

**Minutes**  
**Erie County Fiscal Stability Authority**  
**December 15, 2008**

Present: Chairman Robert Glaser, Vice Chair Joseph Goodell, Director Kenneth Kruly, Secretary Stanley Keysa, Director Louis Thomas, Executive Director Kenneth Vetter

Chairman Glaser: “I would like to bring our ECFSA December 15, 2008 meeting to order. We have a full agenda that we would like to get through pretty quickly. Before we get into our normal agenda items there are a few things that I would like to address publically. There are two critical issues that we have been working on with the County; that would be the County budget and the capital borrowing. Lately media reports have focused on the County’s inability to come to a satisfactory resolution of the 2009 budget with the Legislature having one tax levy, the Executive another and the Comptroller saying he can’t say whether the budget is balanced or not. We encourage the County Executive and the Legislature to work together to resolve this issue in the best interest of the tax payer without invoking the legal system. We stand ready to assist if necessary and hopefully we can work through this without the legal system being in place. The second item in the mix of this turmoil has been that we have been quietly and diligently working with the County officials to issue \$40 million in debt at a reduced cost to the taxpayer. The control board issuance would save Erie County taxpayers at least \$1 million for just one single year yet we have encountered significant road blocks from County officials in getting this done. Because of the significant savings, this should be a “no brainer” to the County, especially in light of the budget problems that are being bantered around these days. In September, the County Legislature passed a resolution approving the control board borrowing. Based on that resolution and numerous conversations with County officials we worked with our professional advisors to complete all the necessary work for the control board to issue a short term bond to fund expenses related to the County’s capital projects. Remarkably, at the last minute a call was placed by a representative of the County to Moody’s rating agency rescinding the essence of that agreement. Since then we have continued to discuss in good faith with County officials and we stand ready to go to market. County vendors deserve to be paid for their work and we have been doing our best to make sure that they are being paid, but this would be the third time an agreement has been backed down by the County if we cannot complete this borrowing. I would also like to reiterate that the control board is pursuing short term financing only because the County has refused to authorize the control board to undertake less costly long term borrowing on behalf of the County. The consequences of the Counties petulance in refusing to avail itself of the cost savings that would be obtained by allowing the control board to conduct long term borrowing on behalf of the County are compounded in these tough economic times. As sales tax revenues decrease and our tax base diminishes, we continue to hear in the paper about a property tax increase. The County has put forth two conspicuous arguments in an attempt to mask its true motivation in refusing to allow the control board to exercise its statutory authority to conduct financial borrowing for the long term benefit of the Counties tax payers.”

“First “the control board is seeking authority to borrow on behalf of the County to perpetuate the existence of the control board.” We are an unpaid board and I know that I can speak on behalf of my fellow board members that we have no interest in continuing in that status. It comes from a desire to fulfill our statutory duty to assist in returning the County to fiscal stability by exercising our powers judiciously including the power to save County taxpayers millions of dollars with a long term borrowing.”

“Second the County has attempted to mislead the public by claiming that “the savings to be achieved through long term control board borrowing will be exceeded by the cost of maintaining the control board through the end of the period for the long term financing which would coincide with the control board statutory termination date.” This scare tactic by the County is simply false. The County will not have to provide any costs to maintain the control board that would not otherwise be incurred but for the long term financing by the control board. In fact, reducing the cost of borrowing will aid the County’s economic recovery and help create conditions that would require us to revert to an advisory status with lessened oversight and reduced costs. The simple fact is that there is no valid reason for the County to refuse the control board to conduct long term financing other than a misplaced, politically-motivated desire to escape the control board’s oversight and return to business as usual. Sadly County officials are willing to forgo millions in savings to cling to the false hope that the State will extinguish the control board if it does not have long term debt. Once again, I urge the County officials to reconsider their decision to refuse to allow the control board to issue long term debt on behalf of the County. In the meantime, we will continue to work in good faith to conclude short term financings to meet the County’s immediate needs and stand ready to get the \$40 million we talked about recently into the County’s coffers very quickly. In that regard there is an item to be consider later in the agenda for the County to borrow at a much higher rate. Given the additional cost to borrow and the fact that we are still in negotiations to borrow on the County’s behalf, I will be asking this body to table the item so that we may continue the process that has already been established. With that I would like to go on to the rest of the agenda. Mr. Keysa if I could hand it over to you for the approval of the minutes.”

Secretary Keysa: “Thank you Mr. Chairman. The minutes were prepared by Miss Martin, a staff member. Miss Martin’s grandmother has passed so she is away today and you may want to send your regards to her. The minutes were edited and circulated by email. You have a copy in your folder and I would ask at this point if there are any changes that they be made known; otherwise they are ready for approval.”

Vice Chair Goodell moved to approve, Director Kruly seconded, and the Directors voted unanimously to approve the following resolution:

**Resolution No. 08-103**

**APPROVING MINUTES AND RESOLUTIONS FROM  
THE NOVEMBER 3, 2008 MEETING**

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its November 3, 2008 meeting and ratifies and affirms seven resolutions numbered 08-95, 08-96, 08-97, 08-98, 08-99, 08-100, 08-101 and 08-102 that were approved on November 3, 2008

This resolution shall take effect immediately.

Chairman Glaser: “The next item on the agenda is space planning. Ms. Mazzone, do you have some comments that you would like to share with us today?”

Michelle Mazzone: “Good afternoon. I have a very brief summary of some of the items that we have been progressing with in the County this year. The eight different departmental relocations are in progress. Some of the moves have been completed and we are currently proceeding with construction of the 1<sup>st</sup> and 16<sup>th</sup> pending this board’s approval of the construction contracts. In summary we are still on board with potentially terminating three leases at the end of 2008 and two leases at the end of 2009. The consolidation of these departments would result in approximately \$2.6 million in savings. That is all I have for today.”

Chairman Glaser: “The only question I have for you is relative to what you’re going through. These items have been appropriately put into the 2009 budget and that these two leases will be gone and you are assuming that everyone will be moved in on time?”

Michelle Mazzone: “The budgetary items are for the three leases that will be terminated at the end of the year which will provide us savings in 2009 and two other leases that will provide us savings effective in 2010.”

Chairman Glaser: “...and we are on track? Construction-wise, it looks like you are going to be on time?”

Michelle Mazzone: “Yes.”

Director Johnson: “Thank you very much for all of your work. I have a couple of questions. In your report you mention that there would be a reduction of 42% in current space savings. Have we been able to calculate that out in terms of dollar savings?”

