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STATE OF NEW JERSEY

DEPARTMENT OF COMMUNITY AFFAIRS

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IN RE :

Local Finance Board :

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Location: Department of Community Affairs
101 South Broad Street
Trenton, New Jersey 08625
Date: Wednesday, March 14, 2018
Commencing At: 11:25 a.m.

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2	<p>1 HELD BEFORE:</p> <p>2</p> <p>3 TIMOTHY J. CUNNINGHAM, Chairman</p> <p>4 DOMINICK DIROCCO</p> <p>5 FRANCIS BLEE</p> <p>6 IDIDA RODRIGUEZ</p> <p>7 TED LIGHT</p> <p>8 ADRIAN MAPP</p> <p>9 WILLIAM CLOSE</p> <p>10 ALAN AVERY</p> <p>11</p> <p>12 A L S O P R E S E N T:</p> <p>13</p> <p>14 MELANIE WALTER, DAG</p> <p>15 PATRICIA PARKIN MCNAMARA, Executive Secretary</p> <p>16 EMMA SALAY, Deputy Executive Secretary</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4	<p>1 MR. CUNNINGHAM: Good morning. This</p> <p>2 meeting was previously open to the public</p> <p>3 upstairs. We can move right into the agenda.</p> <p>4 There is one application listed on Consent Agenda</p> <p>5 for the board and that is the Township of Newton</p> <p>6 who is requesting a Non-Conforming Maturity</p> <p>7 Schedule. This relates to a USDA loan. They</p> <p>8 will be constructing a 20 inch water transmission</p> <p>9 main.</p> <p>10 There is no down payment required</p> <p>11 because their utilities are self-liquidating, but</p> <p>12 because of the way the USDA program operates,</p> <p>13 their Maturity Schedule would not conform with</p> <p>14 Local Bond Law, so they requested a waiver, which</p> <p>15 the board typically grants in such instances, so</p> <p>16 that matter is listed on consent. And if the</p> <p>17 board concurs, I would ask for a motion and a</p> <p>18 second.</p> <p>19 MR. BLEE: Motion.</p> <p>20 MR. AVERY: Second.</p> <p>21 MR. CUNNINGHAM: Mr. Blee. Mr.</p> <p>22 Avery did I hear? Thank you. Roll call, please,</p> <p>23 Pat.</p> <p>24 MS. MCNAMARA: Mr. Cunningham?</p> <p>25 MR. CUNNINGHAM: Yes.</p>																																																
3	<p>1 I N D E X</p> <table border="0"> <tr> <td>2 ITEM</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>3 Opening Remarks</td> <td></td> </tr> <tr> <td>4 By: Mr. Cunningham</td> <td style="text-align: right;">4</td> </tr> <tr> <td>5 Newton Town</td> <td style="text-align: right;">4</td> </tr> <tr> <td>6 Eastampton Township Fire District #1</td> <td style="text-align: right;">5</td> </tr> <tr> <td>7 High Bridge Borough</td> <td style="text-align: right;">11</td> </tr> <tr> <td>8 East Orange City</td> <td style="text-align: right;">16</td> </tr> <tr> <td>9 Caldwell-West Caldwell Board of Education</td> <td style="text-align: right;">16</td> </tr> <tr> <td>10 Gloucester County Improvement Authority</td> <td style="text-align: right;">21</td> </tr> <tr> <td>11 Passaic County Improvement Authority</td> <td style="text-align: right;">23</td> </tr> <tr> <td>12 Highland Park Borough</td> <td style="text-align: right;">31</td> </tr> <tr> <td>13 Jersey City Municipal Utilities Authority</td> <td style="text-align: right;">37</td> </tr> <tr> <td>14 Beverly C. Baytops v. Township of</td> <td style="text-align: right;">44</td> </tr> <tr> <td>15 Irvington</td> <td></td> </tr> <tr> <td>16 Hudson County</td> <td style="text-align: right;">65</td> </tr> <tr> <td>17 Adjournment</td> <td style="text-align: right;">84</td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19 E X H I B I T S</td> <td></td> </tr> <tr> <td>20 ID DESCRIPTION PAGE</td> <td></td> </tr> <tr> <td>21 (NO EXHIBITS WERE MARKED.)</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23 R E Q U E S T S</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25 (NO FORMAL REQUESTS WERE MADE.)</td> <td></td> </tr> </table>	2 ITEM	PAGE	3 Opening Remarks		4 By: Mr. Cunningham	4	5 Newton Town	4	6 Eastampton Township Fire District #1	5	7 High Bridge Borough	11	8 East Orange City	16	9 Caldwell-West Caldwell Board of Education	16	10 Gloucester County Improvement Authority	21	11 Passaic County Improvement Authority	23	12 Highland Park Borough	31	13 Jersey City Municipal Utilities Authority	37	14 Beverly C. Baytops v. Township of	44	15 Irvington		16 Hudson County	65	17 Adjournment	84	18		19 E X H I B I T S		20 ID DESCRIPTION PAGE		21 (NO EXHIBITS WERE MARKED.)		22		23 R E Q U E S T S		24		25 (NO FORMAL REQUESTS WERE MADE.)		5	<p>1 MS. MCNAMARA: Mr. Mapp?</p> <p>2 MR. MAPP: Yes.</p> <p>3 MS. MCNAMARA: Mr. DiRocco?</p> <p>4 MR. DIROCCO: Yes.</p> <p>5 MS. MCNAMARA: Mr. Close?</p> <p>6 MR. CLOSE: Yes.</p> <p>7 MS. MCNAMARA: Mr. Avery?</p> <p>8 MR. AVERY: Yes.</p> <p>9 MS. MCNAMARA: Miss Rodriguez?</p> <p>10 MS. RODRIGUEZ: Yes.</p> <p>11 MS. MCNAMARA: Mr. Blee?</p> <p>12 MR. BLEE: Yes.</p> <p>13 MS. MCNAMARA: Mr. Light?</p> <p>14 MR. CUNNINGHAM: So the board will</p> <p>15 hear from Eastampton Fire District Number One.</p> <p>16 Welcome gentlemen. Mr. Braslow will have you</p> <p>17 introduced, and those that are not counsel will</p> <p>18 need to be sworn in.</p> <p>19 MR. BRASLOW: Good morning. I have</p> <p>20 with me the director, or administrator of the</p> <p>21 board, the board chairman and the chief for the</p> <p>22 fire district.</p> <p>23 (At which time those wishing to</p> <p>24 testify were sworn in.)</p> <p>25 MR. BROCK: Kurt Brock.</p>
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1 MR. O'GRADY: Daniel O'Grady.
 2 MR. ELISHER: Jason Elisher.
 3 MR. CUNNINGHAM: Mr. Braslow, one of
 4 the best fire district applications I've seen in
 5 my tenure here. Take it away.
 6 MR. BRASLOW: Well, in that case, I
 7 have nothing to say then. I'll give a quick
 8 summary of the application. The fire district
 9 secured voter approval to purchase a fire truck
 10 for an amount not exceeding 585. The actual
 11 truck will be -- it's a custom pumper through
 12 Sutphen through state contract in the amount of
 13 584,995.42.
 14 The fire district will be disposing
 15 of two vehicles, a 1996 rescue pumper and a 1996
 16 additional pumper. One they will get rid of
 17 immediately. The other one they will sell when
 18 the new truck comes in. We did go out to bid.
 19 Unfortunately, I believe because of the size of
 20 the issue, we received only one bid. The
 21 proposed financing will be for 284,995.42. The
 22 remaining monies will be capital monies
 23 accumulated by the fire district.
 24 MR. CUNNINGHAM: Talk about that a
 25 little more because I think you should bring that

