

Minutes of the
Erie County Fiscal Stability Authority Meeting
September 21, 2012

Present: Chairman James Sampson, Director Brian Lipke, Director Catherine Creighton, Director Louis Thomas, Executive Director Kenneth Vetter

Chairman Sampson: "I'd like to call this meeting of the Erie County Fiscal Stability Authority to order. We are here today to consider a resolution to borrow up to \$80 million on behalf of Erie County for cash flow purposes. I'd like to thank County Executive Poloncarz and the County Legislature for authorizing this action- I think it was yesterday it occurred in the Legislature. Which allows us to work in cooperation with the county and the administration in meeting their financial obligations and also in that process helping save taxpayers a significant amount of money."

"Before we move forward to that, however, we have some housekeeping to do. Members of the authority, you have in your packet board minutes from August 21, 2012. I'd like to entertain a motion to approve those. "

Resolution No. 12-11
APPROVING MINUTES FROM
THE AUGUST 21, 2012 MEETING

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its August 21, 2012 meeting and affirms two resolutions numbered 12-09 and 12-10 that were approved on AUGUST 21, 2012.

This resolution shall take effect immediately.

Director Lipke moves to approve the minutes, Director Thomas seconds and the Board votes unanimously to approve the minutes of the previous full board meeting.

Chairman Sampson: "Mr. Vetter could you provide us some background on the cash flow borrowing?"

Executive Director Vetter: "Yes, Mr. Chairman. Very briefly, the county via its approval yesterday of that issuance by the Legislature and the declaration of need has authorized the Erie County Fiscal Stability Authority to go to market on behalf of the county. The resolution that is in front of you authorizes the Authority to go up to \$80 million; the actual borrowing itself may be a bit less. The county has been talking about \$70-75 million but our bond counsel thought it prudent that our resolution match the county's initial resolution and give some leeway in the event that there is any kind of change in the future on the borrowing amount. What's required at this point is the ECFA board authorizes this. We will be able

to go to market fairly, given what we've learned of the county's cash flow, we are under a fairly tight schedule. We are looking at closing on October 11th and that's the day we would get the money to the County. This is really the last policy act that's required before going to market."

Chairman Sampson: "Mr. Callan, who is the Deputy Budget Director, is here to speak on behalf of the administration...Mr. Callan."

Tim Callan: "Thank you Chairman Sampson. Thank you Directors for being here today to entertain the County's request. As Mr. Vetter indicated, the County Executive issued a declaration of need requesting the County Legislature approve the Authority to issue a cash flow borrowing. The Declaration of Need requested \$75 million, the Legislature's resolution approved yesterday; the actual Revenue Anticipation Note (RAN) resolution submitted by the Comptroller requested the authority borrow up to \$80 million. We think at this point based on the cash flow projections from the Comptroller's office we will need \$ 75 million. The higher projection from earlier this year, as you may know, was based on the county's disproportionate share upper payment limit situation; Medicaid related payments to Erie County Medical Center Corporation. We made one payment of just under \$6 million to the State Health Department- which then matched that with the corresponding amount from the federal government. They provided that to the hospital back in June. Subsequently, we received no formal notifications from the state about the payment scheme. They had all sorts of unofficial warnings from State Health Department officials, all sorts of discussions with ECMCC management about this. Then the most recent letter from the state health department arrived at 2:00 last Friday the 14th where they notified us they were debiting our account \$12.3 million on September 25th. So they gave us 11 days advanced warning the state was debiting our account to DSH payment to benefit ECMCC. So, it's the DSH & UPL payments which you will hear more about from us when we come over in about a month with the 2013 budget and four-year financial plan that made the projection of the higher cash flow borrowing necessary from an earlier projection this year of lower borrowing somewhere in the \$60 million; \$50-60million range. "

"I have the declaration of need from the County Executive, I also have the certified declaration of need from the Clerk of the Legislature as well as the certified resolution signed by the County Executive, the Comptroller and the County Attorney and Clerk of the Legislature should you need it. I don't know what protocol is, I can talk to Mr. Vetter after the meeting. It was a unanimous vote in the County Legislature yesterday requesting that you to conduct the borrowing, the County Executive is in agreement and asked them for it. We appreciate your support in working with us fastidiously on this. We apologize for the haste of which with this meeting was necessary. We had originally, in

discussions with the Comptroller's Office, thought we would need the cash by the end of October we then realized with the latest DSH payment letter from the state and the size of it that we would need the cash on or by October 12th. So, we appreciate your assistance in working with us on this."