Michelle Mazzone: “Well, when we analyzed the actual square footage element of the departments that are effected, if were to lease space and we did a private sector scenario which was in excess of \$100,000 annually which we would pay if we were to actually go out into the private sector and lease space for these entities. The leasing component of existing leases that we are going to in effect be able to terminate once the construction is complete is about \$2.6 million.”

Vice Chair Goodell: “Is that \$2.6 per year?”

Michelle Mazzone: “No that is \$2.6 over five years.”

Vice Chair Goodell: “Over five years, so what you are saying is if these leases were renewed for five years that the savings would be \$2.6 million and that is being saved by moving into the building?”

Michelle Mazzone: “Yes.”

Director Johnson: “One other question. How far along are we in terms of the analysis of the space in the Erie County Department of Social Services?”

Michelle Mazzone: “We are in the preliminary stages of that right now. We worked on a renegotiation of a smaller piece in hopes that we can do an entire Social Services analysis of all the divisions that are currently leasing space. Right now we are in the process of analyzing a space that comprises of about 114,000 square feet and about \$1.4 million in lease payments a year and that is the particular lease that we’re focusing on right now because there is real potential to either relocate into a County-owned facility or to downsize the square footage that we are utilizing and renegotiate the lease for less space.”

Chairman Glaser: “Are there any other questions? Thank you for the update.”

“The next item on the agenda is the control board’s budget for the year. Mr. Vetter would you like to take us through that.”

Exec. Director Vetter: “Yes Mr. Chairman. Very briefly, there is a budget plan for the ECFSA in your packet. The 2009 proposed budget that has been put forward is \$696,000 which is approximately 10% less than 2008 budget and is \$4,000 less than the County has allocated for the ECFSA for 2009. This budget assumes that there are no salary increases for the Authority and really looks at holding the line and reducing administrative costs and professional fees based on internal management and the history of the organization in reducing its cost over a period of time. Mr. Chairman, this has been presented to members of the Board. I guess I would ask if there are any questions at this point on the document that is in front of the board members.”

Secretary Keysa: “I have one question. That is basically, we have professional services in there. Basically the provision in there is that we cover reasonable expectations of lawsuits against us. Again, if those don’t occur then what we actually spend would be less, would they not?”

Chairman Glaser: “That is correct.”

Exec. Director Vetter: “That is probably the most difficult part of the budget to go through because one lawsuit can be extensive dollars, but based on history that we have had thus far, we think that this is a reasonable amount; maybe there is a little too much there or maybe there is not enough depending upon what happens with the legal venues in 2009.”

Secretary Keysa: “If we don’t expend it, then it goes back to the County?”

Exec. Director Vetter: “Actually, last year we under-spent our budget by a significant amount. That is a savings. Yes.”

Chairman Glaser: “Are there any other questions?”

Secretary Keysa moved to approve, Director Thomas seconded, and the Directors voted unanimously to approve the following resolution:

**Resolution No. 08-104**

**APPROVING 2009-2012 ECFSA BUDGET AND FINANCIAL PLAN**

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, Title 2, Part 203 of the New York Codes, Rules, and Regulations (NYCRR) requires public authorities to prepare an annual budget and financial plan in accordance with several provisions set forth within; and

WHEREAS, Title 2, Section 203.10 of the NYCRR identifies the ECFSA as a public authority for purposes of Part 203; and

WHEREAS, ECFSA staff prepared a proposed annual budget for the 2009 fiscal year and a financial plan for the 2010 through 2012 fiscal years; and

WHEREAS, Title 2, Part 203 of the NYCRR also requires that the annual budget and financial plan, and all amendments or modifications thereto, be approved by the Board of each public authority; and

WHEREAS, the Executive Director of the ECFSA has certified that, to the best of his knowledge and belief, the attached 2009-2012 budget and financial plan is, after reasonable inquiry, based on reasonable assumptions and methods of estimation with the applicable regulations being satisfied; and

WHEREAS, the approved budget and financial plan must be made available for public inspection, whenever practicable, not less than seven days before the commencement of the next fiscal year and must be submitted to the State Comptroller within seven days of approval by the Board in an electronic format prescribed by the State Comptroller; and

NOW, THEREFORE, BE IT RESOLVED that the attached 2009-12 ECFSA budget and financial plan is hereby approved; and

BE IT FURTHER RESOLVED that this Board directs ECFSA staff to make the adopted 2009-12 budget and financial plan available for public inspection and to submit the document to the State Comptroller as directed in Title 2, Part 203 of the NYCRR.

This resolution shall take effect immediately.

Chairman Glaser: “The next item on the agenda is to talk about some requests for proposals that we have been working on. Mr. Vetter would you like to take us through those.”

Exec. Director Vetter: “Yes Mr. Chairman. There are a number of them that have been addressed through an RFP process extended through December 31<sup>st</sup> so that we could have additional time to go through the proposals. Let me go through the results of the research at this point starting with financial advisor.”

“Capital Markets Advisors has been our financial advisor. They have proposed to come back as our financial advisor for the next year and, speaking with board members regarding their services and cost, they feel that their costs are reasonable and they have provided us with the necessary services for the last year. They seem to be doing a good job for us and it is recommended at this time that we re up Capital Markets Advisors as our financial advisors for a period of one year.”

Chairman Glaser: “Are there any questions relative to our Capital Market Advisors?”

Vice Chair Goodell moved to approve, Director Johnson seconded, and the Directors voted unanimously to approve the following resolution:

#### **Resolution No. 08- 105**

#### **APPROVING ENGAGEMENT OF FINANCIAL ADVISOR**

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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA issued a request for proposals for financial advisory services in September 2007 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Capital Markets Advisors, LLC as the most capable of providing financial advisory services to the ECFSA on an as-needed basis for a period of one year; and

WHEREAS, Capital Markets Advisors, LLC has performed their duties to the full satisfaction of the ECFSA; and

WHEREAS, the one-year agreement with Capital Markets Advisors, LLC expired on October 22, 2008; and

WHEREAS, the ECFSA re-issued a request for proposals for financial advisory services in October 2008; and

WHEREAS, through Resolution 08-96 the ECFSA Board extended the agreement with Capital Markets Advisors for a reasonable period of time, but no later than December 31, 2008, in order to evaluate proposals received in response to its request for financial advisory services; and

WHEREAS, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Capital Markets Advisors to provide financial advisory services to the ECFSA on an as-needed basis for a period of one year;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA engage Capital Markets Advisors to provide financial advisory services on an as-needed basis as requested by the Chairman for a period not to exceed one year from this date; and

BE IT FURTHER RESOLVED that such services shall be undertaken for such amounts and on such terms as agreed upon by the Chairman, ECFSA Director or the Executive Director; and

BE IT FURTHER RESOLVED that this resolution shall supersede any previous resolutions of the ECFSA with regard to contracting for financial advisory services.