7

1 to the board's attention.
 2 MR. BRASLOW: The district is using
 3 \$300,000 of its own proceeds which it saved over
 4 time to pay for the truck. Again, with the
 5 remaining being financed over a seven year
 6 period, and those are really the highlights of
 7 the application.
 8 MR. BRASLOW: So I appreciate that,
 9 Mr. Braslow. Over half the cost is coming out of
 10 funds you currently have?
 11 MR. BRASLOW: That's correct.
 12 MR. CUNNINGHAM: And then the two
 13 pieces of equipment that are going to be disposed
 14 of, that will be used to further retire debt
 15 service?
 16 MR. BRASLOW: Absolutely correct.
 17 MR. CUNNINGHAM: So again, I was
 18 really pleased. Mr. Braslow, I wanted to make a
 19 point, and this is not directed to Eastampton
 20 particularly, but every time you and others have
 21 come in forth related to the fire district, I
 22 always lament the participation of the public and
 23 the process and the vote process.
 24 This one was 90 in favor, 26 opposed
 25 out of 4,000 registered voters of the district,

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1 which is poor, but unfortunately, it's endemic of
 2 the fire district elections in general, but I
 3 have to note that in a different context, the
 4 Local Finance Board looks at a lot of the ethics
 5 cases that are involved, and when advocacy, as
 6 opposed to just telling people that votes are
 7 going to occur, advocacy is not permitted.
 8 So it's funny, I just shared with my
 9 colleagues the irony of, you know, we don't get
 10 the votes out, but then from a Local Government
 11 Ethics side, you can't advocate for a certain
 12 position, so I was thinking about, as I was
 13 reading the application today, but honestly, one
 14 of the stronger applications I've seen, I do
 15 understand that you sent the 10 bid packages out.
 16 This is something we have talked
 17 about. To only get one response is
 18 disappointing, but again, at least the rates are
 19 competitive. In this particular case you're not
 20 even financing half the value of the truck. The
 21 only thing that had come up as part of the
 22 review, as you well know, but I'll make sure my
 23 colleagues on the board are aware is that I guess
 24 whoever prepares the Eastampton Township roster
 25 failed to list the fire commissioners as needing

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1 to file financial disclosure statements. That I
 2 understand has been brought to your attention.
 3 MR. BRASLOW: It absolutely is being
 4 corrected. And I will tell you that's
 5 interesting because that apparently was based on
 6 advice they received from the township attorney,
 7 and of course I feel like I've dealt with this
 8 issue enough times, our immediate reaction was
 9 not true, we're happy to file, please, and so I
 10 did speak to the staff, and that has been
 11 corrected or in the process of being corrected.
 12 MR. CUNNINGHAM: Last question.
 13 Where is Eastampton Fire District Number One?
 14 MR. BROCK: It's outside of Mount
 15 Holly.
 16 MR. CUNNINGHAM: I know where
 17 Eastampton is. I lived there when I was
 18 displaced for the storm.
 19 MR. BROCK: The station itself?
 20 MR. CUNNINGHAM: Is it the one
 21 that's near the bakery?
 22 MR. BROCK: Right across.
 23 MR. BRASLOW: It's where the bridge
 24 construction is occurring, it's right there.
 25 MR. CUNNINGHAM: I lived there for

<p style="text-align: right;">10</p> <p>1 quite a while when I was displaced by the storm. 2 I don't have any questions. Nice job on the 3 application. Any questions from any of my 4 colleagues? 5 MR. BLEE: Motion. 6 MR. CLOSE: Second. 7 MR. CUNNINGHAM: Mr. Blee makes a 8 motion. Mr. Close makes a second. Roll call, 9 please. 10 MS. MCNAMARA: Mr. Cunningham? 11 MR. CUNNINGHAM: Yes. 12 MS. MCNAMARA: Mr. Mapp? 13 MR. MAPP: Yes. 14 MS. MCNAMARA: Mr. DiRocco? 15 MR. DIROCCO: Yes. 16 MS. MCNAMARA: Mr. Close? 17 MR. CLOSE: Yes. 18 MS. MCNAMARA: Mr. Avery? 19 MR. AVERY: Yes. 20 MS. MCNAMARA: Miss Rodriguez? 21 MS. RODRIGUEZ: Yes. 22 MS. MCNAMARA: Mr. Blee? 23 MR. BLEE: Yes. 24 MS. MCNAMARA: Mr. Light? 25 MR. LIGHT: Yes.</p>	<p style="text-align: right;">12</p> <p>1 self-liquidating is because they're involved in a 2 significant litigation with the town of Clinton 3 and the Clinton Township Sewage Authority 4 regarding rates that were charged that resulted 5 in litigation challenging the method by which 6 they charged those rates. 7 And in 2017, at the end of the year, 8 it heated up to the point where they believed 9 they had a settlement, but they had depositions 10 and meetings and mediations and whatnot and so it 11 incurred costs and costs resulted in the 12 utilities revenues being less than the utility 13 expenses. And therefore, as you know, at the end 14 of the year, the portion that's not 15 self-liquidating, it forced their debt to 16 3.58 percent. They're raising rates. 17 They have debt coming off the books. 18 So this year, they will be self-liquidating and 19 they will be under their debt capacity. I know 20 it's always an issue that you have. So in order 21 to adopt this ordinance, we're asking for you to 22 grant them the extension of credit. 23 I would point out that although 24 because of that they don't need a down payment 25 and also because there's a grant, a DOT grant,</p>
<p style="text-align: right;">11</p> <p>1 MR. BRASLOW: Thank you very much. 2 MR. CUNNINGHAM: Thank you. Borough 3 of High Bridge. 4 MR. MCMANIMON: I'll introduce the 5 people who are here. Ed McManimon from 6 McManimon, Scotland and Baumann, bond counsel to 7 the borough. To my right is Bonnie Fleming, who 8 is the Chief Financial Officer for the borough, 9 and to her right is Mike Pappas who is the 10 administrator for the borough. They need to be 11 sworn. 12 (At which time those wishing to 13 testify were sworn in.) 14 MR. MCMANIMON: Thank you. The 15 request that the borough is making is in 16 connection with a 602,000 dollar bond ordinance. 17 There is 387,000 authorized in bonds, or notes, 18 for a road improvement program. They need an 19 extension of credit. This bond ordinance, 20 because of an unrelated matter involving the 21 sewer utility caused a portion of the sewer debt 22 to be included in the general debt because at the 23 end of the year, they were no longer 24 self-liquidating. 25 The reason they were not</p>	<p style="text-align: right;">13</p> <p>1 they don't need a down payment, but they're 2 putting in a down payment here anyway, so I think 3 it's \$35,000 on this ordinance, so I think 4 they've done everything that would be financially 5 practical and prudent, so we ask you to approve 6 the ability for them to adopt this ordinance. 7 MR. CUNNINGHAM: Thank you. A 8 couple questions. I pulled Exhibit B from the 9 app and it looks like there is about 11 10 and-a-half million dollars in non utility debt? 11 MS. FLEMING: Mm-mm. 12 MR. CUNNINGHAM: Any plans to issue 13 further debt at this time? 14 MS. FLEMING: Not at this time. 15 MR. MCMANIMON: I should point out, 16 the water utility, which is self-liquidating, is 17 undergoing probably an eight million dollar cost. 18 They attempted to sell the utility which failed 19 by referendum last November and they are 20 proceeding through the NJIB now to finance that. 21 That will be additional debt, but it's not going 22 to come off the general taxpayers. It will come 23 off of water rates which will be 24 self-liquidating. 25 MR. CUNNINGHAM: So do you expect</p>