Director Sampson: "Thank you Mr. Callan. Any questions on the part of the members?"

Director Lipke: "Just one question... is that the usual practice from the state regarding these payments? They call you up one day and tell you two weeks later you're going to have to make the payment? There is no sequence of events that leads up to it and no planning that anyone at the County can do to anticipate this? "

Tim Callan: "Yes, the issue with DSH & UPL if you want a very brief primer- we can talk more about it with you when we send over the budget plan and meet with you in October or early November. Disproportionate share (DSH) are payments for individuals who receive treatment in public hospitals, so Kaleida and Catholic Health are not affected by this scheme. The County isn't affected by it in terms of them. For individuals, this federal program, the federal government administered by the US Department of Health and Human Services. DSH is a scheme where the federal government and the host government sponsor government where here in NYS for medical centers is county governments. DSH is a scheme by where the federal government matched by local sponsor money provides additional revenue to a public hospital that treats a certain kind of patient of individuals who are not officially on Medicaid but who might otherwise be eligible for Medicaid in other words they're just slightly higher than Medicaid eligibility threshold in terms of income but they're not officially on it and don't have private insurance they are either underinsured or uninsured. DSH has been around and has been known in past years as IGT Inter-governmental transfers.

"This program this mechanism has been around for decades. When ECMC was an operating department of county government we had to make similar payments in year's past- nothing of this magnitude. When it was an operating department if we made payments to the State Health Department where they debit our account over here and they would match with federal money and give it to the hospital. When they were an operating department we had to make a payment over here under the scheme we could benefit from other arrangements over here because it was an operating department. Since 2004 it's an independent public authority; a benefit corporation of the state of New York and the county as you know has little to no leverage or role in the hospital whatsoever. In the most recent couple of years, particularly since the recession hit in 2008 the claims submitted by ECMCC to the state health department under DSSH has risen dramatically which means the county's expense and the

federal governments expense has risen dramatically also. The way the process works is ECMC incurs the expense for treating these patients, they submits a claim at year end, their fiscal year end to the state health department. The state vets it, audits it, the state provides the information to the US Department of Health and Human Services. The federal government vets it, looks at it and then two years later when the feds and state agree they direct a payment to be made to the benefit of the hospital. And they do it administratively through the NYS Department of Health. So, in this case the State Health Department contacts Erie County government and contacts ECMC. The State advises ECMC you're going to get a benefit of "X" amount and the County you're going to pay them "X" amount. In the most recent couple of years the county has only officially gotten three week advanced notice of these payments. So we receive a letter from the New York State Department of Health Medicaid Financial Management unit in Albany advising us in three weeks we're going to debit your MMIS or Medicaid account "X" amount so make sure the money is in your account."

"We know informally throughout the year talking with state health department officials and talking to ECMC management, Mike Sammarco their CFO and Paul Hefner their VP of Finance, the County knows through discussions the Comptroller's Office and Budget Office has with those folks. We get a sort of range of possible exposure. The hospital knows the dollar amount they sent for claiming purposes to the state but they never know if the state or fed will award the entire amount. It's not unheard of that the feds and state disallows certain expenses. In fact, recently the feds are making it really tight on not letting the hospital claim for reimbursement on certain legacy costs. The hospital was building in an administrative factor into their claims for like their pensions and healthcare for their medical staff and the feds were getting tighter on that. Not just in Erie County not just in New York State but across the country. Because the last public hospitals around the country have been asking for DSH payments and making claims over the last four years as the recession has hit and more uninsured or underinsured individuals have sought treatment in public hospitals. So, we have a general sense of a range of claims and payments we might face- but we never know. As many of you know, the County has only been budgeting over the past four years, actually three year's, a \$16.2 million ECMCC related payment amount in the County's annual operating budget because we just don't know what the DSH and UPL payments are going to be. UPL by the way is called Under Payment Limits- those are Medicaid related payments for certain patience in Erie County Home."

"In theory, under the Affordable Care Act DSH payments are supposed to be going down significantly. Under the Affordable Care Act the eligibility for Medicaid is going to go up, so in theory a large number of individuals who are

underinsured or uninsured will fall under the provisions of the Affordable Care Act and officially go on Medicaid and so assuming the Affordable Care Act does go into effect on January 1, 2014. Whoever the next President is and maintains the provisions of the act and there are no further legal problems administrative difficulties or what not the County should start seeing significant relief on DSH payments a little bit in 2014 but much greater amount in 2015 and again in theory by 2016 we should not have any more DSH payments. I'll believe it when I see it myself -but that's kind of the theory behind the Affordable Care Act and how it's being handled by the feds and with the provision of the new law."

