executive Director Vetter: "My Chairman, since we met two weeks ago, there was a small contract list."

Chairman Baynes: "Director Goodell's finance committee met just prior to this meeting to collect the committee's thoughts and make a recommendation regarding the County's four-year plan submission. I would ask Mr. Goodell to report on the committee's findings and recommendations."

Director Goodell: "Thank you the finance committee with the staff has been working for approximately two weeks analyzing the four-year plan submitted by the Erie County Executive. I would like to make some comments and observations before making some recommendations."

"We find that the four-year plan is precisely as the County Executive described it as a work in progress and I think we find it is a bit premature for the County to try to develop a four-year plan and we find ourselves in a situation that the County Executive has not developed with us a level of comfort that we have in any projections made. We are simply unable to calibrate those projections the result is we are being very very careful and very through in digging into any of their projections."

"The other statement I want to make is in one of the areas we discussed in the projections and our response has to deal with labor contracts. The discussion that comes from the finance committee and I am quite sure the board, what ever discussions respond back to the county with does not mean that we would accept those values if such a labor contract was negotiated. There are too many other aspects of such that none of our responses I consider acceptance of certain values."

"Mr. Vetter would you like to comment on the staff report please."

Executive Director Vetter: "Mr. Chairman let me reiterate from the meeting the finance committee had prior to this board meeting and I think the comments that the plan does have some good ideas at this point to count on them to fill the gaps in the Erie County financial position is premature. The Administration has been in office for just over four months and it is difficult to create a track record of success and give reasonable assurance. We are taking about hundreds of millions of dollars worth of items over a four year period will actual incur at the dollar levels anticipated so the analysis that the staff and board has gone through really pays attention to that and really was it adding to the process and the major problem there is no significant data to provide reasonable assurance for these items.

"There is a still allowance for Six Sigma initiatives and the board is provided efficiency grants for Six Sigma. There is also a line item in the financial plan which calls for over 11 million dollars in efficiency grant in the future. It actually indicates 5 million dollars more in efficiency grant funding than the Authority has been pledged. At this point, we do have to report before you there is some expected progress from the County be at this point that the point contained therein it is difficult given the data provide especially within the short time of the administration to use the numbers has have for potential savings."

Director Goodell: "Thank you. In the context of our report, Mr. Chairman, at the finance committee meeting Mr. Kruly had a question of our counsel and I think it is important that he ask that same question here because it is germane to the position the County Executive is taking on a certain issue."

Director Kruly: "Thank you, Mr. Goodell. The question is related to the transmittal letter from the former Budget Director that indicated that if we turn down this plan today we are required to produce a plan of our own and so I would ask Mr. McNamara to briefly state what the law is on that."

David McNamara: "Sure. The statue that gives rise to the board recites certain obligations of the board, powers of the board, and those powers of the board in many instances can be exercised in the discretion of the board in its reasonable judgment. Included in that statute it is a provision that states that the board shall approve or disapprove the financial plan and the financial plan modifications of the County as provided in Section 3957 of this title and shall formulate and adopt its own modifications of the financial plan as necessary. The operative words here are "as necessary." Those words would indicate that it is in this board's discretion to adopt and impose a financial plan modification if it deemed it necessary to do so to achieve some benefit but that does not mean you are obligated to do so it has determined in its judgment that there will be no legal benefit for doing so."

Director Goodell: "Any questions for Mr. McNamara? Mr. Chairman, the finance committee recommends that the full board accept the staff recommendation which the four-year plan does not fulfill the requirements of the balance over this four year period with the number of discount items totaling 112 millions dollars. The details of which will be communicated to the County and to others as may be necessary. I would like to make that motion, Mr. Chairman."

Chairman Baynes: "Before we do that, why don't we have Mr. McNamara read what is in the resolution or his conclusions?"

