NASSAU COUNTY INTERIM FINANCE AUTHORITY
MINUTES OF THE MEETING OF THE DIRECTORS
HELD ON MARCH 24, 2011

Pursuant to notice dated March 16, 2011, a meeting of the Nassau County Interim Finance Authority ("NIFA") was convened at 4:00 PM at the Marriott Long Island Hotel & Conference Center located at 101 James Doolittle Blvd, Uniondale, NY 11553.

The following Directors of the Authority were present:

Ronald Stack, Chairman
George Marlin
Leonard Steinman
Thomas Stokes
Christopher Wright (via telephone)

Also present from the Authority were Evan Cohen, Executive Director; Jeremy Wise, General Counsel; Maria Kwiatkowski, Deputy Director; Jane Cunneen, Acting Treasurer; and Laurie Boucher, Corporate Secretary. Consultants to the Authority were also present and included Judge Judith Kaye and Christopher Gunther from Skadden, Arps, Slate, Meagher & Flom.

Upon determining that a quorum was present, the Chairman called the meeting to order.

Before turning to the agenda, Chairman Stack made the following statement.

"Today is the first meeting of the NIFA board since January 26th when the Directors voted unanimously to declare a control period as required by State law when we determined that the County would incur, to quote the statute, "a major operating funds deficit of one percent or more…assuming all revenues and expenditures are reported in accordance with generally accepted accounting principles," which is known as GAAP.

In February, the County exercised its right to bring suit to enjoin and restrain NIFA from continuing to impose the control period. After a full hearing before Supreme Court Justice Arthur Diamond, the Court imposed a temporary stay to study the papers and prepare a decision which was issued on March 11th. That comprehensive 29-page opinion lifted any restraints on the control period making it clear that NIFA's declaration was neither unconstitutional nor arbitrary and capricious. The County can respond to that decision by March 29th if it chooses.

To clarify one continuing public characterization of the deficit that NIFA estimated at $176 million: the deficit is real, the deficit is substantial, and the deficit is in accordance with GAAP as it must according to State law. It is not a "NIFA" deficit. It is not a "paper" deficit. It is a statutory deficit which comes largely from trying to borrow money and counting it as revenue. That is contrary to GAAP. That is contrary to common sense. If you take a home equity loan of $10,000, you do not look at your family's budget and say, we made $10,000 more this year. You made what you made and you borrowed what you borrowed. Borrowed money is not revenue and to claim it as such is simply nonsensical.

Also, as to the continued County public claim that NIFA changed the rules, we turn to Judge Diamond's decision which states: "…[t]he County's complaint that NIFA's disallowance of borrowed funds as operating revenue constituted an about face is refuted throughout NIFA's public records…and to characterize NIFA's act in imposing a control period as in direct contravention of its prior positions would be inaccurate".

Now to the budget.

On Tuesday, pursuant to NIFA's order, the County presented a revised financial plan. After a review by the staff, by our consultants and Board members, we are of the view the new budget is still not balanced. Virtually all of the major items have yet to be implemented, may require approvals by the County Legislature or the State, and are thus unacceptably fraught with risk. They include furloughs and personnel actions needing further County action, while others need State law changes. Others have significant execution risk such as land sales and Mitchell Field leases, which may be completed this fiscal year or they could be delayed. Others are either completely dead or are being questioned such as housing Suffolk County inmates. Finally, other items need additional backup and verification.

We are meeting with County staff in a truly cooperative spirit and working together on the revised budget.

But at this time, the County still does not have a balanced budget that meets the NIFA statutory standards.

Thus, our meeting today. Under our statute, we must decide, as a Board, whether to make a formal finding that a wage freeze is necessary for a balanced budget, whether a fiscal emergency exists in the County and whether a wage freeze should be ordered.

Before we move to our agenda, I would like to say that the County Executive and I spoke yesterday and we agreed that his presence at today's meeting was not necessary.

The County Executive reiterated his sincere desire to work with NIFA in a collaborative effort on the fiscal challenges facing the County and we will do so.

The people of Nassau County deserve no less.

Chairman Stack then asked Executive Director Cohen to go through the items on the agenda.

Executive Director Cohen stated that the first item on the agenda was a resolution to approve the minutes of the January 26, 2011 Directors' meeting.

Upon motion duly made and seconded, the following resolution was approved unanimously:

Resolution No. 11-302

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JANUARY 26, 2011 MEETING OF THE DIRECTORS OF THE NASSAU COUNTY INTERIM FINANCE AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held on January 26, 2011 are hereby approved and all actions taken by the Directors present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

Director Wright who participated via telephone, stated that he was aware of all the resolutions before the Board and would be supportive of these items if he were able to attend this meeting and vote.