14	<p>1 that this is going to have an adverse effect on</p> <p>2 the municipality's bond rating?</p> <p>3 MR. MCMANIMON: No. Well, I could</p> <p>4 even ask Dennis DeSanto who is in the audience.</p> <p>5 They have a very good credit rating. This is not</p> <p>6 expected to have any impact at all.</p> <p>7 MR. CUNNINGHAM: I just know when</p> <p>8 because the sewer debt now is non</p> <p>9 self-liquidating is now going to be debt of the</p> <p>10 municipality, at least in the eyes of the rating</p> <p>11 agencies, for three years, I was curious if there</p> <p>12 is anticipated impact from that.</p> <p>13 MR. MCMANIMON: It's still payable</p> <p>14 from the utility users as opposed to the</p> <p>15 taxpayers.</p> <p>16 MR. CUNNINGHAM: It is outstanding</p> <p>17 debt in the municipality not being</p> <p>18 self-liquidating?</p> <p>19 MR. MCMANIMON: Yes.</p> <p>20 MR. CUNNINGHAM: So Ed, you said you</p> <p>21 expect the utility to return to self-liquidating</p> <p>22 status later this year?</p> <p>23 MS. FLEMING: Yes. We haven't</p> <p>24 adopted our budget yet, but we are looking at</p> <p>25 possible rate increase. We do have some surplus</p>	16	<p>1 MS. MCNAMARA: Mr. Close?</p> <p>2 MR. CLOSE: Yes.</p> <p>3 MS. MCNAMARA: Mr. Avery?</p> <p>4 MR. AVERY: Yes.</p> <p>5 MS. MCNAMARA: Miss Rodriguez?</p> <p>6 MS. RODRIGUEZ: Yes.</p> <p>7 MS. MCNAMARA: Mr. Blee?</p> <p>8 MR. BLEE: Yes.</p> <p>9 MS. MCNAMARA: Mr. Light?</p> <p>10 MR. LIGHT: Yes.</p> <p>11 MR. MCMANIMON: Thank you very much.</p> <p>12 MR. CUNNINGHAM: Thank you. The</p> <p>13 application from the East Orange City was</p> <p>14 deferred at their request which then brings us to</p> <p>15 the Board of Education of Caldwell-West Caldwell</p> <p>16 relating to the ESIP program. Good morning.</p> <p>17 Would you introduce your colleagues and those who</p> <p>18 aren't counsel need to be sworn.</p> <p>19 MS. GORAB: Yes. To my right is</p> <p>20 Thomas Lambe. He's the business administrator of</p> <p>21 the school district, and Mary Lyons from Phoenix</p> <p>22 Advisor who is the municipal advisor to the</p> <p>23 school district. And my name is Lisa Gorab,</p> <p>24 Wilentz, Goldman and Spitzer, bond counsel to the</p> <p>25 school district.</p>
15	<p>1 available.</p> <p>2 MR. CUNNINGHAM: And you introduced</p> <p>3 them on March 8th?</p> <p>4 MS. FLEMING: No, we're introducing</p> <p>5 them on the 22nd.</p> <p>6 MR. CUNNINGHAM: Your budget?</p> <p>7 MS. FLEMING: Yes.</p> <p>8 MR. CUNNINGHAM: First reading of</p> <p>9 this ordinance is on the eighth?</p> <p>10 MS. FLEMING: We had the first</p> <p>11 reading on the eighth, yes.</p> <p>12 MR. CUNNINGHAM: Questions from the</p> <p>13 board? Hearing none, I would ask for a vote.</p> <p>14 MR. LIGHT: I'll move the</p> <p>15 application.</p> <p>16 MR. CUNNINGHAM: Mr. Light.</p> <p>17 MR. CLOSE: Second.</p> <p>18 MR. CUNNINGHAM: Mr. Close. Roll</p> <p>19 call, please.</p> <p>20 MS. MCNAMARA: Mr. Cunningham?</p> <p>21 MR. CUNNINGHAM: Yes.</p> <p>22 MS. MCNAMARA: Mr. Mapp?</p> <p>23 MR. MAPP: Yes.</p> <p>24 MS. MCNAMARA: Mr. DiRocco?</p> <p>25 MR. DIROCCO: Yes.</p>	17	<p>1 (At which time those wishing to</p> <p>2 testify were sworn in.)</p> <p>3 MS. GORAB: Good morning. So the</p> <p>4 school district is seeking your approval to</p> <p>5 finally adopt a bond ordinance. It's called a</p> <p>6 refunding bond ordinance for five million dollars</p> <p>7 which would fund their energy savings program.</p> <p>8 As you know, in 2009, the state enacted a</p> <p>9 financed legislation that allowed local units to</p> <p>10 finance energy conservation measures as long as</p> <p>11 the savings from those energy conservation</p> <p>12 measures paid the debt service on the bonds.</p> <p>13 And this financing vehicle, as you</p> <p>14 could guess, was very attractive primarily to</p> <p>15 school districts because, otherwise, they would</p> <p>16 have to go to the voters to do these kind of</p> <p>17 improvements, lighting replacement, boiler</p> <p>18 replacement, controls. They all save energy, but</p> <p>19 notwithstanding this law, they would have had to</p> <p>20 have a referendum to finance them.</p> <p>21 So this law allows us to finance</p> <p>22 these projects two different ways, through a</p> <p>23 lease or through bonds. And you don't see many</p> <p>24 of these applications, or you haven't recently,</p> <p>25 because the lease option was primarily the most</p>

<p style="text-align: right;">18</p> <p>1 attractive option by which to finance these 2 improvements. We did many of them via a lease. 3 There were many done in the state. They're long 4 term leases between 15 and 21 years, but that 5 market has become a little less attractive to 6 finance these due to the lowering of the 7 corporate tax rate, so banks are not so 8 interested in financing these anymore. 9 They still finance them, but based 10 on Mary's input we feel like a general obligation 11 bond is actually a more attractive option that 12 would produce a lower interest rate for the 13 board. So we were talking you might start seeing 14 some more of these coming up. The district is 15 proposing to issue these bonds over a 21 year 16 period. 17 There is something called 18 cogeneration. It's a type of, I don't know. It 19 gives you 20 years to finance. It's a way to 20 produce energy. It's a very complex -- produces 21 heat and cooling. It's a very efficient motor to 22 produce energy for the facility. There's a fair 23 amount of lighting replacement which has a very 24 quick pay back. They also are including a solar 25 power purchase agreement in the financing.</p>	<p style="text-align: right;">20</p> <p>1 ecological benefit to moving forward, so even if 2 it's not tremendous in terms of the amount being 3 saved, there is a benefit to going to cleaner 4 types of energy for the district's energy needs, 5 so I just, as I said, we spent some time with the 6 application and we looked at it, so -- 7 MS. GORAB: I might just point out 8 too that most recently, we have started pulling 9 back on some of the proposed rebates in the cash 10 flow to be conservative. Particularly, a third 11 pay for performance rebate which is performance 12 related. To receive it, it's performance 13 related, and in our experience, there's been some 14 struggles to get that third rebate. 15 So we've dropped it, so if it comes 16 in, it's a bonus, but it's not included. It's 17 anticipated to be received, but we did not 18 include it in the projections to be conservative. 19 MR. CUNNINGHAM: Thank you. Any 20 other questions on the application? 21 MS. RODRIGUEZ: I'll make a motion. 22 MR. CUNNINGHAM: Ms. Rodriguez makes 23 a motion. 24 MR. CLOSE: Second. 25 MR. CUNNINGHAM: Mr. Close seconds.</p>
<p style="text-align: right;">19</p> <p>1 So I believe the appendix to the 2 application listed all the improvements to be 3 undertaken, so the board is seeking your approval 4 to adopt this bond ordinance not to exceed five 5 million and issue the bonds to finance the 6 project on a negotiated basis. 7 MR. CUNNINGHAM: Not at all 8 critical, but the one thing that I noticed of all 9 the ESIPs that have come in front of this board, 10 this is the tightest one we've seen. The savings 11 are fairly razor thin. I understand from BPU 12 that there have been thinner, I can't think of a 13 better word, ESIPs, but they haven't come in 14 front of the board. 15 So that is something that they have 16 looked at, so just I want you and my colleagues 17 on the board, and frankly the public, to know 18 that we did discuss the application with BPU and 19 we were comforted by the fact that the energy 20 projections and calculations are very 21 conservative. So none of the ESIPs, even some 22 that have savings of hundreds of dollars as 23 opposed to thousands, have ever failed to reach 24 the savings that were projected. 25 I guess there probably would be an</p>	<p style="text-align: right;">21</p> <p>1 Roll call, please. 2 MS. MCNAMARA: Mr. Cunningham? 3 MR. CUNNINGHAM: Yes. 4 MS. MCNAMARA: Mr. Mapp? 5 MR. MAPP: Yes. 6 MS. MCNAMARA: Mr. DiRocco? 7 MR. DIROCCO: Yes. 8 MS. MCNAMARA: Mr. Close? 9 MR. CLOSE: Yes. 10 MS. MCNAMARA: Mr. Avery? 11 MR. AVERY: Yes. 12 MS. MCNAMARA: Miss Rodriguez? 13 MS. RODRIGUEZ: Yes 14 MS. MCNAMARA: Mr. Blee? 15 MR. BLEE: Yes. 16 MS. MCNAMARA: Mr. Light? 17 MR. LIGHT: Yes. 18 MS. GORAB: Thank you. 19 MR. CUNNINGHAM: Thank you. Good 20 luck with the project. The next matter in front 21 of the board arises from the Gloucester County 22 Improvement Authority. I had waived the 23 appearance of the applicant because, while this 24 was part of a larger landfill expansion project, 25 the only matter in front of the board is they're</p>

