NASSAU COUNTY INTERIM FINANCE AUTHORITY

RESOLUTION NO. 11-303

FINDING A WAGE FREEZE IS ESSENTIAL TO THE ADOPTION AND MAINTENANCE OF A FY 2011 BUDGET FOR NASSAU COUNTY THAT IS IN COMPLIANCE WITH GOVERNING LEGISLATION

WHEREAS, on September 15, 2010, the County Executive submitted for NIFA's review his Proposed Multi-Year Financial Plan, Fiscal 2011-2014, the first year of which was its Proposed Budget for FY 2011, which incorporated $60 million in labor concessions to be achieved in 2011; and

WHEREAS, on October 15, 2010, the County Executive submitted to the County Legislature a proposed Taxpayer Relief Act, which would make a legislative finding of a fiscal emergency and would authorize the County Executive's Administration to pay salary and wages consistent with the County's 2011 budget, even at reduced levels, notwithstanding existing labor agreements; and

WHEREAS, on October 30, 2010, after a one-day recess of its October 29, 2010 meeting, the County Legislature completed enactment of a Multi-Year Financial Plan, including a Budget for FY 2011, containing the $60 million in proposed labor concessions proposed by the County Executive, albeit with purported contingencies; and

WHEREAS, on January 26, 2011, following extensive review and analysis, NIFA declared a control period upon finding a likelihood and imminence of a major operating funds deficit, as defined by the Act, of more than one percent for FY 2011; and

WHEREAS, on March 15, 2011, the County Executive delivered a letter to NIFA explicitly requesting that NIFA exercise its statutory authority to impose a wage freeze, from which request it follows that the County Executive endorses the finding made by this Resolution; and

WHEREAS, on March 22, 2011, at NIFA's request, the County submitted to NIFA a plan of proposed revisions to the FY 2011 budget to address the major operating funds deficit identified by NIFA, which plan, in addition to incorporating a requested wage freeze by NIFA worth $10.5 million, provides for $50 million in labor savings, including layoffs/department closures of 213 positions from 23 departments worth $9.7 million, and a furlough of County personnel for 13 days worth $17.1 million; and

WHEREAS, NIFA, with the assistance of its counsel and its outside accounting advisors, has conducted a careful analysis of the information provided by the County; and

WHEREAS, NIFA, having analyzed the expenditure and revenue components of the County's current FY 2011 outlook, including the County's plan of proposed revisions submitted to NIFA on March 22, 2011, finds a dearth of alternatives for achieving the fiscal balance required by law, such that the savings contributed by a wage freeze are a necessary component of a solution, if one can be found; and

WHEREAS, during a control period, by law NIFA may in appropriate circumstances adopt a Resolution finding that a wage freeze is essential to the adoption or maintenance of a County budget or a financial plan that is in compliance with the State legislation that established NIFA,

NOW, THEREFORE, BE IT RESOLVED, that NIFA, for the reasons stated in the Finding annexed hereto and made a part of this Resolution, hereby finds that a wage freeze as authorized by NIFA's governing legislation is essential to the County's adoption and maintenance of a FY 2011 budget that is in compliance with such legislation.

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Ronald Stack
Chairperson

March 24, 2011

Finding of the Nassau County Interim Finance Authority

<u>Relating to Resolution No. 11-303</u>

Pursuant to Section 3669(3) of the N.Y. Public Authorities Law, Chapter 43-A (the "NIFA Act"), the Nassau County Interim Finance Authority ("NIFA") hereby finds that a wage freeze is essential to the adoption and maintenance by Nassau County (the "County") of a FY 2011 budget that is in compliance with the NIFA Act.

It is useful to analyze the importance of a wage freeze by reference to the calculations and judgments inherent in the County's own FY 2011 budget proposals and analyses. The reason is that the elected officials of the County formulated and adopted a FY 2011 budget amid both (i) a compelling incentive to achieve balance under the Act and thereby avoid NIFA's declaration of a control period (a declaration which the County sought to enjoin in court) and (ii) a strong disincentive to impose burdens on a valued County workforce with a large voting membership that is represented by politically influential unions. The budgeting process is driven by mathematics and policy judgments. Both factors demonstrate the essential role of a wage freeze in returning the County's FY 2011 budget to the fiscal balance required by the NIFA Act.