This resolution shall take effect immediately.

Exec. Director Vetter:           “On the second RFP, with regard to general legal counsel, Phillips Lytle has been our general legal counsel. We received an updated bid from Phillips Lytle and another firm from Albany. Those were the only two bids we received on the proposal. After speaking with board members, the services provided by Phillips Lytle have been very good; no one has had complaints regarding their services. They have been very fair with us. The cost differentiation between the two is almost the same and really at this point based on the service that Phillips Lytle has provided and one of the stated goals of this Authority is to look at having vendors who are within Erie County or in the area. So the recommendation would be that we retain Phillips Lytle as legal counsel and this particular resolution looks at extending for three years as opposed to the others. So this will be for a three year period.”

Chairman Glaser:           “I would add that we have been very well served by the firm on a number of issues that we have dealt with over the last several years or so. May I have a motion on this?”

Director Kruly moved to approve, Vice Chair Goodell seconded, and the Directors voted unanimously to approve the following resolution:

**Resolution No. 08-106**

**APPROVING ENGAGEMENT OF LEGAL COUNSEL**

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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA issued a request for proposals for legal services in June 2006 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Phillips Lytle LLP to provide legal services to the ECFSA on an as-needed basis for a period of one year;

WHEREAS, the one-year agreement with Phillips Lytle LLP expired on July 26, 2008;

WHEREAS, the ECFSA re-issued a request for proposals for legal services and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Phillips Lytle LLP to provide legal services to the ECFSA on an as-needed basis for a period of one year;

NOW THEREFORE BE IT RESOLVED, that the ECFSA engage the firm Phillips Lytle LLP to provide such legal services on an as-needed basis as requested by the Chairman for a period not to exceed three years from the signing of a letter of agreement. Such services shall be undertaken for such amounts and on such terms as agreed upon by the Chairman, ECFSA Director or the Executive Director; and

BE IT FURTHER RESOLVED that this resolution shall supersede any previous resolutions of the ECFSA with regard to contracting for legal services.

This resolution shall take effect immediately.

Exec. Director Vetter:           “Mr. Chairman, there are two more issues to go through in the bidding process. One is with regard to our bond counsel. The New York office of Phillips Lytle has come forward to be our bond counsel for the future. There have also been four other firms that have come forward. The proposals have been extensive and frankly, based on the number of proposals and the point at which we are right now, it is being proposed on the bond counsel and we are at a critical part in bonding at this point. Philips Lytle has done a yeoman’s job for us; they have done some excellent work but we don’t want to get short-tripped as to the analysis to firms that have applied for this business. It is recommended at this point that, for the first four months of 2009, that we would extend the contract with Philips Lytle, at which time we would continue to review the proposals that have come in and make a long term decision at that point.”

Chairman Glaser:           “Okay. Could I get a motion on that?”

Secretary Keysa moved to approve and Director Kruly seconded the following resolution:

**Resolution No. 08-107**

**APPROVING ENGAGEMENT OF BOND COUNSEL**

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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA issued a request for proposals for bond counsel in September 2006 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Phillips Lytle, LLC as the most capable of providing bond counsel to the ECFSA on an as-needed basis for a period of one year; and

WHEREAS, Phillips Lytle, LLC has performed their duties to the full satisfaction of the ECFSA; and

WHEREAS, the one-year agreement with Phillips Lytle, LLC expired on October 22, 2008; and

WHEREAS, the ECFSA Board extended the agreement with Phillips Lytle LLP for a reasonable period of time, but no later than December 31, 2008, in order to evaluate proposals received in response to its request for financial advisory services; and

WHEREAS, the ECFSA re-issued a request for proposals for bond counsel in October 2008; and

WHEREAS, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and has selected Phillips Lytle, LLC to provide financial advisory services to the ECFSA on an as-needed basis for a period of one year;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA engage Phillips Lytle, LLC to act as bond counsel on an as-needed basis as requested by the Chairman for a period not to exceed one year from this date; and

BE IT FURTHER RESOLVED that such services shall be undertaken for such amounts and on such terms as agreed upon by the Chairman, ECFSA Director or the Executive Director; and

BE IT FURTHER RESOLVED that this resolution shall supersede any previous resolutions of the ECFSA with regard to contracting for bond counsel.

This resolution shall take effect immediately.

Chairman Glaser: “Is there any discussion on that?”

Secretary Keysa: “We do have a time frame on that?”

Exec. Director Vetter: “Yes Mr. Keysa we talked about having it by April 30, 2009.”

Secretary Keysa: “Okay, I just wanted to make sure that was clear.”

Chairman Glaser: “Is there any further discussion? All in favor?”

The Directors then voted unanimously in favor of the foregoing resolution.

Exec. Director Vetter: “Mr. Chairman, two more issues. One is with regard to our underwriting services. Our RFP for underwriting only received one proposal from Merrill Lynch and when we had done some research on the fees and charges passed on the market, their fees and charges seem to be somewhat greater than what we could get in the market on the spot basis. So what the staff, in concert with legal counsel, is suggesting is: one, that we reject the bid for underwriting services. If you are going to be bidding we should be getting a good price and the service they are looking for we were unable to get a price that we were looking for. Two, there will be a second resolution establishing a procedure particularly given in a very volatile market that we are in that would give the fiscal stability authority maximum flexibility in choosing an underwriter on an as-needed basis to meet the market demand. So the first resolution is to reject the current bid that is unacceptable based on the cost.”

Chairman Glaser: “Can I get a motion?”