"The most recent letter we got from the State Health Department we literally received it at 2:03 pm last Friday. I remember it down to the minute because our receptionist anxiously brought it in to me and the Budget Director "we got another payment letter!" We have been waiting for this- we thought we were going to get a letter in August- they didn't come. We reached out to the state and the hospital and said "you know, you guys have any new information?" and they said "we don't know when the letters are going to come out." So, we received the latest letter for \$12.3 million payment last Friday and the state is requiring the money be in our account because they are going to debit our account on September 25th. That's the latest payment."

"We do expect other payments for DSH and one final UPL payment before the end of the year. However, there is reason to believe there is something going on in Albany and some of those payments might get pushed into the 2013 so they would not count towards our financial statements for the county's 2012 budget it might go into our 2013 budget. That's not official, that not hard and definitive yet. When the state gave us the latest warning letter, not a warning letter, the latest letter directing us to make the payment on the 25th of September. We reached out to them- the budget director called our contacts at the state and asked if they could give us a better sense of when the initial payments might be coming. They said the state may be pushing these payments into January or February of 2013. Obviously, this impacts the four-year plan in a different way and next year's budget, which is one of the reasons why we are constantly changing and adjusting this."

"I'll say one final thing because we will talk in more detail about this in about month when we send the 2013 budget and four-year plan to you. We have been in extensive discussion with ECMCC management for a number of months about developing some sort of scheme for credits similar to the excess operating support the use of credit the county used in 2010 and 2011 to mitigate DSH and UPL payment expenses beyond the \$16.2 million budget amount. We have a draft written agreement. The hospitals attorney Mr. Colucci has drafted and our law department and the Administration are

reviewing it right now. This would give us credits so that the impact on our 2012 budget if in fact we have to make these additional payments before the end of the year or 2013 budget if payments are pushed by the state into 2013 for DSH & UPL. We have a friend at the hospital that has assured us we will have credits from them to mitigate this expense. We have an agreement being vetted by the lawyers right now to address that. Because I know that will be one of your concerns when you get the 2013 budget and four-year plan, how the county will address this expense. That's where we're at- at this point. We will have a lot more information for you after October 15th when we meet with you within the 20 days for your budget deadline."

Chairman Sampson: "Thank you Mr. Callan. Any other questions?"

Director Lipke: "Thank you very much – that is a very thorough primer on the subject."

Tim Callan: "The strategy is to wear you down."

Director Lipke "I don't know there is any need to wear us down. Now we know why you didn't know why you didn't know what you were going to be paying nor when you had to make the payment. Seems it's a flawed system – not of your making. Nonetheless, one you have to operate within. I'd also say, if the Comptroller was here today he'd be hard-pressed to give any better explanation than you just gave."

Tim Callan: "Thank you."

Chairman Sampson: "Any further questions...Mr. Thomas? Great!"

Tim Callan: "Thank you Mr. Callan. I do want to indicate that after we approve the resolution Mr. Callan would like to come back and share some information with us. Not an action item though."

Chairman Sampson: "Mr. .Steinhart from the Comptroller's office is here...would you like to speak?"
"Come on up."

Lorne Steinhart: "Good morning."

Director Creighton: "Good afternoon."

Lorne Steinhart: "Is it? My watch stopped...it says 11:17. Really, Tim did a great job thoroughly explaining the situation. We, in the Comptroller's Office, did pursue a MIG 1 rating. We recognized that due to the IGT payment situation we were not going to be able to achieve it. So, a few weeks ago we decided to step back and we recognized the fiscal stability authority could borrow less expensively and therefore we fully support this action. We are in a position- the cash flow

statement that we provided- we are looking to obtain proceeds by October 11th. We have been in discussions with Ken in this regard. Looking at the cash flow statement- the forecasted projected cash flow until the end of October-. without the RAN proceeds we would most likely be in a negative position. This will carry us through the rest of this fiscal year; calendar year 2013. As well as our anticipated low point in cash which will be towards the end of December or January 2013. I should say our cash-flow for 2012. That's really all I have. If you have any questions, I'd be happy to address them."

Chairman Sampson: "Any questions from the members?"