From the outset of the FY 2011 budgeting process, the County Executive recognized that a reduction in labor costs in 2011, including labor concessions, was essential to achieving a balanced budget. His budget proposal stated

> The 2011 projected deficit, inherited from the previous Administration, resulted primarily from labor contracts previously entered into that bestowed salaries and benefits far in excess of rational cost of living adjustment. Total benefits derived from the labor settlements exceed the consumer price index ("CPI") by over $500 million over the life of the contracts. The cost of the current labor agreements is simply not affordable or sustainable.

Department of Management, Budget & Finance, *Summary of Fiscal 2011 Proposed Budget*, at 3 (Sep. 15, 2010) ("Proposed Budget").

Despite existing collective bargaining agreements requiring wage and salary increases for most County workers, and despite restrictions on layoffs in the labor agreements, the Proposed Budget assumed that the County would dramatically reduce its labor costs in 2011 both by reducing the size of the County workforce and by negotiated, or if necessary unilaterally imposed, reductions in existing obligations to County employees. The Proposed Budget observed that "[t]otal salaries, including fringe benefits, comprise nearly one-half of the overall County budget" and that "[l]abor concessions of approximately $60 million have been factored into the 2011 Proposed Budget to provide fiscal stability and ensure that the County lives within its means." *Id.* at 4.

The County Executive proposed a new tool for exacting labor concessions – an idea underscoring the urgency with which he viewed the fiscal outlook of the County and the necessary role of labor savings in addressing it. The proposal was the so-called Taxpayer Relief Act ("TRA"), which the County Executive submitted for consideration by the County Legislature on October 15, 2010. Under the TRA, "[t]he Legislature intends the fullest exercise of its police power to authorize and direct County officials to set and pay 2011 wages of County employees so as to be consistent with the County's 2011 Budget, notwithstanding any terms in any labor-related agreement to the contrary." TRA § 1. By way of rationale, the TRA provides a stark assessment of the County's predicament through its proposed legislative findings:

> The Nassau County Legislature hereby finds and declares that it has reviewed the proposed 2011 Budget presented to it by the County Executive, and has concluded that it maintains only those services deemed essential by this Legislature; has exhausted all other reasonable revenue measures; has exhausted all other reasonable limitations on expenses; and that the only remaining reasonable option for the County . . . is to effectuate changes in the wages of County employees.
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> . . . .
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> [T]he Legislature hereby finds and declares that a fiscal emergency confronts the County; that said emergency threatens the health, safety and welfare of the County; that other alternatives to addressing said emergency have been reviewed – and to the extent possible been utilized . . . .

Id.

Thus, the County Executive posited a fiscal emergency sufficiently severe to warrant local legislation that would empower his Administration not only to freeze wages (*i.e.*, suspend increases) but also to reduce wages so as to fit the County government's budgeting priorities as enacted by the 2011 budget. The County Legislature adopted the County's FY 2011 budget, including the projection of $60 million in 2011 labor concessions, although adding contingencies purporting to remedy any shortfall in this $60 million expense reduction. The Presiding Officer of the County Legislature subsequently expressed support for the TRA and held a joint press conference with the County Executive to promote the idea and to promise legislative hearings to consider it, although to date no such hearings have been held.

In sum, having balanced the competing interests of forestalling a control period and avoiding burdens on County employees, the County Executive has proffered a solution that includes $60 million in labor concessions in 2011, even under threat of reducing the current wages and salaries of County personnel notwithstanding existing labor agreements calling for increases. That considered policy judgment of the County's elected representatives – which has remained constant throughout a period of shifting submissions – provides a frame of reference for NIFA's analysis.

On January 26, 2011, NIFA, after considering the County's enacted 2011 budget and information received from the Administration, determined that there existed a substantial likelihood and imminence of a major operating funds deficit, as defined by the Act, of more than one percent for 2011. Indeed, NIFA found a deficit of $176 million in a budget of $2.7 billion, and observed that even on a strictly cash basis (a benchmark forbidden by the NIFA Act, which requires application of generally accepted accounting principles) the County faced an imminent deficit of $49 million. As a result, NIFA imposed the current control period, and the Determination accompanying NIFA's resolution imposing the control period is hereby incorporated by reference into this Finding.

The magnitude of the statutory and cash deficits facing the County, in spite of the County's best efforts to arrange its fiscal affairs to avoid the imposition of controls, demonstrates that a wage freeze is essential to achieving fiscal balance in 2011. In current circumstances, labor costs – a category totaling nearly half of the County's expenditures – can hardly remain untouched, much less increased.