David McNamara: "I will summarize the proposed resolution. It is seven sections and it reflects the findings that are set forth in the report of the finance committee. Section one includes a recitation of the provisions of the law that require you to act upon and approve or disapprove the modifications of the four-year financial plan that has been submitted for you consideration. Section II identifies areas were the projected savings in the plan are either unsubstantiated or lack of sufficient support to be included that the savings reasonably certain to achieve for purposes of financial planning. The next section III identifies areas were in the judgment of the finance committee and has set forth in the finance committee's report projected revenues are unsubstantiated or lack sufficient support to be included as savings that are reasonably certain to be achieved for financial planning purposes. Section number IV sets forth the areas in the finance committee report that identify situations were expenses were underestimated within the plan and in some detail. Section V of the proposed resolution sets forth the areas in the budget that caused the finance committee to conclude that the first year of the four-year financial plan is structurally imbalanced. Section VI identifies several additional concerns regarding the plans that are not covered in the prior sections in the resolution. Finally section VII includes the resolutions that are being suggested and recommendation for adoption by the finance committee.

"Those resolutions included a determination that the plan as proposed doe 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 that is taken directly from the statues and is the relevant guidepost for your analysis. There are a number of other resolutions that follow included a resolution that recommends any further revisions of the County's four-year plan correct the specific items that are identified to that point in the resolution. There is also a resolution confirming that this board renews and recontinues a control board upon the County as Public Authorities Law section 3959 requires and a resolution that pledges that the Authority to continue to work cooperatively with the County's elected officials toward returning fiscal stability to County. I would be glad to take any questions that anyone has."

Chairman Baynes: "Does anybody have any questions for Mr. McNamara?"

Vice Chair Glaser:	"I have a comment that I would like to make, Mr. Chairman. I want to make it a point to say, I do not believe we are trying to impose our judgment on the initiatives that the County Executive is trying to do. I think we applaud the fact that he is trying to take these initiatives. But as a reasonable business man, it is just too soon to see the clarity of so many potential problems coming to rest so we could make some better business judgments".
Chairman Baynes:	"Any further comments."
Secretary Keysa:	"Chair just a point of order we have a motion made by Director Goodell we do need a second on that."
Chairman Baynes:	"May I have a motion to accept the recommendations of the finance committee to the County's four-year plane."

Director Goodell moved the following resolution, seconded by Director Glaser, and the resolution was unanimously approved:

Resolution No. 08-60

REJECTING ERIE COUNTY'S FURTHER REVISED 2008-2011 FINANCIAL PLAN AND CONTINUING THE CONTROL PERIOD UPON THE COUNTY

I. The Ability of the Erie County Fiscal Stability Authority to Review Erie County's Further Revised 2008-2011 Financial Plan

WHEREAS, Chapter 182 of the New York Laws of 2005 (the "ECFSA Act"), 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 fiscal stability;" and

WHEREAS, then-County Executive Joel Giambra submitted his proposed budget for Erie County (the "County") for fiscal year 2008, and a four-year financial plan ("Plan") for fiscal years 2008-2011, to the ECFSA on October 15, 2007; and

WHEREAS, by Resolution 07-108 on November 2, 2007, the ECFSA determined that the 2008-2011 Plan 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 each fiscal year," and thereby violated New York Public Authorities Law ("Public Authorities Law") section 3957(1); and

WHEREAS, Public Authorities Law section 3957(2) authorizes Erie County (the "County") to "modify . . . [its] four-year financial plan covering the county and [its] covered organizations . .;" and

WHEREAS, the County submitted to the ECFSA its adopted 2008 Budget and a modified financial plan for fiscal years 2008-2011 on December 21, 2007; and

WHEREAS, by Resolution 08-11 on January 4, 2008, the ECFSA determined that the financial plan modification similarly 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 each fiscal year," and also violated Public Authorities Law section 3957(1); and

WHEREAS, pursuant to Resolution 08-11, the ECFSA further determined that the modification relied upon "unreasonable and inappropriate assumptions and methods of estimations;" and