Director Lipke: "I have one question. It relates to a comment that was in the Buffalo News about the amount of savings that the Fiscal Stability Authority could generate relative to the County doing the RAN borrowing on its own and the number in the paper was \$50,000. I was wondering if you could shed any light on how you arrived at that number."

Lorne Steinhart: "That was the amount – contingent upon the county achieving a MIG 1- Moody's Investment Grading One rating- the highest quality rating. We stepped away from that as a result..."

Director Lipke: "So, in fact, without that MIG 1 rating the savings using the fiscal stability authority, will be far greater than the \$50,000 that was stated in the paper?"

Lorne Steinhart: "Yeah, we stepped away when it was evident to us we would not achieve MIG1 (rating) we just stepped away. Presumably we would have received a MIG2 in which case the spread more substantial."

Director Sampson: "Thank you. I just want to make one observation. As the Chairman, I think I speak on behalf of all our members, want to work cooperatively and collaboratively with the county to make sure you meet your fiscal responsibilities and you want to use our authority to do that and also benefit the tax payers. We are in somewhat of an odd position; the authority is comprised of seven members by statute. We currently have four and we don't have a vice-chairman, which means we have little room for error. If we can't get all the members in the room and we don't vote unanimously, then we can't do business. If we can work just a little more cooperatively about what the future looks like and we don't want the county to get into a position where they have to borrow and it costs much more than it ought to. I had to delay a trip and Mr. Lipke had to come back early and we are happy to do it, but sometimes we're not quite that flexible."

Lorne Steinhart: "Understood, thank you."

Chairman Sampson: "Thank you. Any other questions?"

"At this moment, I would like to entertain a motion to approve a resolution in your packet authorizing the Erie County Fiscal Stability Authority to do cash flow borrowing on behalf of Erie County."

Director Creighton moves, Director Thomas seconds and the board votes unanimously to approve the following resolution:

Erie County Fiscal Stability Authority

Resolution No 12-12

APPROVING THE ISSUANCE OF

NOTES BY ERIE COUNTY FISCAL STABILITY AUTHORITY

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";

WHEREAS, as a result of its high bond rating, the ECFSA can issue new debt at a lower cost than the County can;

WHEREAS, by issuing new debt through the ECFSA at lower interest rates, the County can reduce its cost of borrowing, and thereby save taxpayer dollars;

WHEREAS, based on County cash flow projections, the County Comptroller's Office has identified a need for the County to issue up to \$80,000,000 in Revenue Anticipation Notes in October, 2012, and such borrowing was authorized by the Erie County Legislature on September 20, 2012;

WHEREAS, pursuant to the New York Local Finance Law, the County Legislature delegated to the County Comptroller the powers to authorize the issuance of and to prescribe the terms, form and contents for the sale and credit enhancement of such Revenue Anticipation Notes through approval of its Resolution, up to an amount of \$80 Million;

WHEREAS, the County Legislature on September 20, 2012 approved a Declaration of Need for an ECFSA borrowing on behalf of the County, as required by Section 3961 of New York Public Authorities Law, to enable the ECFSA to realize such savings for County taxpayers;

NOW, THEREFORE, BE IT RESOLVED, that, the ECFSA does hereby approve and authorize the Erie County Fiscal Stability Authority issuance of Bond Anticipation Notes and/or other note instruments in an amount not to exceed \$80,000,000, in order to purchase said County Revenue Anticipation Notes to allow the County to meet its short term obligations;

BE IT FURTHER RESOLVED, that the power to set the financial terms of such Bond Anticipation Notes is hereby delegated to the Chairman and/or the Executive Director of the ECFSA;

BE IT FURTHER RESOLVED, that the Chairman and/or the Executive Director of the ECFSA, acting together or individually, be hereby authorized and directed to execute and deliver any agreements, certificates, documents, papers or other written instrument, to make any changes, modifications or amendments as may be necessary, to do all other things and to take all other actions necessary and appropriate to consummate the transactions contemplated by this resolution; and

BE IT FURTHER RESOLVED, that copies of this resolution be provided to the County Executive, the County Comptroller, the County Legislature, the Director of the State Division of the Budget, the Chair of the State Senate Finance Committee, the Chair of the State Assembly Ways and Means Committee and the State Comptroller.

This resolution shall take effect immediately.

Director Thomas moves to adjourn, Director Lipke seconds and the board votes unanimously to adjourn.

Respectfully submitted,

James Sampson,

Chairman

Date: September 21, 2012