The County has provided NIFA with information indicating that more than $10 million in savings will be achieved in FY 2011 through a wage freeze. This is an important opportunity for budgetary relief to the County. It is true that the $10 million figure represents a fraction of the deficit that the County must address. Yet that fact leaves these funds no less essential to approaching an overall answer to the challenge of achieving fiscal balance in FY 2011. NIFA has analyzed the opportunities for budgetary relief on both the expenditure and revenue sides of the ledger, and the realistic alternatives available to the County for immediate budgetary relief are limited.

With regard to headcount, its greatest source of costs, the County Executive already incorporated actions in his Proposed Budget, which reported as follows:

> As part of the County-wide effort to control costs and reduce the County workforce, the County opted into the New York State Early Retirement Incentive and offered a separate County incentive to employees. As a result of this, coupled with minimal rehiring, the County now has over 400 fewer employees compared to the 2010 Adopted budget.

Proposed Budget at 5. Since then, the County Executive has instituted a hiring freeze, publicly pledging not to rehire positions vacated in 2011 through attrition.

The County was highly motivated, moreover, to avoid a control period, as evinced by the County's effort to enjoin NIFA. In that context, it is doubtful the County has held back a known opportunity to achieve substantial budgetary savings by cutting a non-essential program or service.

This is not to say that further analysis will not identify ways to reduce County expenditures. NIFA is authorized by the Act to conduct operational and financial audits of the County government, with the assistance of expert consultants as necessary, to identify opportunities for savings. NIFA may determine that it is appropriate to exercise this statutory authority. If such a process is begun, however, the results of the analysis and subsequent implementation will take time and cannot be expected to achieve appreciable budgetary relief in 2011.

At this juncture, the prospect for realizing new revenue sources in 2011 is likewise bleak. With regard to non-tax revenues – such as fees and fines – the County already appears to have pushed its expectations for new revenues to the limit. The adopted 2011 budget included local legislative changes projected to garner nearly $50 million in revenues. Legislative changes at the State level, which remain unachieved, were projected to yield an additional $28 million. And as noted in NIFA's January 26 Determination of a control period, the County has exhausted readily available one-shot opportunities for generating revenues.

Approximately two-thirds of the County's revenues are derived from property tax (29%) and sales tax (37%). While NIFA during the control period may impact County spending through the contract approval and budget modification processes, NIFA has no authority to impose or raise taxes. Judgments regarding tax increases, which lie at the heart of democratic self-governance, remain with the County's elected officials, whose public pronouncement (from both parties) on the topic have reflected a rather widely-held view that the tax burden on County residents has reached an upper limit in the context of challenges presented to taxpayers by the current economy, even after bipartisan repeal of the Energy tax in January 2011. NIFA recognizes the high tax burden that currently exists in the County for businesses and residents. The prospect of new sources of 2011 tax revenues is remote, at best, and additional taxation may be counterproductive by creating incentives for businesses and residents to leave the County.[1]

Events since January 26 further demonstrate that a wage freeze is essential. First, in its lawsuit against NIFA seeking to overturn the control period, the County adhered to a litigation position that its 2011 budget was in fact balanced in accordance with the Act, notwithstanding NIFA's determination to the contrary. To advance that argument, the County insisted that labor concessions in 2011 would be achieved either through negotiations or, if necessary, through powers that would be made available to the Administration under the TRA upon the County Legislature's finding of a fiscal emergency authorizing reductions in wages. In the litigation, the Deputy County Executive for Finance filed an affidavit favoring this scenario and attaching a copy of the TRA for the Court's consideration. *See* Affidavit of Timothy Sullivan, dated January 31, 2011, ¶¶ 66-

1 As the Long Island Regional Planning Council recently observed, "[t]he high cost of living and working on Long Island, as reflected in housing costs, taxes at all levels of government, energy and transportation are a significant impediment to attracting and retaining businesses and residents." Long Island 2035 Regional Comprehensive Sustainability Plan (Oct. 2010) at 21.

70 & Exh. G. Thus, before the Court the County endorsed the existence of a fiscal emergency sufficient to justify labor concessions, even through unilaterally imposed wage reductions.