WHEREAS, on May 1, 2008, County Executive Christopher Collins submitted to the ECFSA a further revised financial plan for fiscal years 2008-2011 (the "May 2008 Plan"); and

WHEREAS, fiscal years 2009 through 2011 constitute the "Out Years" of the May 2008 Plan; and

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

WHEREAS, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine on or before May 16, 2008, whether the May 2008 Plan complies with the provisions of section 3957;

II. <u>Unsubstantiated Savings in the May 2008 Plan</u>

WHEREAS, Public Authorities Law section 3957-a authorizes the ECFSA to provide to the County certain efficiency incentive grants ("efficiency grants"), subsidized by New York State, to fund implementation of "a plan for achieving recurring savings through innovations and reengineering;" and

WHEREAS, the May 2008 Plan assumes that the County will spend $21 million in efficiency grant funds to implement plans that will achieve $11.25 million in aggregate savings through 2011; and

WHEREAS, the ECFSA has only approximately $16.5 million in efficiency-grant funding at its disposal to release to the County; and

WHEREAS, given New York State's multi-billion dollar budget deficit, the ECFSA lacks reasonable assurance that the State will appropriate an additional $5 million in efficiency grant funding to the ECFSA over the next four years; and

WHEREAS, the County has submitted no detailed analysis to the ECFSA to support or explain how the County would achieve the $11.25 million in savings projected to result from the expenditure of $21 million in efficiency-grant funds; and

WHEREAS, the ECFSA consequently lacks reasonable assurance that the County will achieve any of the savings contemplated by the May 2008 Plan to result from the implementation of initiatives to be funded by efficiency grants; and

WHEREAS, the May 2008 Plan also projects that the County will save $22.1 million through 2011 as the result of the implementation of "Six Sigma" methodologies; and

WHEREAS, the County has provided insufficient information to provide reasonable assurance that Six Sigma initiatives will achieve such savings; and

WHEREAS, it appears likely that the May 2008 Plan "double counts" savings projected to result from the expenditure of efficiency grant funds, also as savings that would derive from the implementation of Six Sigma and/or other initiatives; and

WHEREAS, the ECFSA finds that the May 2008 Plan fails to provide reasonable assurance that the County would save $550,000 in 2008, and $12.45 million during the Out Years, as the result of implementation of Six Sigma initiatives; and

WHEREAS, the May 2008 Plan also contemplates the conversion of 200 positions per year in County government from full-time to "regular part time" ("RPT"), such that the County would employ 800 regular part-time workers by the end of 2011; and

WHEREAS, the County's general fund includes approximately 4,000 full-time employment positions, of which four to five percent turn over each year; and

WHEREAS, the County has indicated that certain positions are "not RPT eligible;" and

WHEREAS, the pool of persons interested in RPT positions, which require working only 39 hours per week at much lower benefits than full time employees receive, may prove limited; and

WHEREAS, the County has filled less than 60% of its available RPT positions; and

WHEREAS, the May 2008 Plan also fails to detail any plan for eliminating positions through attrition or for otherwise taking advantage of efficiencies; and

WHEREAS, the ECFSA consequently finds that the May 2008 Plan fails to provide reasonable assurance that the County would save $700,000 in 2008, and $6.3 million during the Out Years, as a result of the conversion of employment positions to RPT status; and

WHEREAS, the May 2008 Plan projects that the County will achieve savings due to anticipated outcomes of collective bargaining; and

WHEREAS, since December 2007, when the County first made this projection, it has realized no substantive progress in negotiations with labor unions representing County employees; and

WHEREAS, the ECFSA recognizes an opportunity for the County to achieve savings as the result of collective bargaining, but lacks reasonable assurance that such savings will materialize in 2008 as projected by the May 2008 Plan; and

WHEREAS, assuming that savings due to outcomes of collective bargaining will not materialize until 2009, the May 2008 Plan consequently fails to provide reasonable assurance of projected savings in the amount of another $4,990,784 during the Out Years; and