Director Johnson moved to approve, Director Kruly seconded, and the Directors voted unanimously to approve the following resolution:

### **Resolution No. 08-108**

#### **REJECTING THE BID FOR UNDERWRITING SERVICES**

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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, in adopting Resolution 07-99 on October 22, 2007, the ECFSA pre-qualified several firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for ECFSA financing on an as-needed basis through October 22, 2008; and

WHEREAS, on November 2, 2008, the ECFSA adopted another resolution extending the term of this pre-qualification through December 31, 2008; and

WHEREAS, the ECFSA has issued a Request for Proposals for firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for the ECFSA’s financing program for one year, lasting

from November 1, 2008, through October 31, 2009, or for just over three years, lasting from October 1, 2008, through October 31, 2011 (the “RFP”); and

WHEREAS, this RFP requested the submission of any proposals no later than October 17, 2008; and

WHEREAS, this ECFSA issued this RFP prior to reaching an agreement with Erie County (the “County”) concerning the particular terms of ECFSA financing to subsidize the County’s capital projects; and

WHEREAS, only one firm, Merrill Lynch, responded to this RFP; and

WHEREAS, the rates proposed for Merrill Lynch’s underwriting services in this response were significantly greater than the rates quoted by the firms pre-qualified on October 22, 2007; and

WHEREAS, the ECFSA anticipates that it can procure underwriting services as necessary for a cost much lower than Merrill Lynch has quoted in its response to the ECFSA’s RFP, once the ECFSA has determined the particular terms of any future issuance of bonds on behalf of Erie County;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA rejects the sole bid by Merrill Lynch in response to the RFP.

This resolution shall take effect immediately.

Secretary Keysa: “Are we doing this as two separate resolutions?”

Chairman Glaser: “Yes.”

Exec. Director Vetter: “I am sorry Mr. Chairman, the second resolution in your packet is to establish a procedure in essence, this has been prepared by our legal counsel indicating that pursuant to Section 2879 of the Public Authorities Law that the ECFSA does have authorization to establish alternate procedures, paraphrasing the resolution in essence given the market conditions that fluxuate on a daily basis and prices that fluxuate on a daily basis, the resolution in front of you gives the ECFSA the ability to quickly go to market and bring in the necessary underwriters based upon access and market conditions that are beneficial at that time.”

Chairman Glaser: “Okay, can I get a motion on that?”

Vice Chair Goodell moved to approve, Director Thomas seconded, and the Directors voted unanimously to approve the following resolution:

#### **Resolution No. 08-109**

#### **ESTABLISHING A PROCEDURE FOR SELECTING AN UNDERWRITER FOR ECFSA FINANCING**

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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, in adopting Resolution 07-99 on October 22, 2007, the ECFSA pre-qualified several firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for ECFSA financing on an as-needed basis through October 22, 2008; and

WHEREAS, on November 2, 2008, the ECFSA adopted another resolution extending the term of this pre-qualification through December 31, 2008; and

WHEREAS, the ECFSA has issued a Request for Proposals for firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for the ECFSA’s financing program for one year, lasting from November 1, 2008, through October 31, 2009, or for just over three years, lasting from October 1, 2008, through October 31, 2011 (the “RFP”); and

WHEREAS, this RFP requested the submission of any proposals no later than October 17, 2008; and

WHEREAS, this ECFSA issued this RFP prior to reaching an agreement with Erie County (the “County”) concerning the particular terms of ECFSA financing to subsidize the County’s capital projects; and

WHEREAS, only one firm, Merrill Lynch, responded to this RFP; and

WHEREAS, on December 15, 2008, the ECFSA rejected Merrill Lynch’s bid, thereby requiring the ECFSA to seek new underwriters for any financing that it shall undertake on the County’s behalf in 2009; and

WHEREAS, pursuant to Public Authorities Law section 2879, the ECFSA has adopted Procurement Guidelines to establish a procedure for purchasing goods and retaining professional services; and

WHEREAS, Public Authorities Law section 2879(3) requires the ECFSA to select contractors on a competitive basis, but authorizes the ECFSA to waive such competition by resolution as necessary; and

WHEREAS, section 401 of the ECFSA’s Procurement Guidelines establishes a procedure for selecting firms to provide professional services, unless that procedure is “specifically waived;” and

WHEREAS, pursuant to section 404 of the Procurement Guidelines, the ECFSA may waive such procedure when, *inter alia*, “[e]mergency or other extraordinary circumstances exist which make competition impracticable or inappropriate;” and

WHEREAS, the American economic downturn that intensified in the last quarter of 2008 is likely to continue through 2009; and

WHEREAS, this downturn has contributed to increased volatility in the capital markets; and

WHEREAS, the ECFSA has yet to reach agreement with the County with regard to the terms of any financing that the ECFSA might undertake to fund the County’s capital projects; and

WHEREAS, in the absence of such an agreement, the ECFSA cannot offer specific terms of the financing to potential underwriters, which in turn cannot provide a precise quote on the cost of their services; and

WHEREAS, the ECFSA must promptly select an underwriter for any financing of the County's capital projects on the best terms then available once the ECFSA and the County agree to the financing's terms; and

WHEREAS, because time will be of the essence under these extraordinary circumstances, the ECFSA's utilization of the procedure in section 401 of its Procurement Guidelines with regard to selecting an underwriter would be impracticable;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA hereby waives section 401 of its Procurement Guidelines with respect to the limited circumstance of retaining underwriter(s) for any financing of the County's capital projects in calendar year 2009; and

BE IT FURTHER RESOLVED that the ECFSA in 2009 shall select in its best business judgment firm(s) able to perform underwriting services as necessary at a cost that is fair, reasonable, and most advantageous at the time when such services may become necessary.

This resolution shall take effect immediately.

Chairman Glaser: "This brings us to our last item on the agenda which are the contracts. Mr. Vetter would you like to take us through those?"

Exec. Director Vetter: "Yes Mr. Chairman. Let me go through four separate slates on the contracts. Items 1-1 through 11-7, which the staff has reviewed, appear to be regular County business and do not appear to have any problems or issues with them. The information has been shared with the board. There are no board members with any significant questions or having comments on any of these items therefore it is recommended by staff that the board consider these as a slate 1-1 through 11-7."