22	<p>1 seeking positive findings for the county 2 guarantee.</p> <p>3 So the county is putting 10,500 of 4 the guarantee on a project that's being issued 5 through the New Jersey I Bank, which was formally 6 the EIT, so we simply did not have any issues 7 with the application, so I would ask for my 8 colleagues indulgence with a motion and a second 9 to approve this application.</p> <p>10 MR. MAPP: Move.</p> <p>11 MR. AVERY: Second.</p> <p>12 MR. CUNNINGHAM: Motion and a 13 second. Roll call, please.</p> <p>14 MS. MCNAMARA: Mr. Cunningham?</p> <p>15 MR. CUNNINGHAM: Yes.</p> <p>16 MS. MCNAMARA: Mr. Mapp?</p> <p>17 MR. MAPP: Yes.</p> <p>18 MS. MCNAMARA: Mr. DiRocco?</p> <p>19 MR. DIROCCO: Yes.</p> <p>20 MS. MCNAMARA: Mr. Close?</p> <p>21 MR. CLOSE: Yes.</p> <p>22 MS. MCNAMARA: Mr. Avery?</p> <p>23 MR. AVERY: Yes.</p> <p>24 MS. MCNAMARA: Miss Rodriguez?</p> <p>25 MS. RODRIGUEZ: Yes.</p>	24	<p>1 said, this is a fairly straight forward 2 application by an Improvement Authority, so I'll 3 quote Phil, but this is a 17 million dollar 4 proposed financing to undertake a fairly 5 diversified DPW county project to solidify and 6 put everything in one place basically with all 7 the different services.</p> <p>8 The application reflects a 30 year 9 maturity, but based on discussions before coming 10 to this meeting, they're going to do it over 11 15 years as opposed to 30 years because, as Steve 12 can testify, that they have a drop off of debt 13 service in 2020 and using a 15 year schedule 14 makes more sense than doing a 30 year schedule, 15 so I have the people here who can answer any 16 questions about it.</p> <p>17 It's a lease, not a county 18 guarantee. It's a full faith and credit lease 19 under the Improvement Authorities Law. It has 20 the same weight in the market because it's an 21 obligation that's valid and forcible and binding, 22 so it's an Improvement Authority private 23 property, build the project, lease it to the 24 county under the full faith and credit lease 25 under the County Improvement Authorities Law, so</p>
23	<p>1 MS. MCNAMARA: Mr. Blee?</p> <p>2 MR. BLEE: Yes.</p> <p>3 MS. MCNAMARA: Mr. Light?</p> <p>4 MR. LIGHT: Yes.</p> <p>5 MR. CUNNINGHAM: The board will next 6 hear from the Passaic County Improvement 7 Authority. I would ask that this group kindly 8 introduce themselves for the record, and those 9 that aren't counsel will need to be sworn in.</p> <p>10 MR. CAHILL: Richard Cahill, 11 director of finance.</p> <p>12 MR. MCMANIMON: Ed McManimon, 13 McManimon, Scotland and Baumann, bond counsel to 14 the authority.</p> <p>15 MS. FOX: Nicole Fox, executive 16 director, Passaic County Improvement Authority.</p> <p>17 MS. LITZEBAUER: Heather Litzebauer 18 from NW Financial, financial advisor to the 19 Improvement Authority.</p> <p>20 MR. WIELCOTZ: Steve Wielcotz, 21 Ferraioli, Wielkotz, Cerullo and Cuva, auditors 22 to the county and the Improvement Authority. 23 (At which time those wishing to 24 testify were sworn in.) 25 MR. MCMANIMON: Phil Norcross always</p>	25	<p>1 it's paid for by the county, appropriated money 2 for the lease payments equal to the debt service 3 and the fee to the Improvement Authority which is 4 built into this in the 0.125 percent. So any 5 questions you have, we have a group here, other 6 than the county administrator.</p> <p>7 MR. CUNNINGHAM: Rich, could you 8 tell us a little bit about the project? Where is 9 it, by the way?</p> <p>10 MR. CAHILL: It's in Wayne. It's 11 the former Nike base, so it's going to allow us 12 to consolidate a number of our operations and 13 bring them all to one location.</p> <p>14 MR. CUNNINGHAM: I saw it on the 15 application, but remind me who is going into this 16 facility.</p> <p>17 MR. CAHILL: The Roads Department, 18 Mosquito Control Division.</p> <p>19 MR. MCMANIMON: Weights and 20 Measures.</p> <p>21 MR. CAHILL: Weights and Measures, 22 and I believe ultimately they'll bring in the 23 Sheriff's Department, the mechanics there as 24 well, but it will be a Paratransit as well. 25 MR. CUNNINGHAM: You're currently</p>

<p style="text-align: right;">26</p> <p>1 leasing some space for them? Are you going to 2 have a lease savings? 3 MR. CAHILL: Yeah. There will be 4 some savings, and also one of the sites we'll be 5 able to sell somewhere down the road. 6 MR. WIELKOTZ: Director, this takes 7 the last piece of operational anything from 317 8 Pennsylvania Avenue, Patterson, the old county 9 administration down by the farmers market. 10 MR. CUNNINGHAM: You had severe 11 environmental challenges there as I recall from 12 my tenure. 13 MR. WIELKOTZ: There's issues, but 14 this will finally clear the way once the new 15 facility is up and running for the county to 16 explore selling that piece of property finally. 17 MR. CUNNINGHAM: So I know what the 18 total financing is, but what's the expected cost 19 of the new building or improvements being done? 20 MS. LITZEBAUER: 414.3 million. 21 MR. MCMANIMON: And they will only 22 borrow the amount they need. They won't borrow 23 17 million unless the costs and all the other 24 aspects of the reserves are necessary. 25 MR. CUNNINGHAM: So at the time I</p>	<p style="text-align: right;">28</p> <p>1 there was only three affirmative votes and no 2 no's abstentions or absences were identified. 3 MS. LITZEBAUER: At the time, there 4 was only three commissioners. 5 MS. FOX: I thought you were talking 6 about the county meeting. We only had three 7 commissioners present at that meeting. 8 MR. CUNNINGHAM: It's not for any 9 other reason than of attendance? 10 MS. FOX: Yeah. 11 MS. RODRIGUEZ: The Freeholder Board 12 was financed, right? 13 MR. CAHILL: Yes. 14 MR. LIGHT: That raises a concerned 15 question whether significant members of the 16 commission that were present who constitute a 17 quorum. 18 MS. LITZEBAUER: Yes, we only have 19 five members. 20 MR. CUNNINGHAM: Any other questions 21 from the board? 22 MR. AVERY: I'm just curious as to 23 the total size of the site. It's for my own 24 edification. Is it an acre? Two acres, 25 14 acres?</p>
<p style="text-align: right;">27</p> <p>1 read the application, I think it was still a 2 longer Maturity Schedule, but regardless of that, 3 the application stated, and I think for the same 4 reason you talked about, the Maturity Schedule, 5 that this project will not adversely impact 6 either the county's rating, which I know the 7 county worked really hard on, Steve and Nicole, 8 but it's also not going to affect the county tax 9 rate. And I guess the reason for it is because 10 of that debt service that's dropping off? 11 MR. WIELKOTZ: Right. In 2019, 12 there is a small drop off. And then in 2020, 13 there is a significant drop off, somewhere around 14 four or five million dollars, so we had a 15 discussion. We looked at 15, 25, 25 and 30 and 16 the incremental difference in the annual payment 17 between 15 and 30 was only a couple hundred 18 thousand dollars, so it made no sense whatsoever 19 to not do the short term. 20 MR. CUNNINGHAM: Nicole, just 21 something that popped up, I would have asked you 22 before had I seen it, but is this project 23 undertaken controversial in some way? Because 24 looking at the vote sheet for the resolution to 25 make application to the Local Finance Board,</p>	<p style="text-align: right;">29</p> <p>1 MS. FOX: I have toured it before. 2 I don't know how many acres. 3 MR. WIELKOTZ: It's multiple acres. 4 MS. FOX: Pretty large. It's in the 5 back, you don't even know it's there. 6 MS. RODRIGUEZ: What is the address 7 exactly? 8 MR. WIELKOTZ: It's right off of 9 Route 23 North, Gary's Wine and Liquor. It's the 10 driveway right before the entrance to Ski Barn. 11 MR. CLOSE: You have the recycling 12 there? 13 MR. CAHILL: Yes. 14 MR. CUNNINGHAM: When they call it 15 the Nike base, I worked there. It is a Nike 16 missile base, so there are these very large 17 gigantic manholes that covered missile sites, but 18 the facility -- so we talked about the size of 19 that facility, but we also didn't mention you're 20 putting in a new salt dome there, too. That's 21 270,000 square feet of a salt dome alone that's 22 going on the site. 23 MR. AVERY: That's going up. 24 MR. CUNNINGHAM: That's true. 25 MR. MCMANIMON: Outdoor storage as</p>