WHEREAS, the May 2008 Plan also projects that the County will achieve savings due to implementation of alternatives to incarceration; and

WHEREAS, such alternatives were contemplated to yield savings by reducing the inmate population in the County's jails, and by reducing the costs of overtime pay for employees in the County Sheriff's Department; and

WHEREAS, since 2006, the ECFSA has awarded $684,000 in efficiency grants to fund implementation of alternatives to incarceration; and

WHEREAS, for the first quarter of 2008, overtime costs in the County Sheriff's Department nonetheless have run over budget by $822,058; and

WHEREAS, the inmate population in the County's jails has not decreased in the past year, even though the County originally proposed alternatives to incarceration in September 2005; and

WHEREAS, the ECFSA recognizes an opportunity for the County to achieve savings due to alternatives to incarceration, but lacks reasonable assurance that such savings will materialize in 2008 as projected by the May 2008 Plan; and

WHEREAS, assuming that savings due to alternatives to incarceration will not materialize until 2009, the May 2008 Plan consequently fails to provide reasonable assurance of projected savings in the amount of another $2.19 million during the Out Years; and

WHEREAS, the May 2008 Plan also projects that the County would achieve over $4 million in savings due to information technology reform; and

WHEREAS, the County has not provided the ECFSA with reasonable assurance that it can realize such savings in 2008; and

WHEREAS, the County projects that such savings will result only from an additional capital expenditure of $2.5 million in 2008 and 2009; and

WHEREAS, assuming that savings due to information technology reform will not materialize until 2009, the May 2008 Plan consequently fails to provide reasonable assurance of projected savings in the amount of another $1,368,375 during the Out Years;

III. <u>Unsubstantiated Revenues in the May 2008 Plan</u>

WHEREAS, the May 2008 Plan assumes that the County will receive $2 million in revenue in 2010, and $3.5 million in 2011, from proceeds to be realized from the operation of a gambling casino by the Seneca Nation of Indians in the City of Buffalo (the "Seneca Buffalo Casino"); and

WHEREAS, no legislation presently in effect would entitle the County to such revenues; and

WHEREAS, the ECFSA lacks reasonable assurance that New York State would enact legislation so entitling the County; and

WHEREAS, New York State Senator William Stachowski and State Assemblywoman Crystal Peoples have co-sponsored legislation that would allocate any and all Seneca Buffalo Casino revenue available to local governments to the City of Buffalo; and

WHEREAS, the ECFSA consequently finds that the May 2008 Plan fails reasonably to project revenue in the amount of $5.5 million during the Out Years;

IV. Underestimated Expenses in the May 2008 Plan

WHEREAS, the May 2008 Plan does not provide for intergovernmental transfer ("IGT") payments by the County to ECMC; and

WHEREAS, the County's May 2007 Budget Monitoring Report indicates that IGT payments to ECMC would equal $8,874,200 in 2008; and

WHEREAS, although the May 2008 Plan includes a February 2008 IGT payment to ECMC in the amount of $2,049,667 as an expenditure item, it fails to account for another $6,824,533 in IGT payments in 2008; and

WHEREAS, assuming annual 2% growth in the County's IGT payments to ECMC, they would equal $9,051,684 in 2009, $9,232,718 in 2010, and $9,417,372 in 2011, for a total of $27,701,774 during the Out Years; and

WHEREAS, the ECFSA Executive Director forwarded to the County on May 9, 2008, a letter requesting justification for the May 2008 Plan's failure to account for IGT payments to ECMC; and

WHEREAS, responding to this request on May 13, 2008, the County provided the ECFSA with a copy of the Final Report of the New York State Commission on Healthcare Facilities in the 21st Century, as well as a Westlaw printout concerning the IGT; and

WHEREAS, such submission does not constitute documentation providing the ECFSA reasonable assurance that the County need not make IGT payments to ECMC during the years covered by the May 2008 Plan; and