Secretary Keysa moved to approve, Director Johnson seconded, and the Directors voted unanimously to approve the following resolution:

#### **Resolution No. 08-110**

### **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 Attorney-Service Contract – Erie County Bar Association Aid to Indigent Prisoners Society	2007-2008 State Aid to Defense program-Indigent Prisoners Society, Inc.	\$152,401-no local share
EC Attorney- Service Contract - Erie County Bar Association Aid to Indigent Prisoners Society	2008-2009 State Aid to Defense program-Indigent Prisoners Society, Inc.	\$152,401-no local share
EC Attorney - WC Claim – Jimmy Starr	Workers compensation claim	\$115,800.30-all local share
EC Attorney – Service Contract – Legal Aid Bureau of Buffalo, Inc.	2007-2008 State Aide to defense program	\$101,602-no local share
EC Attorney-Service Contract – Legal Aide Bureau of Buffalo	2007-2008 Byrne-Narcotics JAG grant	\$190,116-\$19,012 local share
EC Attorney- Service Contract – Legal Aide Bureau of Buffalo	Public Defender program-Legal Aid Bureau of Buffalo	\$100,000-\$81,278 local share
EC Public Works—Federal aid, Construction Change Order – NYSDOT, LAFA, & Erdman, Anthony & Associates	Cemetery Road Bridge Replacement	\$1,761,000-\$88,050 local share
EC Public Works—Construction Change Order – Window Specialist, Inc.	Contract increase for School 84-window and door replacement	\$8,402.97-all local share
EC Public Works - Purchase Contract – Approved Bid Book Vendors	Construction and maintenance materials to be used by the Public Works department	\$3,000,000 – all local share
EC Public Works-Service Contract – Unified Court System	County of Erie and the NYS Unified Court system for cleaning and minor repairs	\$2,477,000-no local share
EC Public Works -Change Order-Abate Associates	Botanical Gardens structural repairs	\$14,108-all local share

EC Public Works-change order-Concrete Applied Technologies	Glen Avenue Bridge replacement	\$135,586.61-6,779.32 local share
EC Public Works – Purchase Contract – DiDonato Associates	Emergency Services Communications upgrade	\$195,000 – all local share
EC Public Works – Purchase Contract – Buffalo Engineering PC	Buffalo & Erie County Public Library/Fuel tank replacement, sidewalk replacement and design of Mezzanine	\$65,000 – all local share
EC Environment & Planning-Federal Grant – Town of Evans	2003 Design phase agreement with the Town of Evans for the Lakeshore Trail	\$295,000-no local share
EC Environment & Planning-Consulting Services - Peter J Smith & Company	Construction engineering and inspection services for the Erie Canal Way Trail	\$243,188-all local share
EC Environment & Planning - Service Contract - Paul Gallo Contracting	Sewer district No. 3-restoration of sewer pipe and manholes	\$531,512 – Sewer District Funds
EC Environment & Planning-Service Contract-Wendel Duchscherer Architects & Engineers	Fund study in compliance with Federal Phase II Stormwater regulations	Not to exceed \$254,000 - Sewer District Funds
EC Environment & Planning-Intermunicipal Agreement – EC Sewer Dist. #3 & Town of OP	Coordinate & facilitate the construction of the Greenmeadow sanitary sewer sub-trunk to eliminate the Greenmeadow pumping station	Value to be anticipated in excess of \$50,000
EC Environment& Planning – Payment In Lieu of Taxes - H@ LOFTS,LLC	PILOT application agreement for the former AM & A's warehouse	\$211,782 – all local share
Erie Community College-Purchase Contract-Maquet	Servo I Mechanical ventilators as instruction aides	\$58,467.60 – all college funds
Erie Community College – Receiving Grant Funds - ECDSS	ECDSS funds the Education to Recovery program that provides services to non-custodial parents to facilitate family involvement	\$111,411 – in-kind
Erie Community College – Purchase & Service Contract – DV Brown	Installation of heating, air conditioning & ventilation equipment for the renovated Chemistry labs	\$251,200 – all college funds
EC Emergency Services – Receipt of Grant Funds – Dept. of Homeland Security	Urban Area Security Initiative to support the law enforcement community to prevent acts of terrorism	\$1,568,695 – no local share
EC Emergency Services – Receipt of Grant Funds – Homeland Security	State Homeland Security program (SHSP) supports planning, training and exercise, and purchase equipment to prepare for and prevent acts of terrorism	\$1,233,750 – no local share
EC Emergency Services – Receipt of Grant Funds – Homeland Security	State law Enforcement Terrorism Prevention Program supports planning, training and exercise, and purchase equipment to prepare for and prevent acts of terrorism	\$411,250 – no local share
EC Health- Receipt of Grant Funds - NYSDOH	Facilitated Enrollment Program-increasing the contract period from 1/1/07 -12/31/08 to 1/1/07-12/31/09	\$247,600-no local share
EC Health- Service Contract – Beyond Boundaries, Blessed Beginnings, McCauley Seaton	Early Intervention service contracts-Beyond Boundaries Therapy Services, Blessed Beginnings Family Services and McCauley Seton Home Center	\$60,569,822-\$19,988,041-local share
EC Health-Grant Program – NYS DOH	Bio Safety Level 3 Laboratory – Grant – Grant Period – 8/10/08 – 8/9/09	\$200,000-no local share

EC Mental Health – Service Contract - NYS Offices of Mental Health, alcoholism and Substance Abuse and Mental Retardation, and related agencies	Retroactive, cost of living increases retroactively applied and funded in accordance with NYS schedules	\$14,146,540 – no local share
EC Mental Health – Service Contract – Listed Multiple Agencies	Renewal contracts a designated cluster of providers for a combination of evidence-based strategies for preventing behavioral health dysfunction in youth and adults	\$12,553,480 - \$1,009,728 local share
EC Mental Health – Service Contract – Listed Multiple Agencies	Renewal contracts a designated cluster of providers for a combination of evidence-bases strategies for preventing behavioral health dysfunction in youth and adults	\$15,889,649-\$358,411 local share
EC Mental Health – Service Contract – Listed Multiple Agencies	Renewal contracts a designated cluster of providers for a combination of evidence-bases strategies for preventing behavioral health dysfunction in youth - children’s system of care	\$6,590,687-\$10,000 local shares
EC Mental Health – Service Contract – Listed Multiple Agencies	Renewal contracts a designated cluster of providers for an array of community based services to individuals with significant lifetime disabilities of mental retardation and other developmental disabilities	\$2,185,202-\$644,849 local share
EC Mental Health – Service Contract –	Renewal contracts a designated cluster of providers for a combination of evidence-bases strategies for preventing behavioral health dysfunction in youth and adults	\$19,384,077-\$197,867 local share
Information and Support Services-Purchase Order-Synergy Global	Hardware support and maintenance contract for CISCO network	\$130,000-all local share
Information and Support-Service Contract – EMC systems & Peripheral Storage	Annual maintenance fee for Network storage	\$168,00-all local share
Information and Support-Purchase Contract – SIRIUS Computer Solutions	IBM Blades & Chassis to replace the existing SAP landscape	\$128,133.92-all local share
Medical Examiner - Purchase Contract-GXC	Purchase of a Remanufactured C Arm	\$80,000-\$51,200 local share
Senior Services-Service Contract – Meals on Wheels	Meals on Wheels contract – Supplemental Nutrition Assistance Program	\$1,707,583-no local share
Senior Services-Service Contract – American Red Cross	Long term care ombudsman program	\$84,024-no local share
Social Services-Service Contract – Be-A-Friend	Be-A-Friend Special Delinquency prevention program	\$50,000-\$1,000 local share
Social Services-Service Contracts – Compass House	Compass House-Runaway Advice, Runaway reimbursement and Homeless reimbursement	\$350,394-\$47,353 local share
Social Services-Service Contract The Bonadio Group	Review of additional Medicaid cases	\$64,000-no local share
Social Services-Service Contract – Meals on Wheels	Meals on Wheels-2009 contract renewal Title XX	\$66,650-\$33,325-local share
Social Services-Service Contract – 31 Listed Community Agencies/Branches	Mandated Preventive Service	\$9,509,525-\$2,726,659 local share
Social Services-Service Contract – 10 Listed	Employment services contracts designed to enable	\$4,233,368-\$64,750