30	<p>1 well.</p> <p>2 MR. AVERY: I'm familiar with a</p> <p>3 couple of Nike sites, and they're not that big</p> <p>4 and that's why I asked the question.</p> <p>5 MR. CUNNINGHAM: Any other questions</p> <p>6 from the board? Entertain a motion and a second?</p> <p>7 MR. CLOSE: So moved.</p> <p>8 MR. MAPP: Second.</p> <p>9 MR. CUNNINGHAM: Thank you.</p> <p>10 MS. MCNAMARA: Mr. Cunningham?</p> <p>11 MR. CUNNINGHAM: Yes.</p> <p>12 MS. MCNAMARA: Mr. Mapp?</p> <p>13 MR. MAPP: Yes.</p> <p>14 MS. MCNAMARA: Mr. DiRocco?</p> <p>15 MR. DIROCCO: Yes.</p> <p>16 MS. MCNAMARA: Mr. Close?</p> <p>17 MR. CLOSE: Yes.</p> <p>18 MS. MCNAMARA: Mr. Avery?</p> <p>19 MR. AVERY: Yes.</p> <p>20 MS. MCNAMARA: Miss Rodriguez?</p> <p>21 MS. RODRIGUEZ: Yes.</p> <p>22 MS. MCNAMARA: Mr. Blee?</p> <p>23 MR. BLEE: Yes.</p> <p>24 MS. MCNAMARA: Mr. Light?</p> <p>25 MR. LIGHT: Yes.</p>	32	<p>1 convert over to the responsibility of the</p> <p>2 borough. This will save them, you know, some of</p> <p>3 the administrative fees that would otherwise that</p> <p>4 would go in keeping an agency alive that doesn't</p> <p>5 need to be active, so I think the view is they're</p> <p>6 in a much better position to keep the same</p> <p>7 activity but do it internally at the borough</p> <p>8 governing body than run it as a separate entity,</p> <p>9 so we're asking for the approval.</p> <p>10 I believe we've established that</p> <p>11 they have very little to identify what it is, so</p> <p>12 we believe we've assumed the responsibility for</p> <p>13 all the services and for all of the obligations.</p> <p>14 There's no debt, but there's just contractual</p> <p>15 obligations so we assume the responsibility for</p> <p>16 those. And as I said, there is no employees that</p> <p>17 we have to be concerned about, and all</p> <p>18 professional contracts that exist will be</p> <p>19 terminated.</p> <p>20 It will be converted into the</p> <p>21 borough to the extent they choose to decide who</p> <p>22 the auditor and lawyers are. There's an</p> <p>23 outstanding grant which they will assume</p> <p>24 responsibility for proceeding with, so any</p> <p>25 questions, Teri will be here to answer them.</p>
31	<p>1 MR. WIELKOTZ: Thank you very much.</p> <p>2 MR. CUNNINGHAM: Thank you.</p> <p>3 Highland Park Borough.</p> <p>4 MR. MCMANIMON: Thank you. Ed</p> <p>5 McManimon from McManimon, Scotland and Baumann,</p> <p>6 bond counsel, special counsel to Highland Park</p> <p>7 Borough. Teri Jover, who is the administrator of</p> <p>8 the borough is here.</p> <p>9 (At which time those wishing to</p> <p>10 testify were sworn in.)</p> <p>11 MR. MCMANIMON: This is a relatively</p> <p>12 straight forward application like the Bridgeton.</p> <p>13 MR. CUNNINGHAM: Second time you</p> <p>14 said that.</p> <p>15 MR. MCMANIMON: Highland Park is</p> <p>16 seeking to dissolve the existing Highland Park</p> <p>17 Redevelopment Agency, and essentially, take over</p> <p>18 the responsibilities by designating themselves as</p> <p>19 the redevelopment entity for all redevelopment</p> <p>20 that will go on there. There's very limited</p> <p>21 activity. There's no staff and there's really no</p> <p>22 reason for the continued existence of this</p> <p>23 redevelopment agency.</p> <p>24 There is a redevelopment agreement</p> <p>25 that's been approved, but not signed, which will</p>	33	<p>1 MR. CUNNINGHAM: So that grant is a</p> <p>2 good segue into the only question I had, and you</p> <p>3 got the points I wanted on the record because,</p> <p>4 Ed, I think as much as it's a less complicated</p> <p>5 application, the statutes are certainly the same</p> <p>6 and the principals are certainly the same.</p> <p>7 MR. MCMANIMON: Correct.</p> <p>8 MR. CUNNINGHAM: The question I had</p> <p>9 is looks like the expenses of the existing</p> <p>10 authority were about 81,000, but when we look at</p> <p>11 the budget, the budget was significantly less and</p> <p>12 showed expenditures of 17,000 and around 18,000.</p> <p>13 Is the difference the grant? Do you know?</p> <p>14 MS. JOVER: Let me just look. Are</p> <p>15 you talking about the budget for the agency</p> <p>16 budget?</p> <p>17 MR. CUNNINGHAM: Yes.</p> <p>18 MS. JOVER: I base the number -- the</p> <p>19 81 is based on two years of expenses the</p> <p>20 borough -- we run basically administratively, the</p> <p>21 agency now, so I looked at actual expenses over</p> <p>22 two years is that 81. I don't have --</p> <p>23 MR. CUNNINGHAM: Again, I realize</p> <p>24 you probably don't have this in front of you.</p> <p>25 MS. JOVER: Yeah. Sorry.</p>