WHEREAS, the ECFSA consequently finds that the May 2008 Plan fails to account for IGT payments amounting to $6,824,533 in 2008, and $27,701,774 during the Out Years; and

WHEREAS, the May 2008 Plan also assumes that the County need not make $15.25 million in debt service payments on behalf of ECMC during the Out Years; and

WHEREAS, a Consent Decree issued by the New York State Supreme Court requires the County to make such debt service payments; and

WHEREAS, the May 2008 Plan consequently fails to account for debt service payments amounting to $15.25 million during the Out Years; and

WHEREAS, the May 2008 Plan also assumes that the County will save another $20 million through 2011, due to a partial freeze in discretionary spending; and

WHEREAS, the May 2008 Plan anticipates that the County will not spend $7.66 million in appropriate funds in 2008, and thereby realize net savings amounting to $5 million; and

WHEREAS, the ECFSA questions the reasonableness of this assumption, because the County failed to spend only $2.9 million in appropriated funds in 2007, and realized approximately $2 million in savings as a result; and

WHEREAS, the ECFSA has reasonable assurance only that the County would achieve similar annual savings, adjusted by an inflationary factor, in 2008 through 2011, as the result of failing to spend appropriated funds; and

WHEREAS, the ECFSA consequently discounts any savings that would materialize from the County's failure to spend appropriated funds, by $2.9 million in 2008, and by $8.2 million during the Out Years; and

WHEREAS, the unreasonable savings and revenues and underestimated expenses cited in sections II, III, and IV of this Resolution contribute to a deficit of over $90 million for the Out Years of the May 2008 Plan;

V. <u>Structural Imbalance in the First Year of the May 2008 Plan</u>

WHEREAS, structural imbalance in the County's 2008 Budget, which forms the basis for the first year of the May 2008 Plan, contributes to deficits greater than the May 2008 Plan expects in 2009, 2010, and 2011; and

WHEREAS, pursuant to the 2008 Budget, Erie County would borrow $3.8 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 2008 Budget structurally imbalanced, in that recurring CHIPS expenditures would exceed recurring CHIPS revenue; and

WHEREAS, the 2008 Budget also permits the County Road Fund to operate at a deficit, which now totals $8,443,000, according the County's Financial Report dated March 31, 2008; and

WHEREAS, the 2008 Budget also fails to account for IGT payments of $6,824,533 to ECMC; and

WHEREAS, the ECFSA has also determined that the first year of the May 2008 Plan fails to provide reasonable assurance of:

(1) savings due to the implementation of Six Sigma methodologies by $550,000,

(2) savings due to the conversion of employment positions to regular part-time status by $700,000, and

(3) savings due to a partial freeze in the County's discretionary spending, by $2.9 million; and

WHEREAS, because of (i) borrowing to subsidize CHIPS; (ii) the deficit in the County Road Fund; (iii) the failure to account for IGT payments to ECMC; and (iv) unreasonable projections of savings due to the implementation of Six Sigma methodologies, the conversion of employment positions to regular part-time status, and a partial freeze in discretionary spending, the first year of the May 2008 Plan is unbalanced;

VI. Additional Concerns Regarding the May 2008 Plan

WHEREAS, the May 2008 Plan mentions the possible sale of County tax liens as an "Other Item" for consideration; and

WHEREAS, any projected revenues that the County might realize from the sale of tax liens are speculative, given recent changes in the American housing market, and their impact upon tax lien purchasers; and

WHEREAS, for accounting purposes, the County may need to treat proceeds from the sale of tax liens as collateralized borrowing, pursuant to Governmental Accounting Standards Board Statement No. 48 ("Determining Whether a Transaction is a Sale or Collateralized Borrowing"); and

WHEREAS, the May 2008 Plan also notes $7 million in "chargeback" funds that it projects Erie Community College ("ECC") to receive; and

WHEREAS, ECC receives chargebacks as reimbursement for the cost of subsidizing the matriculation of County residents at community colleges outside the County; and