Executive Director Cohen stated that the next item on the agenda was a resolution requesting that the Directors approve a three year extension of a liquidity facility. He then asked Jeremy Wise to briefly discuss this action item in greater detail.

General Counsel Wise stated that the Directors were being asked to approve a three year extension of a liquidity facility with KBC Bank N.V., New York Branch in connection with NIFA's 2008B Bonds, and Bank of America, NA in connection with NIFA's 2008D-1 Bonds. He stated that the Directors are also being asked to enter into a three year liquidity facility with JPMorgan Chase Bank, National Association in connection with NIFA's 2008A Bonds, which will replace BNP Paribas who informed NIFA of their decision not to renew the existing facility. Mr. Marlin, Chairman of the Finance Committee, stated that he had no questions. Chairman Stack complimented the staff on the excellent bids, good facilities and on the work they did.

Upon motion duly made and seconded, the following resolution was approved unanimously:

Resolution No. 11-305

AUTHORIZATION TO ENTER INTO LIQUIDITY FACILITIES IN CONNECTION WITH NIFA'S 2008A, 2008B AND 2008D-1 BONDS AND TO TAKE RELATED ACTIONS

RESOLVED, that the materials presented to this meeting (the "Materials") are ordered to be filed with the records of the Nassau County Interim Finance Authority ("NIFA"); and be it further

RESOLVED, that in accordance with the Materials, the Chairman or his designee(s) is hereby authorized to negotiate and execute a three year extension of a liquidity facility with KBC Bank N,V., New York Branch ("KBC") in connection with NIFA's 2008B Bonds, and Bank of America, NA (BANA) in connection with NIFA's 2008D-1 Bonds substantially upon the terms and conditions discussed in the Materials; and be it further

RESOLVED, that in accordance with the Materials, the Chairman or his designee(s) is hereby authorized to negotiate and execute a three year three year liquidity facility with JPMorgan Chase Bank, National Association ("JP Morgan") in connection with NIFA's 2008A Bonds substantially upon the terms and conditions discussed in the Materials; and be it further

RESOLVED, that in connection with the substitution of liquidity providers for the Series 2008A Bonds, the Chairman or his designee(s) is authorized to cause a mandatory tender of said Bonds, and to take such steps as are necessary for the reoffering of said Bonds by the Remarketing Agent, including the preparation and distribution of a reoffering circular with respect to such Bonds, in such form as he may deem reasonable and appropriate; and be it further

RESOLVED, that reasonable outside counsel fees and disbursements for each of the aforesaid liquidity facility providers are hereby approved, as well as fees and disbursements for NIFA's outside counsel, Sidley Austin LLP, and such other expenditures as are deemed necessary or appropriate in connection with the completion of the aforesaid actions, be it further

RESOLVED, that all actions heretofore taken by the Chairman or his designee(s) in furtherance of the foregoing resolutions are hereby ratified and approved; and be it further

RESOLVED that the Chairman or his designee(s) are further authorized to take all actions deemed necessary or appropriate to implement the foregoing and related actions.

* * *

Executive Director Cohen stated that the next item on the agenda was a resolution to approve guidelines for all County contracts over $50,000, which contracts must be approved by NIFA during a control period. General Counsel Wise added that any contract that will be rejected must go before the Board.

Upon motion duly made and seconded, the following resolution was approved unanimously:

Resolution No. 11-306

ADOPTION OF GUIDELINES TO REVIEW NASSAU COUNTY CONTRACTS AND THE TAKING OF RELATED ACTIONS

RESOLVED, that the materials presented to this meeting of the Board of Directors (the "Materials") are ordered to be filed with the records of the Nassau County Interim Finance Authority (the "Authority") and are incorporated into this Resolution by reference; and be it further
RESOLVED, that the Authority hereby approves the staff recommendations in the Materials as well as the Contract Approval Guidelines, which include the Contract Approval Request Form, in substantially the form attached to the Materials; and be it further

RESOLVED, that only the Board of Directors may vote to disapprove a contract; however the Executive Director or his designee(s) ("Staff") are hereby directed as follows:

1. Staff shall approve all contracts over $50,000.
2. Staff shall submit any contract in the amounts between $500,000 and under $5,000,000 to the Chairman or such other Director(s) as he may delegate, for approval.
3. Staff shall submit all contracts over $5,000,000 to the entire Board of Directors, for approval;

and be it further

RESOLVED that a copy of the Materials and the Contract Approval Guidelines which include the Contract Approval Request Form shall be forwarded to the County with an indication that these are the parameters that they must comply with during the Control Period regarding contract review; and be it further

RESOLVED that the Chairman of NIFA may request such reports concerning the contract approval process as he may deem appropriate or advisable; and be it further

RESOLVED, that Staff may take all actions and do all things that they deem necessary to carry out the intent of this resolution.