<p style="text-align: right;">34</p> <p>1 MR. CUNNINGHAM: It's okay. The 2 audit reports? 3 MS. JOVER: Yeah. 4 MR. CUNNINGHAM: Of the authority, 5 for 2015 and '16, has significantly lower 6 expenditures of 17,000 and 18,000 as opposed to, 7 you know, what you had just said were 8 significantly higher for two years. And I was 9 wondering what the difference was between the 10 numbers you were using, the audit report. The 11 only thing I could come up with potentially is 12 that it wouldn't be the reflection of the grant. 13 MS. JOVER: It must be the 14 professional fees. To answer your grant 15 question, we haven't spent down those grants yet. 16 We have one outstanding invoice that we haven't 17 paid that would go against that grant for 18 environmental services. 19 It's an HDSRF grant, so the answer 20 is no, it's not the grant that it counts for 21 that, but I believe we just had ongoing 22 professional costs between the legal and 23 potentially the planner. I don't have the 24 numbers in front of me and the audit should be 25 the bulk of that.</p>	<p style="text-align: right;">36</p> <p>1 it's effective because we don't have a transition 2 to deal with. There's no transition plan because 3 it will terminate all the professional fees. 4 MS. JOVER: That's our hope is to do 5 that quickly because we do have some projects 6 that we want to get into the governing bodies to 7 get them up to speed on things. 8 MR. CUNNINGHAM: Questions? I'd ask 9 for a vote. 10 MR. BLEE: Motion. 11 MR. CUNNINGHAM: Mr. Blee. 12 MR. LIGHT: I'll second it. 13 MR. CUNNINGHAM: Mr. Light. 14 MS. MCNAMARA: Mr. Cunningham? 15 MR. CUNNINGHAM: Yes. 16 MS. MCNAMARA: Mr. Mapp? 17 MR. MAPP: Yes. 18 MS. MCNAMARA: Mr. DiRocco? 19 MR. DIROCCO: Yes. 20 MS. MCNAMARA: Mr. Close? 21 MR. CLOSE: Yes. 22 MS. MCNAMARA: Mr. Avery? 23 MR. AVERY: Yes. 24 MS. MCNAMARA: Miss Rodriguez? 25 MS. RODRIGUEZ: Yes.</p>
<p style="text-align: right;">35</p> <p>1 MR. CUNNINGHAM: And that's where 2 you're anticipating getting a savings from? 3 MS. JOVER: The auditor, we won't be 4 having monthly meetings with the attorney there. 5 Those were the costs that were accruing. 6 MR. CUNNINGHAM: 2,000 for the audit 7 likely savings was reported. 4,000, legal, 4,000 8 dollars in in-kind cost of the audit. 9 MS. JOVER: Yeah. 10 MR. CUNNINGHAM: That's right? 11 MS. JOVER: Mm-mm. 12 MR. CUNNINGHAM: As your counsel 13 previously said, there's sufficient cash on hand 14 to fund any and all liabilities of the authority. 15 MR. MCMANIMON: Yes. 16 MR. CUNNINGHAM: For the agency, I 17 should say. Rest of the points, I think, were 18 covered. Any questions from my colleagues? Did 19 you include an effective date, or are you going 20 to do it effective upon the board's -- 21 MR. MCMANIMON: Once you dissolve 22 it, they'll adopt the ordinance. Once you 23 authorize it, they'll adopt the ordinance. It 24 will be effective immediately upon that as the 25 statute provides. Once they adopt the ordinance</p>	<p style="text-align: right;">37</p> <p>1 MS. MCNAMARA: Mr. Blee? 2 MR. BLEE: Yes. 3 MS. MCNAMARA: Mr. Light? 4 MR. LIGHT: Yes. 5 MR. MCMANIMON: Thank you very much. 6 MS. JOVER: Thank you. 7 MR. CUNNINGHAM: Thank you. Jersey 8 City MUA. 9 MR. SCERBO: Good morning, Director. 10 My name is Ryan Scerbo. I'm with the law firm of 11 DeCotiis, FitzPatrick, Cole and Giblin, general 12 counsel to the Jersey City Municipal Utilities 13 Authority and with me is John Folk. He's the 14 director of finance at the JCMUA. 15 (At which time those wishing to 16 testify were sworn in.) 17 MR. SCERBO: So this application 18 revolves around a current contract at the JCMUA 19 under the New Jersey Water Supply Public Private 20 Contracting Act. The contract that's currently 21 in effect was procured in 2008 by the JCMUA 22 awarded to Suez Water. Suez and the JCMUA have 23 gone through nearly the entire 10 years, contract 24 term, the initial term. 25 That expires at the end of this</p>

<p style="text-align: right;">38</p> <p>1 month, and beginning in 2016, the parties sat 2 down and began to negotiate an extension of the 3 contract which was contemplated under the 4 original agreement. However, under that original 5 agreement, approval by the Board of Public 6 Utilities at least, I wasn't certain if this body 7 had made the same requirement. 8 But the Board of Public Utilities 9 indicated that if we did extend the contract, 10 they would like us to resubmit an application as 11 if it were a brand new application for 12 submission, so we did that and we also submitted 13 to this body as well. 14 It is a substantial change to the 15 contract, one that economically benefits the 16 JCMUA, but it also modernizes some of the tasks 17 being performed by the operator, tries to account 18 for changing circumstances and changing laws that 19 we've been experiencing over time and we held a 20 public process, we held a public hearing. We 21 received no public input. 22 We've moved on through the 23 application process and answered some discovery, 24 questions from the Board of Public Utilities, 25 most of which I've characterized, in my</p>	<p style="text-align: right;">40</p> <p>1 both options at once? 2 MR. SCERBO: Correct. 3 MR. CUNNINGHAM: I was curious as to 4 what the prudence of that would be. 5 MR. SCERBO: Really synergy. Some 6 of the advancements in this contract and the 7 agreements we made, particularly around AMI, the 8 Advanced Metering Infrastructure investment takes 9 some time to implement that. And the first 10 extension was a four year extension followed by a 11 five year, so we didn't think that we could get 12 the same kind of concessions out of Suez if we 13 offered them four years. 14 We thought we would do a better job 15 with the nine as a total. Under the Act, we're 16 entitled to up to 40 year arrangements, so we 17 thought we'd be ticking along. We thought it 18 would be better to put all nine years together 19 and see what we can negotiate. 20 MR. FOLK: And we've been satisfied 21 with the service that we received from Suez. 22 Basically for the price. One thing in particular 23 was during Superstorm Sandy, everyone had water 24 and, you know, they have certainly provided clean 25 safe water to the residents of the city.</p>
<p style="text-align: right;">39</p> <p>1 experience, as standard questions. We did supply 2 those questions and answers to this body as well, 3 and we're here today seeking approval under the 4 statutory requirements. 5 MR. CUNNINGHAM: So the current 6 agreement expires on the 31st of this month? 7 MR. SCERBO: It does, yes. And we 8 know we were tight in our submission. 9 Unfortunately, there was some changing issues 10 going on at the JCMUA, but we also tried to back 11 pedal. We didn't put any pressure on the 12 reviewing entities. We know we have 60 days. In 13 fact, the Board of Public Utilities will actually 14 be finishing outside of their review window, but 15 we granted -- they asked for an extension and we 16 accepted that. 17 And we are seeking from Suez 18 currently and we anticipate having it today, a 19 one month extension of the current contract by a 20 letter agreement, just to allow for a meeting at 21 JCMUA that still has to take place. 22 MR. CUNNINGHAM: The one thing I was 23 just curious about, and this is not at all a 24 concern. I'm just curious, so in '16, the 25 authority notified Suez if you wanted to exercise</p>	<p style="text-align: right;">41</p> <p>1 MR. SCERBO: Or 35,000 meters. 2 MR. FOLK: Yes. 3 MR. CUNNINGHAM: I think I would be 4 remiss if I didn't ask about the comptroller's 5 report, so maybe you could discuss that for the 6 record, the issues that were identified. I know 7 the authority has its response, but I think that 8 should be discussed. 9 MR. SCERBO: So we did receive a 10 controller report, review and report. The report 11 with respect to Suez identified a couple of 12 issued around contracting, a couple of issues 13 around bulk water purchase issues. We've 14 provided a full response to the controller. That 15 response is posted on their website, along with 16 the report currently, and we are working with 17 them to prepare a corrective action plan on those 18 issues. 19 We took steps in this contract to 20 address some of those circumstances. Bulk water, 21 we've been well ahead of the curve on putting 22 together our application and submitting that. 23 That's before the city currently, and when the 24 city approves that, it will go down to DEP, but 25 we've structured the term of that contract to</p>