Agencies/Branches	clients to exit the welfare system	local share
Social Services-Service Contract – 11 Listed Agencies/Branches	Community Optional Preventive Services	\$2,231,014-\$401,326 local share
Social Services-Service Contract – Child & Family Serv., Crisis Services, Family Justice Ctr., Hispanics United	Non-Residential Domestic Violence contract	\$615,538-\$169,042 local share
Social Services-Service Contract – 27 Listed Agencies	Foster Care Contracts	\$39,723,867-\$11,917,160 local share
Social Services-Service Contract – Belle Center, Buffalo Urban League, ECC	Youth engagement services provides services to address special needs of at-risk in-school youth from the Buffalo schools	\$400,000-no local share
Social Services-Service Contract – Child & Adolescent Services, Compass House, ECC	Independent Living program prepares youths in foster care to transition into adulthood	\$400,000-\$15,493 local share
Social Services-Service Contract – 17 Listed Agencies	Personal care service to over 2000 elder and disabled Erie county residents	\$2,100,000 – Medicaid Local Share
Social Services-Service Contracts – 19 Listed Agencies	In-home nursing care	\$1,975,550- Medicaid Local Share
Social Services-Service Contract - MetroData	MetroData services Inc-contract expansion	\$74,250-\$23,433 local share
Social Services-Service Contract – Salvation Army	Salvation Army provides food vouchers, prescription vouchers, furniture and clothing	\$317,500-120,650 local share
Social Services-Service Contract – 9 Listed providers	Medicaid Transportation providers	\$3,475,000 – Local share Medicaid Cap Chargeback
Social services-Service Contract – Multiple Vendors Listed in the Application	Day care providers	\$31,759,501-2,461,362 local share
Social Services-Service Contract – Legal Services for the Elderly	Legal services for the elderly and disabled – Medicare Maximization Project	\$50,000-no local share
Social Services-Service Contract – Jewish Family Services	Jewish Family Services-nursing assessment services	\$1,341,233-no local share
Social Services-Service Contract-The Bonadio Group	Review of Medicaid cases	\$120,000-no local share
Social Services-Service Contract - VIVE	VIVE refugee house serves up to 125 refugees nightly who have fled war and persecution	\$50,000-all local share
Social Services-Service Contract – Franciscan Center	Franciscan Center Homeless contract provides counseling, tutoring, mentoring and recreation programs	\$113,096-2,262 local share
Social Services – Service Contract – Center for Transportation Excellence	Contract provides for mobility management services	\$925,824 – no local share
Social Services-Service Contract – Joan A. Male Family Support Center	Joan A. Male family support center contract to provide respite to foster parents	\$328,400-\$150,570 local share
Social Services-Service Contract-Lab Corp of America	DNA paternity testing	\$100,000-\$5,000 local share
Social Services – Service Contract - Erie County Medical Center CASAC Services	Contract provides for Certified Alcohol and Substance Abuse Counselors to provide formal comprehensive assessments for those for which	\$313,916 - \$131,958 local share

	there is evidence of alcohol or drug dependency	
Social Services – Service Contract – Cornell Cooperative Extension	Contract provides for nutritional education and outreach services for applicants of the Food Stamp Program	\$258,000 – no local share
STOP DWI-Service Contract – Town of Lancaster	Town of Lancaster	\$72,000 – no tax levy local share
STOP DWI-Service Contract - Town of Orchard Park	Law Enforcement & Court Services as per STOP-DWI Program	\$99,687 – no tax levy local share
STOP DWI-Service Contract – Town of Tonawanda	Law Enforcement & Court Services as per STOP-DWI Program	\$250,505 – no tax levy local share

This resolution shall take effect immediately.

Chairman Glaser: “Are there any questions on this slate of contracts?”

Vice Chair Goodell: “Yes, I am looking at 8-4, \$66,000 of which \$33,000 is local share. There are a couple of other ones in there with relatively small numbers. Does anybody get into these tiny little contracts and say yes we accomplished what we were suppose to or no we didn’t accomplish what we were suppose to? Can you tell me how effective those programs are?”

Exec. Director Vetter: “I can tell you about the application process that public agencies, which most of these are, need to submit proposals with anticipated outcomes. I guess the question is to how relevant the outcomes are and how close they are monitored. I couldn’t say at this point that it is something that we could sit down and discuss with the County to review but the process indicates that they do have to submit a proposal, their do have to have anticipated outcomes and then monies flow to the agencies.”

Chairman Glaser: “I think, to add to your question, if we had what you and I would think of as an internal audit function we would have the ability to go back and check on some of those things. I think we have been told over time, that part of Six Sigma, that analysis would be taking place. It is still in its embryonic stages of being utilized at the County to have all of its benefits.”

“The next item that would take place is to send it over to the County Comptroller’s office and, quite honestly as we have tried to in the past keeping numbers and staff bound, I think he has had some difficulty finding the appropriate people to be able to do those things. So I think you are right, Mr. Goodell, and those are probably things that we would like to get behind.”

Secretary Keysa: “My experience in the past was that of reporting as Deputy Commissioner of Environment and Planning. The Commissioner at that time went through those things and wanted to know how successful those things were and in turn he was reporting that to Jim Keane, who was the Deputy County Executive at the time. Jim was monitoring those things and presumably reporting them to the County Executive. I don’t know, but I’m assuming those kinds of changes are in place, but I don’t know that for sure.”