* * *

Chairman Stack stated that the next item on the agenda was a resolution finding that a wage freeze is essential to the adoption and maintenance of a FY 2011 Budget for Nassau County.

Upon motion duly made and seconded, the following resolution was approved unanimously:

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.

* * *

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, ¶¶ 66-70 & 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.

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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.

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.

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Chairman Stack stated that the next item on the agenda was a resolution declaring a fiscal crisis in Nassau County and ordering, with respect to employees of the County, the suspension of all increases in salary or wages, and the suspension of increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan, and step-ups and increments. He stated that the wage freeze and declaring a fiscal emergency will provide more than $10 million in budgetary relief to the County.

Upon motion duly made and seconded, the following resolution was approved unanimously:

Resolution No. 11-304

DECLARING A FISCAL CRISIS IN NASSAU COUNTY AND ORDERING, WITH RESPECT TO EMPLOYEES OF THE COUNTY, THE SUSPENSION OF ALL INCREASES IN SALARY OR WAGES, AND THE SUSPENSION OF INCREASED PAYMENTS FOR HOLIDAY AND VACATION DIFFERENTIALS, SHIFT DIFFERENTIALS, SALARY ADJUSTMENTS ACCORDING TO PLAN, AND STEP-UPS AND INCREMENTS

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, namely a statutory deficit of $176 million and a deficit on a cash basis of $49 million; 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, on this date, March 24, 2011, NIFA adopted Resolution No. 11-303, which 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; and

WHEREAS, by law NIFA, after enactment of Resolution No. 11-303, may declare a fiscal crisis and, upon making such declaration, shall be empowered to order a wage freeze;

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, the County estimates that a wage freeze will provide more than $10 million in budgetary relief in FY 2011; and

NOW, THEREFORE, BE IT RESOLVED, that NIFA hereby declares a fiscal crisis; and be it further

RESOLVED, that NIFA hereby orders that all increases in salary or wages of employees of the County, which will take effect after the date of this order pursuant to collective bargaining agreements, other analogous contracts or interest arbitration awards, now in existence or hereafter entered into, requiring such salary increases as of any date thereafter are suspended; and be it further

RESOLVED, that NIFA hereby orders that all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan, and step-ups and increments for employees of the County which will take effect after the date of this order pursuant to collective bargaining agreements, and other analogous contracts or interest arbitration awards requiring such increased payments as of any date thereafter are, in the same manner, suspended.

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Declaration and Order of the Nassau County Interim Finance Authority

<u>Relating to Resolution No. 11-304</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 (i) declares a fiscal crisis, and (ii) orders with respect to employees of the County, the suspension of all increases in salary or wages, and the suspension of all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups and increments that would otherwise take effect after March 24, 2011.

By Resolution No. 11-303, NIFA made its finding that a wage freeze is essential to the adoption and maintenance of a FY 2011 budget for Nassau County (the "County") that is in compliance with the NIFA Act. As a result, NIFA may declare a fiscal crisis and, upon such declaration, is empowered to suspend the wage-related items specified above (as set forth in the Act). Informing NIFA's analysis are the preliminary legal questions of why the Act provided NIFA with discretion to declare a fiscal crisis and order a wage freeze, and what standards should govern NIFA's exercise of its discretion.

Suspending increases in compensation otherwise due to municipal employees under existing labor agreements, although authorized by the NIFA Act, implicates the Contracts Clause of the United States Constitution. U.S. Const. Art. I, § 10. The courts long have held that the State, in exercising its police power, may impair such contract rights, even substantially, if it is reasonable and necessary to do so in furtherance of an important public purpose. The wage freeze provision of the Act was modeled on, and closely tracks, the wage freeze authority enacted by the State Legislature in the New York State Financial Emergency Act for the City of New York, the application of which was upheld against constitutional challenge by the Court of Appeals in *Subway Surface v. New York City Transit Authority*, 44 N.Y.2d 101 (1978). The Act's wage freeze section was, in turn, the model for the corresponding section of the Buffalo Fiscal Stability Authority Act, the application of which was likewise upheld by the United States Court of Appeals for the Second Circuit in *Buffalo Teachers Federation v. Tobe*, 464 F.3d 362 (2d Cir. 2006). Accordingly, the validity of the Act's wage freeze authorization is well grounded in the case law of the State and federal courts.

The important State purpose served by NIFA's power to freeze wages is established by the text, legislative findings and history of the Act, all of which were analyzed by NIFA in its January 26, 2011 Determination supporting the Resolution No. 11, the imposition of the current control period. NIFA incorporates that discussion by reference. NIFA's conclusion that the County's fiscal predicament involves an operating deficit exceeding the minimum statutory amount triggering controls underscores the importance of the State's purpose to protect the creditworthiness of the County and, by extension, other municipalities of New York. The County Executive's and the County's effort to enjoin the control period, moreover, only reinforces the conclusion that County elected officials are unwilling to address the County's fiscal problem unless compelled to do so through the State's fiscal oversight authority, which includes the power to order a wage freeze.