42	<p>1 avoid some of the situations that were pointed 2 out to us under the controller's report. 3 I think the relationship between 4 Suez and JCMUA was actually complimented by the 5 controller overall. When you look at the items 6 they pointed out, and not to make light of them, 7 but given the size of the facility that we're 8 operating with Suez and the number of customers 9 we have, they were relatively minor issues 10 overall, so we were comfortable with our 11 response, I think. 12 MR. CUNNINGHAM: In the past, prior 13 to approving contract extensions are similar, 14 this board is asked that one person be submitted 15 as the contract administrator and prepare 16 quarterly reports that get submitted. 17 MR. SCERBO: Sure. 18 MR. CUNNINGHAM: We would ask you to 19 do that. You can submit it to my attention and 20 approval. 21 MR. SCERBO: I think we did the same 22 thing in Rahway. It might take us a week or two 23 to provide you with that person, but we can 24 definitely do that. 25 MR. CUNNINGHAM: Any questions?</p>	44	<p>1 Chairman Mrs. Rodriguez will take the gavel for 2 the balance of the meeting. 3 MS. HUDAK: My name is Shannon 4 Hudak. I'm the manager of the Certification Unit 5 for the Division of Local Government Services. 6 This matter involves an appeal of the director's 7 final decision affirming the initial division of 8 Administrative Law Judge Thomas Betancourt which 9 approved the settlement agreement between the 10 township of Irvington and its tax collector, 11 Beverly Baytops. 12 I was just going to briefly, by way 13 of procedural background, summarize what took 14 place in this case. Here, the township filed a 15 complaint with the director of the Division of 16 Local Government Services in August of 2017 17 seeking the removal of Miss Baytops from her 18 tenured position as tax collector. The matter 19 was thereafter transmitted to the Office of 20 Administrative Law for a plenary hearing as a 21 contested case. 22 On November 6, 2017, the parties 23 advised that they had reached a settlement 24 agreement and the terms of the agreement were 25 placed upon the record at that time. Thereafter,</p>
43	<p>1 Hearing none, I'd seek a motion and a second. 2 MR. MAPP: Move. 3 MS. RODRIGUEZ: Second. 4 MS. MCNAMARA: Mr. Cunningham? 5 MR. CUNNINGHAM: Yes. 6 MS. MCNAMARA: Mr. Mapp? 7 MR. MAPP: Yes. 8 MS. MCNAMARA: Mr. DiRocco? 9 MR. DIROCCO: Yes. 10 MS. MCNAMARA: Mr. Close? 11 MR. CLOSE: Yes. 12 MS. MCNAMARA: Mr. Avery? 13 MR. AVERY: Yes. 14 MS. MCNAMARA: Miss Rodriguez? 15 MS. RODRIGUEZ: Yes. 16 MS. MCNAMARA: Mr. Blee? 17 MR. BLEE: Yes. 18 MS. MCNAMARA: Mr. Light? 19 MR. LIGHT: Yes. 20 MR. SCERBO: Thank you very much. 21 MR. CUNNINGHAM: So the next two 22 matters in front of the board deal with appeals 23 of director's decision, my decision, to come out 24 of the Division of Local Government Services, so 25 I shall recuse myself to the gallery and Vice</p>	45	<p>1 ALJ Betancourt issued a written initial decision 2 on November 21st 2017 memorializing the terms of 3 the party's agreement. The initial decision was 4 then forwarded to the director. 5 Having received no exceptions to the 6 initial decision and having no objections to the 7 terms of the party's agreement, the director 8 issued a final decision on January 5th 2018 9 approving ALJ Betancourt's initial decision and 10 the settlement agreement. Subsequently, on 11 January 12th 2018, counsel for Miss Baytops filed 12 a present appeal with the Local Finance Board 13 pursuant to N.J.S.A. 52:27BE-15. The LFB must 14 now determine whether to sustain or reverse or 15 modify the determination of the director. 16 MR. PHILLIPS: Good morning. 17 (At which time those wishing to 18 testify were sworn in.) 19 MR. PHILLIPS: I'm Lucas Phillips. 20 I represent Miss Baytops as tax collector, or was 21 the tenured tax collector in Irvington, who is to 22 my right. We are seeking a modification of the 23 director's determination, in that, there had been 24 minor discipline imposed upon Miss Baytops with 25 respect to the same subject matter that was the</p>

<p style="text-align: right;">46</p> <p>1 basis of the tenure charges. 2 The minor discipline involved two 3 days loss of pay, and that was imposed in March 4 of 2017. Subsequent to that, and has been 5 indicated in the record, the township brought 6 tenure charges in August. Those tenure charges 7 included the same subject matter that was the 8 subject for the minor discipline that had 9 previously been imposed. 10 During the course of the litigation 11 in front of the judge, I made a motion to 12 restrict the amount, not the amount, but the 13 matters that would go forward based upon the fact 14 that prior discipline had been imposed. The 15 township's position was that they had been 16 mistaken in applying minor discipline previously, 17 arguing that they did not have the authority 18 because the authority for tax collectors 19 circumstances are subject to the director. 20 My position, and I thought they were 21 inaccurate with that representation, was that 22 with respect to major discipline, which is 23 removal, demotion and substantial suspension 24 which is over five days, that was corrected. The 25 director had that responsibility and therefore it</p>	<p style="text-align: right;">48</p> <p>1 to be vacated. That particular minor discipline 2 has to be purged and two days of the suspension 3 needs to be returned. It's as simple as that. 4 MS. RODRIGUEZ: So first, I want to 5 establish that the director did not make that 6 determination. This was something that was 7 handed to him and he saw it through, so the 8 determination didn't come from this board or from 9 Director Cunningham. 10 MR. PHILLIPS: Understood. 11 MS. RODRIGUEZ: At the time that the 12 settlement was done or was accepted, that was the 13 time, I believe that these are the points that 14 should have been brought up then and they 15 weren't. 16 MR. PHILLIPS: Well, can I address 17 that issue? 18 MS. RODRIGUEZ: Sure. 19 MR. PHILLIPS: During the course of 20 the argument on whether the matter should go 21 forward as tenure charges, in light of the fact 22 that minor discipline had previously been 23 imposed, counsel for the township argued that 24 they were mistaken legally by proceeding 25 initially, and in fact on the record, said that</p>
<p style="text-align: right;">47</p> <p>1 had to be incorporated in tenure charges. 2 However, with respect to minor discipline, which 3 is five days or less, or written reprimands, that 4 a township could in fact reprimand a tenured tax 5 collector. 6 The judge accepted the 7 representation of the township that they were not 8 accurate in terms of their initial application of 9 minor discipline and the matter proceeded. After 10 several days of hearings, I think it was two in 11 fact, we arrived at a settlement. The settlement 12 was a voluntary demotion to the position of 13 assistant tax collector, no findings of wrong 14 doing and no suspension. 15 We had disagreements as to the 16 written content of the actual settlement 17 agreement in writing and therefore there was no 18 settlement agreement put forth in writing. Our 19 position is simple. You can't have it both ways. 20 If you're going to impose minor discipline and 21 then decide to pursue tenure charges based upon 22 the same subject matter, once the matter is 23 resolved in a tenure proceeding and it's resolved 24 without findings of wrong doing and no 25 suspension, then what was previously imposed has</p>	<p style="text-align: right;">49</p> <p>1 they would return two days because they accepted 2 the proposition that they were wrong by imposing 3 the discipline in the first place. 4 The matter proceeded, and at the end 5 of the matter, there was no suspension agreed to 6 or imposed. It was simply an agreed to reduction 7 in position, and obviously, since she was going 8 to a non tenured position, giving up her tenure. 9 That, in and of itself, inherently requires that 10 the prior discipline that was imposed has to be 11 vacated or removed or purged. 12 It's inherent in settling a matter 13 without suspension and for a voluntary reduction 14 in position, so you know, there are some things I 15 submit that are obvious that should not 16 necessarily have to be rehashed, particularly 17 when on the record, counsel for the township had 18 previously said, while they're arguing, to 19 continue with the proceeding even though they had 20 imposed discipline prior thereto, oh, in fact I 21 think the representation was, well, we'll have 22 her two days back in a week, never came. 23 So the fact is that representation 24 was made. We relied, and Miss Baytops relied, on 25 that representation. The matter was settled with</p>