Chairman Glaser: “Your answer is someone is doing it but how effective is it and that is a little more difficult question to answer?”

Vice Chair Goodell: “We tend to, as a board, say, okay if this is partly funded by someone else, of course we will approve it. I think at some point we should take a look at particularly these small contracts. They probably add up to a couple of million a year.”

Chairman Glaser: “Maybe what we could do, Mr. Goodell, and I am just throwing out ideas, maybe we can have someone from the County come over and possibly talk about how we could put something into place or if they are have something, because I don’t know that they do or not.”

Secretary Keysa: “I think that we have to get back to the fact that we are not the ones administering the County day-to-day. We are an oversight board. There is a County Executive there and a County Administration. There is a Legislature which also has oversight responsibilities. We don’t want to duplicate what they already maybe doing but obviously, as a result of problems in the past, we do have some responsibility.”

Vice Chair Goodell: “Mr. Keysa we are asked to approve, in this case, \$33,000, and in my mind, yes it is a tiny amount of money, but there are a whole bunch of them. It raises the question “are we getting fair value?” I think what Mr. Glaser has suggested that we take a look at some point.”

Secretary Keysa: “I think we should ask them “what is the monitoring process in the County?”

Exec. Director Vetter: “Mr. Goodell, if I could, we are scheduled at our January meeting to have a Six Sigma update by Mr. Hammonds, so maybe he in his dual roles as the Deputy County Executive and if not the direct Six Sigma coordinator, at least a secondary Six Sigma coordinator, I would ask this to the area of questioning and presentation.”

Director Johnson: “Just one question, Mr. Chairman. My colleague, Mr. Goodell, are you speaking about 8-4?”

Vice Chair Goodell: “Yes.”

Director Johnson: “I spent a considerable amount of time in my past career working on contracts of this nature. I will say Erie County was one of the counties in the state that did a very, very good job of selecting the appropriate foster care agency, congregate care and individuals to be foster parents. They monitor this system through their unit of Child Protective Services, set goals in terms of the number of foster parents and congregate care agencies that they would engage in services. They usually came out okay. I agree with you whole heartedly that we have a right to know, as an oversight agency, as to how well they are doing on an annual basis and if necessary on a monthly basis. Having said that, I certainly would be elated to have the Commissioner or his designee come in and share with us the accomplishments that have been made, especially when we are talking about a heavy local investment, but usually those contracts go pretty well.”

Chairman Glaser: "Is there any other discussion on those contract items?"

Vice Chair Goodell: "Does this go through 11-7?"

Chairman Glaser: "Yes."

Vice Chair Goodell: "DNA paternity testing; \$100,000 is written there does that mean \$5,000 is local share?"

Exec. Director Vetter: "I'm sorry, which one are you addressing?"

Vice Chair Goodell: "11-7"

Exec. Director Vetter: "Are you reading from the exemption list?"

Vice Chair Goodell: "Contracts binding the County..."

Exec. Director Vetter: "I think you are reading from the exemption list?"

Vice Chair Goodell: "No it's not, it from the contract, settlements or other obligations to the ECFSA, 11-7 Social Service Contract with Lab Corporation of America, DNA paternity testing."

Chairman Glaser: "You might have the previous copy."

Exec. Director Vetter: "I think you could have the prior copy. When we go back and forth reconciling, sometimes the numbers change with the County."

Chairman Glaser: "I think it is 11-3."

Vice Chair Goodell: "My question is, is that \$5,000 local share?"

Exec. Director Vetter: "Yes."

Vice Chair Goodell: "Do they charge people for the paternity testing?"

Exec. Director Vetter: "No, what this really is, when someone comes in and applies for public assistance and one of the parents is not in the household and they need evidence of who a parent is, the department pays for testing so that they can go and seek support from the parent who is not in the household."

Chairman Glaser: "Any other discussion on any of those items? If not can I have role call?"

Exec. Director Vetter: "I would suggest as a slate items 12-1 through 12-5. These really are contracts that are related to efficiency grants that the authority has approved in the past. These contracts have been reconciled to the grant approval but it is recommended by staff because we do not have the money in hand at this point to fund these contracts. It is at the NYS Division of Budget and they do a final review of releasing the cash contingent on NYS Division of Budgets final approval."

Chairman Glaser: “These are items that we have looked at in the past?”

Exec. Director Vetter: “These are items that have been looked at in the past and approved but there is a final technical review done by the State Division of Budget before the money is forwarded to us and we really wanted to make sure that there are contingencies in there in case there is a problem with State Division of Budget.”

Secretary Keysa: “For the record, the numbers we have are?”

Exec. Director Vetter: “I’m sorry 12-1 through 12-5.”

Chairman Glaser: “Thanks. So I need a motion, but this is all contingent on NYS approval?”

Exec. Director Vetter: “Yes.”

Director Johnson moved to approve, Secretary Keysa seconded, and the Directors voted unanimously to approve the following resolution:

**Resolution No. 08-111**

**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 Public Works -Construction Contract-Trason Development	Renovations on the 1 <sup>st</sup> and 16 <sup>th</sup> floor	\$652,000 – ECFSA Efficiency \$'s
EC Public Works-Construction Contract-Weydmann Electric	Renovations on the 1 <sup>st</sup> and 16 <sup>th</sup> floor	\$349,000 – ECFSA Efficiency \$'s
EC Public Works – Purchase Contract – Advance Architecture & Planning	Professional change order related to construction on the 1 <sup>st</sup> and 16 <sup>th</sup> floor of the Rath Bldg.	\$88,600 – ECFSA Efficiency \$'s
Sheriff Department-Purchase Contract-Towne Ford	Purchase 2 Ford Econoline Vans	\$50,336 – ECFSA \$'s
Sheriff Department-Purchase Contract-DeLacey Ford	20 Ford Crown Victoria Patrol Vehicles	\$677,480-ECFSA \$'s

This resolution shall take effect immediately.

Exec. Director Vetter: “Item number 12-6 and this is with regard to five legal claims that were sent very late to us by the County Attorney’s office for which one of them has significant detail, that is regarding DiPizio Construction, but there are four others as well which our attorneys and representatives of the County Attorney’s office have discussed and I believe our legal counsel has spoken separately with you and with myself . These are the five items listed on the memorandum that were sent to me from Christine Kline Wheaton, the First Assistant County Attorney. Based upon the conversations we have had with the County and with our legal counsel, there be a recommendation that the five items 1 – 5 be approved by this body.”