Second, on March 21, 2011, the County Executive wrote to the NIFA Chairman explicitly asking that NIFA impose a wage freeze pursuant to its authority under the Act. From this request, it stands to reason that the County Executive and his Administration endorse the existence of a fiscal crisis and the need for a wage freeze in addressing the crisis. What is more, in a published opinion piece weeks ago the County Executive already had declared that "[t]he most helpful thing [NIFA] can do is to freeze the wages for county workers." Edward P. Mangano, *Pulling for the Nassau Taxpayers*, Newsday (Feb. 10, 2011), at A32.

Third, at NIFA's request, the County Executive, on March 22, 2011, submitted a plan of proposed revisions to the FY 2011 budget (the "March 22 Plan"), which, in addition to incorporating savings from a NIFA wage freeze, features $50 million in savings in 2011 through personnel reductions. These proposed savings include (i) identified layoffs/department closures of 213 positions from 23 departments worth $9.7 million in salary and fringe benefits, and (ii) a furlough of County personnel for 13 days generating $17.1 million in savings. Obviously, layoffs and unpaid furloughs are a more drastic alternative for achieving labor savings than a temporary wage freeze. Given the choice, the workforce can be expected to prefer preserving jobs and avoiding unpaid leave, to the extent feasible, rather than an incremental wage increase for those whose jobs survive a round of layoffs. County residents, too, benefit if, for the same level of expenditures, a greater number of County personnel are available to deliver essential services.

Apart from the personnel reductions referenced above and the wage freeze requested by the County, many of the 15 other proposals in the March 22 Plan are repetitive of prior County submissions and continue to contain many risks. Although the March 22 Plan proposes total "solutions" with a value of $181.9 million, the personnel reductions are the largest and an indispensable component of the plan.

To be sure, the Administration's public stance is to blame NIFA for the existence of the 2011 budget deficit that elected officials must address, including the need for layoffs, program cuts and the County Executive's own request for a wage freeze. And there can be little doubt that in the absence of NIFA and the Act, the Administration would seek to bridge its current budgetary shortfalls through borrowing and, if possible, the sort of agreement that obtains some relief today in exchange for increasing obligations tomorrow. But this reality of local elective politics is addressed by the State oversight envisioned by the Act.

The Act entrusts appointed volunteers having relevant expertise with the statutory obligation to ensure the fiscal balance which the New York State Legislature found to be in the best interest of the residents of the County and State. The essence of the balance required by New York State, in exchange for its bailout of the County in 2000, is that current operating expenditures must be within the limits of current operating revenues. If local elected officials must assign responsibility for their difficult policy judgments to the requirements of State oversight – that is, to NIFA – so be it. The County Executive's public complaints that his original budget was balanced and that NIFA is enforcing a "paper deficit" and a "fabricated fiscal emergency" are regrettable but in no way undermine the truth that, in current circumstances, the labor savings at the level provided by a wage freeze are essential to achieving the fiscal balance required by the NIFA Act. That is a reality recognized by the Administration in its Proposed Budget, its proposal of the TRA, its explicit request for a wage freeze and its March 22 Plan.

As matters stand today, with the first quarter of FY 2011 almost complete, the County faces a large deficit on both a statutory and cash basis and has only nine months to correct the imbalance. It is inconceivable that a resolution of this predicament can avoid further reduction in labor costs, amid reductions of the County workforce through layoffs. Negotiations between the County and its labor unions have realized no discernable savings, and some labor leaders have stated publicly that no voluntary concessions will be made for 2011. NIFA's wage freeze authority is essential, even if the savings realized in 2011 may be part of a larger solution involving greater sacrifices in jobs and services.

It is noteworthy that the County's challenges are not unique, and that public officials have responded similarly at other levels of government. At the federal level, the President has declared a two-year wage freeze on federal civilian workers as part of the effort to address high annual federal deficits. *See* P. Baker & J. Calmes, *Amid Deficit Fears, Obama Freezes Pay*, N.Y. Times (Nov. 30, 2010), at A1. In his 2011 budget proposal for New York State, the Governor would freeze the wages of State employees. *See* M. Quint, *Governor Cuomo Freezes Wages, Taxes in Plan to Close New York's Deficit*, Bloomberg (Jan. 5, 2011). While NIFA's finding is particular to the circumstances of the County, the necessity of a wage freeze locally is consistent with the prevailing sign of the times in public employment in the current economic environment.

For all these reasons, NIFA finds that a wage freeze is essential to adoption of a budget for 2011 that complies with the Act.

Dated: March 24, 2011

By the Directors