WHEREAS, such cost cancels any revenues that the County might realize due to chargebacks, because two years lapse between a County resident's matriculation at a community college outside the County, and ECC's receipt of the corresponding chargeback; and

WHEREAS, the County has also commissioned an actuarial report, which evaluated the cost of supplying medical and dental benefits for retired County employees; and

WHEREAS, that report estimated the present value of such benefits at over $981 million, as of December 31, 2006; and

WHEREAS, retroactive settlement of collective bargaining disputes with bargaining units representing County employees could create further expenditures that the May 2008 Plan does not anticipate;

VII. Resolutions

NOW, THEREFORE, BE IT RESOLVED that the ECFSA adopts the report and findings accepted by its Finance Committee concerning the May 2008 Plan; and

BE IT FURTHER RESOLVED that this Resolution and the Staff's report and findings constitute the ECFSA's comments concerning the May 2008 Plan as submitted; and

BE IT FURTHER RESOLVED that, for the following reasons, the May 2008 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 May 2008 Plan does not provide sufficient documentation or other reasonable assurance to substantiate the savings that it projects to result from the expenditure of efficiency grant funds, from the implementation of Six Sigma methodologies, or from the conversion of full-time employment positions to regular part-time status.

(2) The May 2008 Plan does not provide reasonable assurance to substantiate the entirety of the savings that it projects to result from collective bargaining, implementation of alternatives to incarceration, or improvements in risk management.

(3) The May 2008 Plan does not reasonably assume that the County will receive any revenue from proceeds of the operation of the Seneca Buffalo Casino.

(4) The May 2008 Plan does not reasonably assume that the County need not make IGT payments to ECMC, or debt service payments on ECMC's behalf.

(5) The May 2008 Plan does not reasonably assume that the County will realize the entirety of the savings projected to result from a partial freeze on discretionary expenditures.

(6) Bonding to subsidize the CHIPS fund, the deficit in the County Road Fund, the failure to account for IGT payments to ECMC, and unreasonable savings projections contribute to a structural imbalance in the 2008 Budget and in the first year of the May 2008 Plan.

BE IT FURTHER RESOLVED that the ECFSA recommends that any further revision of the County's four-year financial plan for 2008-2011 correct these enumerated deficiencies; and

BE IT FURTHER RESOLVED that the ECFSA hereby finds the following:

> (1) Because Public Authorities Law section 3957(1) mandates that the May 2008 Plan "*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), it violates section 3957(1).
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> (2) In submitting the May 2008 Plan, the County has violated a provision of the ECFSA Act.
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> (3) Public Authorities Law section 3959(1)(e) mandates the ECFSA to impose a control period at any time that the County "shall have violated any provision" of the ECFSA Act.

BE IT FURTHER RESOLVED that the ECFSA finds that the County's violation of the ECFSA Act in submitting the May 2008 Plan constitutes a condition that justifies continuation of the control period that the ECFSA originally imposed upon the County on November 3, 2006; and

BE IT FURTHER RESOLVED that the ECFSA rejects the May 2008 Plan as submitted, because it violates Public Authorities Law section 3957(1); and

BE IT FURTHER RESOLVED that the ECFSA renews and continues the control period upon the County, as Public Authorities Law section 3959(1) requires; and

BE IT FURTHER RESOLVED that the ECFSA regards renewal and continuation of this control period, and the careful scrutiny of Erie County's finances that has resulted since its imposition, to be in the best interests of the citizens of Erie County; and

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

BE IT FURTHER RESOLVED that the ECFSA shall terminate this control period when it ascertains pursuant to 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, on account of the findings herein, and pursuant to Public Authorities Law section 3959(2)(a), the ECFSA disapproves the May 2008 Plan.

This resolution shall take effect immediately.

Chairman Baynes: "With no other business, within one month from today, I would like to meet again."

Director Kruly moved to adjourn, seconded by Director Glaser, and the resolution was unanimously approved.

Respectfully submitted,

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Stanley J. Keysa
Secretary