The necessity of a wage freeze is established by NIFA's finding in Resolution No. 11-303 that the freeze is essential to the County's adoption and maintenance of a FY 2011 budget that is in compliance with the Act. Again, that discussion is incorporated by reference. NIFA does not view a wage freeze as on par with other policy alternatives, but rather sees it as a less harsh alternative to further layoffs and cuts. NIFA relies on, among other factors, the County's focus upon labor concessions from the outset of the FY 2011 budget process; the Administration's proposal of local legislative authority to reduce wages unilaterally, notwithstanding existing labor agreements, to address a perceived fiscal emergency; and the County's inability to identify alternative sources of budgetary relief despite an evident desire to avoid a control period.

The final element of a lawful impairment of existing labor agreements is that the State's exercise of its police power to do so must be reasonable under all the circumstances. It is this third element that led the State Legislature to grant NIFA, amid a control period and upon finding a wage freeze essential, statutory discretion – as opposed to mandating – with regard to declaring a fiscal emergency and ordering a freeze. The evident legislative purpose was to provide NIFA with the ability to conclude that a wage freeze might in some circumstances present an unreasonable burden on the County workforce.

Under all the current circumstances, NIFA determines that a wage freeze is not only necessary but also a reasonable response to the County's fiscal distress. While NIFA has considered the totality of the circumstances, the following points deserve mention.

First, the wage freeze ordered today is both temporary and prospective, factors which the courts have found to be strong indications of reasonableness. The wage freeze does not affect wages for services already provided to the County. Wages are not being reduced; rather, increases are being suspended for an executory portion of the agreements. The existing collective bargaining agreements between the County and the unions were struck well after the creation of NIFA. As such, the parties to those agreements bargained in light of the existing legislation requiring State oversight, including NIFA's statutory authority to freeze wages. The wage freeze order is effective for one year. However, the wage freeze terminates before then with respect to employees who have agreed to a deferral of increases pursuant to an agreement certified by NIFA. In addition, NIFA has broad statutory discretion to terminate the wage freeze, in whole or in part, upon finding that the fiscal crisis has been sufficiently alleviated or for any other appropriate reason.

Second, the recent history of the labor agreements with County employees generally has included increasing levels of compensation that have placed the County workforce at a higher level of overall compensation than many other municipalities. The point is not that the workforce, which delivers valued services to County residents, is compensated excessively. Rather, the point is that suspending incremental increases in their compensation temporarily is not unreasonable given the County's current challenges and the marketplace.

Third, existing labor agreements with the workforce contain plans or schedules for advancement or promotion, known as steps. As an employee acquires service credit or years of employment, the employee advances in steps and receives increases in compensation in recognition of increased experience and proficiency. As the Appellate Division held with respect to the Buffalo fiscal stability statute, suspending increases in payments and benefits during a wage freeze does not suspend the contractual provision concerning an employee's ongoing advancement of steps on the compensation schedule as a result of continued accrual of service credit not cancelled, annulled or eliminated. *Meegan v. Brown*, 63 A.D.3d 1673 (4th Dep't 2009). In other words, upon termination of the wage freeze the County cannot ignore the fact that the employees have continued to accrue service credit and climbed the ladder of salary and career increments set forth in the collective bargaining agreements. Again, this moderates the impact of a wage freeze upon the workforce and supports its reasonableness.

Fourth, the size of the operating deficit faced by the County in 2011 makes some contribution by labor toward a resolution entirely appropriate. Labor leaders have expressed publicly that they have little desire to grant concessions to the County that would provide budgetary relief in 2011. Wages and benefits to the County workforce account for nearly one-half of the County's annual budgeted expenditures. In this context, a temporary and prospective wage freeze is reasonable.

One can posit factors that might weigh toward finding a wage freeze unreasonable, but none is present here. A history of pay reductions might weigh against a wage freeze, but the County workforce has experienced no salary reductions and labor concessions historically have been compensated by deferred benefits and other negotiated terms. The working conditions of County personnel are protected against deterioration by effective union bargaining and existing labor agreements. Longer working hours are generally compensated through overtime. The cost of housing on Long Island, where most County employees reside, generally appears to have stabilized following a period of decline. Although concerns about inflation recently have resurfaced, the rate of inflation has been relatively modest, and in some periods reflected disinflation by some calculations, during the past year. In sum, NIFA perceives no factor suggesting an undue burden on the County workforce from a wage freeze.

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The Chairman then entertained a motion to adjourn. Upon motion duly made and seconded, the Directors voted unanimously to adjourn the meeting at 4:20 PM.

Respectfully submitted,

Laurie A. Boucher
Corporate Secretary