Chairman Glaser: “I would just like to make some comments before I ask for a motion and that is to remind everyone the way the process in terms of litigation. We have our legal counsel, in this case Mr. McNamara, who has spoke with the County Attorney’s office to go through anything that is relevant and give me his recommendation relative to the issue where it is being resolved and so forth. I then bring it back to this board and we have gone through that process. So I would ask for your support and a motion recommending that we approve those items. I would like to put that on the table and then we can have discussion.”

Vice Chair Goodell moved to approve and Director Kruly seconded resolution 08-112. Discussion followed.

Chairman Glaser: “The only item that I would like to have discussion on is the Di Pizio case. Mr. McNamara?”

Secretary Keysa: “While we are waiting for Mr. McNamara, I assume that if there is a question on any of these either from our counsel or ourselves, that it will be sent back to the

County Attorney or additional information that is questioned would be brought to us for approval?"

Chairman Glaser: "If we have any questions relative to these lawsuits, yes."

"The only question that I wanted to ask was, if we had had the money in hand, like we could have, could that lawsuit be avoided and that amount paid to this contractor?"

David McNamara: "Yes. I learned from attending the court proceeding with respect to the Di Pizio claim against the County that the County had no defense to the claim other than a claimed lack of ability to pay the claim. So if the County had completed or authorized the control board to complete bond financing for its 2007 capital projects, it would have avoided the litigation and the interest that is being paid now until the County obtains funds to pay that claim."

Chairman Glaser: "...and if in fact there is a date that the bill is paid by, this thing goes away? So the whole lawsuit against the County goes away once that legitimate claim is paid?"

David McNamara: "Correct."

Chairman Glaser: "So the question might become, is there cash available?"

David McNamara: "My understanding is that that is the only question."

Chairman Glaser: "I would like to go on record that we can get this financing accomplished and get those vendors paid that should be paid. It's ridiculous that it has gotten this far."

Secretary Keysa: "It is not fair to vendors."

Chairman Glaser: "I have gotten calls from various vendors relative to this issue. I'm sure if the rest of the board has gotten any relative to this issue. I would like to say we stand ready to get the money in and vendors paid. Are there any other comments relative to those issues? Then I would ask for a vote for approval?"

The Directors voted unanimously to approve the following resolution:

#### **Resolution No. 08-112**

#### **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

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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
County Attorney-Legal Settlement Di Pizio Construction	Legal Settlements	\$1,065,000

This resolution shall take effect immediately.

Exec. Director Vetter: “The last item, item number 12-7 on the contract approval matrix is a request from the County Comptroller, that is really two-fold, one of either approving a \$40 million BAN borrowing for the County or an \$89 million long-term borrowing for Erie County.”

Chairman Glaser: “At this point I would like to go back relative to the comments that I made in the beginning. I would like to table that item. We are at the end process, that would take I think two phone calls to get the County money and get these bills cleaned up. So at this point I would like to table this.”

Director Kruly moved to table item 12-7 and Director Johnson seconded the resolution. The board voted unanimously to table.

Secretary Keysa: “I assume that, if we need to, we will have a special meeting if there is any other authorization that is required for bonding, but I think that we have it in place?”

Chairman Glaser: “Yes I think we have that in place. We are all set to borrow.”

Vice Chair Goodell: “There is a resolution in place.”

Exec. Director Vetter: “Mr. Chairman if I could, on the exemption requests for the ECFSA, items 1-1 through 1-5 are items that the County has gotten and indication that they will be receiving grant funding. The contracts have not caught up with that commitment. As been our practice for the last couple of months, these would be exempted from our approval process based on not having to lay off County employees and continuing the grant funded services when the contract comes in.”

Vice Chair Goodell moved to approve, Director Johnson seconded, and the Directors voted unanimously to approve the following resolution:

### **Resolution No. 09-113**

#### **APPROVING THE ECFSA EXEMPTION OF CERTAIN GRANTS 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 exempts itself from certain grants listed on the attached document.

Department	Description	Amount
Health-Grant Program – NYS DOH	Child Lead Poisoning Prevention Program – Grant Period 4/1/09 – 3/31/10	\$620,505-no local share
Health-Grant Program – NYS DOH	Expanded Syringe Access Demonstration Program – Grant Period 7/1/09 – 6/30/10	\$56,812-no local share
Health-Grant Program – NYS DOH	Immunization Action Plan – Grant Period – 4/1/09 – 3/31/10	\$294,000-no local share
Health-Grant Program – NYS DOH	Public Health Campaign STD Grant – Grant Period - 4/1/09-3/31/10	\$114,364-32,364 local share
Health-Grant Program – NYS DOH	Public Health Campaign TB Grant - Grant Period – 3/31/09 – 3/30/10	\$297,583-\$52,583 local share

This resolution shall take effect immediately.

Vice Chair Goodell: “I just want to note that there are four of these contracts that come under my earlier point of very small numbers.”

Chairman Glaser: “Yes, some of those items were underneath our cusp so to speak. That takes care of the contract. The only other item I wanted to comment on relative to the County budget is that at this point in time we have not received anything relative to have a motion on or even discuss since the Legislature and the County Executive are still discussing those budgets. So relative to that, I think of no comment from our stand point that is appropriate, but for this board, I would like to say that I do understand that discussions are taking place amongst certain people and I think that is good. I think the County Executive is discussing a number of other items we had put in our budget as we move forward to be managed such as ECMC and the like and that he is trying to get those things accomplished. So it is good when people are talking.”

Secretary Keysa: “I hope this can be resolved without going to legal action, that it can be resolved through negotiation. One of the things that concerns me, as a past town supervisor, although nearly 20 years out of that position now, was that the towns all depend upon the County to send out a combined bill and makes a great deal of sense that there be a combined bill, but on the other hand, it also assumes that everybody has their budget’s adopted on a timely basis so that that can be accomplished.”

Chairman Glaser: “We still won’t know what is going to happen with New York State before this budget is finalized, although I think it is getting worse as oppose to better in terms of what the fixes are going to be all the way through the system.”

Vice Chair Goodell: “Are you holding your breath in terms of the State budget being done quickly?”

Chairman Glaser: “I don’t think I would hold my breath. The way things are going, we will probably be back here next month. If there is no other business before us, I’ll take a motion to adjourn.”

Secretary Keysa moved to approve, Director Thomas seconded and the Directors voted unanimously to adjourn.

Respectfully submitted:

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Stanley J. Keysa  
Secretary

December 15, 2008