<p style="text-align: right;">50</p> <p>1 no findings of wrong doing with a voluntary 2 reduction in position. Inherent in that is the 3 return of the funds that were previously imposed 4 as punishment and the vacating of the minor 5 discipline that the township argued they didn't 6 have the authority to impose in the first place. 7 Although I didn't agree with that legal 8 proposition, but that was put forth by the 9 township and accepted by the ALJ judge. 10 MS. RODRIGUEZ: That's where it's 11 at. I mean, you're asking us, the issue of the 12 two days -- and, please, colleagues, the issue of 13 the two days lies with the city, with the town, 14 with the township of Irvington, not necessarily 15 in this board. Basically, that is what you're 16 seeking aside from a vacate or a change in the 17 determination that came to this board. 18 MR. PHILLIPS: Well, I respectfully 19 disagree. Obviously, the township is the body 20 that docked the two days and has the money. 21 MS. RODRIGUEZ: Right. 22 MR. PHILLIPS: So obviously, they're 23 the ones that ultimately, if they do so, have to 24 return the funds. 25 MS. RODRIGUEZ: Right.</p>	<p style="text-align: right;">52</p> <p>1 in a situation where we have a settlement it 2 dispatches all the claims, all the controversies 3 are resolved and all those ancillary items are 4 handled, but it seems like here, after the 5 settlement which I guess was never reduced to 6 writing. 7 MR. PHILLIPS: No, it wasn't. 8 MR. DIROCCO: And the settlement was 9 agreed to verbally, it appears, and this is not 10 having something in writing, now there are 11 lingering questions as to what that settlement 12 actually means, you're asserting -- and I give 13 you the benefit of the doubt that you're 14 asserting that it was contemplated that the days 15 would be paid, but there is this dispute, and I 16 think what the Chairwoman is struggling with, and 17 I agree, is really all the director did here was 18 to confirm the settlement that was handed down, 19 essentially, from the ALJ. 20 So we're, I think, a little bit 21 reluctant to modify that in any way, shape or 22 form. I think where we think this lies is back 23 with the ALJ who originally agreed with the 24 settlement. I think that's what we're struggling 25 with. So procedurally, if we were to not change</p>
<p style="text-align: right;">51</p> <p>1 MR. PHILLIPS: This was not 2 presented to you without efforts to get the 3 township to comply with what they had suggested 4 they were going to do during the course of the 5 matter and they declined to do so. You 6 ultimately have the ability to modify the 7 director's determination. It's not that -- 8 MS. RODRIGUEZ: You keep saying the 9 director's determination. 10 MR. PHILLIPS: Well, the director -- 11 maybe my language is -- 12 MS. RODRIGUEZ: Yeah. 13 MR. PHILLIPS: The director 14 adopted -- 15 MS. RODRIGUEZ: What was said. 16 MR. PHILLIPS: And made a final 17 decision accepting a resolution of a matter. The 18 resolution of a matter was no suspension, also a 19 reduction to a lower position that was non 20 tenured. It did not include minor discipline 21 remaining in place and two days that were docked 22 based upon prior discipline remaining. 23 MR. DIROCCO: I appreciate the back 24 board of that. I think what we're struggling 25 with, or what I'm struggling with, is typically</p>	<p style="text-align: right;">53</p> <p>1 the director's decision today, what would happen? 2 Would you then go back -- would you have the 3 ability to go back to the ALJ? 4 MR. PHILLIPS: No. Because your 5 action would be the final administrative action, 6 and any subsequent appeal would have to go to the 7 Superior Court Appellate Division. If I'm 8 pounding a point, but I think it's clear on the 9 record that part of the settlement was there were 10 to be no suspension. By the way, Miss Baytops 11 was suspended from her participation from her 12 work at the township but it was with pay. 13 They had made an emergent 14 application in an attempt to suspend her without 15 pay and that was denied so she was being paid 16 throughout the proceedings. If the settlement, 17 which is clear and undisputed, was a reduction to 18 another position, therefore giving up your tenure 19 going to a lower paying position and no 20 suspension. 21 And there had previously been a 22 suspension imposed based upon the same subject 23 matter that was now before the director through 24 the ALJ, then those two days are inherent to be 25 returned because, ultimately, the final</p>

<p style="text-align: right;">54</p> <p>1 resolution, even though it wasn't reduced to 2 writing, it was clear, there would be no 3 suspension. 4 And quite frankly, the township 5 presses for a suspension. They wanted some days, 6 and I appreciate having been on that side of the 7 board from some time in positions representing 8 townships, there had been several months in the 9 preparation of this matter and the trial of this 10 matter in which Miss Baytops wasn't performing 11 any services but was being paid, so it was an 12 effort to recruit some of that back when they 13 were unsuccessful in getting her suspended 14 without pay through their emergent application. 15 So in essence, what I'm asking is 16 really it is termed a modification, but it's 17 really an affirmation that since this was 18 resolved without a suspension, the days of 19 suspension that were imposed should be returned. 20 MR. DIROCCO: I understand what 21 you're saying. The problem I'm having is you're 22 saying an affirmation that none of us, including 23 the director, were in the room to hear. We 24 didn't hear the oral or verbal terms of the 25 settlement that were put forth. We didn't hear</p>	<p style="text-align: right;">56</p> <p>1 lower position allowing them to put somebody else 2 in that position. 3 MR. CLOSE: You're a civil service 4 community? 5 MR. PHILLIPS: Yes. 6 MR. CLOSE: So would this be filed 7 with civil service, the suspension? Typically 8 it's filed once it's issued. Is that already 9 done? 10 MR. PHILLIPS: The two day is in her 11 file. It was imposed. Because it's minor 12 discipline, you don't have an appeal through the 13 civil service process. 14 MR. CLOSE: Right. It was less than 15 five days. 16 MR. PHILLIPS: Less than five days. 17 MR. CLOSE: It is filed with civil 18 service? 19 MR. PHILLIPS: It is filed. Not 20 being the attorney for the township, I would 21 assume that they followed the procedures. The CC 22 list on the memorandum has the township attorney. 23 You would assume that that would have been the -- 24 MR. MAPP: The part that I'm 25 struggling with is that Mr. Phillips keeps</p>
<p style="text-align: right;">55</p> <p>1 it, so how are we to modify what was said by some 2 other body, some other entity that we weren't -- 3 that's the problem I'm having. 4 MS. RODRIGUEZ: And the settlement 5 was agreed upon. 6 MR. BLEE: As the attorney said, if 7 we uphold the decision today, it's final. I'll 8 throw this out to the attorneys. If we table the 9 motion today, would that give you the ability to 10 go back to the ALJ one more time? 11 MR. PHILLIPS: Well, it would give 12 me the ability to obviously reach out for counsel 13 for the township and see if they were willing to 14 agree to, you know -- it's ironic because it is 15 two days pay and I don't want to pooh-pooh the 16 fact -- 17 MR. LIGHT: It's not like we're 18 robbing a bank or anything like that. 19 MR. PHILLIPS: This is true, so even 20 time and energy that's expanded at this point is 21 sort of, it's beyond the principal of thing, 22 because obviously there is a minor discipline 23 sitting in her file and there was a two day 24 suspension and she agreed to a resolution that 25 benefitted, from the township's perspective, to a</p>	<p style="text-align: right;">57</p> <p>1 referring to a settlement, and there appears to 2 be nothing that we can reference that was reduced 3 to writing as proof as to what both parties 4 agreed to. Is there such a document? 5 MR. PHILLIPS: There is no document. 6 However, Mayor Mapp, however, if there had not 7 been a settlement, then the determination as to 8 whether or not removal, or something less than 9 removal of the tenured position -- 10 MS. RODRIGUEZ: There is a document 11 though that was not signed, but there is a 12 document. 13 MR. PHILLIPS: There was a drafted 14 document. 15 MS. RODRIGUEZ: There was a drafted 16 document. 17 MR. MAPP: Not signed by parties? 18 MR. PHILLIPS: No. 19 MS. RODRIGUEZ: No. 20 MR. CLOSE: It's a transcript? 21 MS. MCNAMARA: I don't know if I can 22 testify or not. When this appeal came in, I got 23 the records from the certification unit and we 24 had a disk with the transcript, not transcript, 25 the verbatim recording of the hearing. It ended</p>

<p style="text-align: right;">58</p> <p>1 at a certain point where the judge had asked the 2 parties to go into chambers, so we requested the 3 OAL to revisit their file and send us anything 4 that may have addressed the settlement itself. 5 They sent us a new disk which did 6 have a recording of the settlement discussion and 7 so we do have a disk. I listened to it and it 8 did include the discussion of the settlement 9 terms, so I didn't share it with the board 10 members at this moment, but we could do that if 11 you wanted to put this off and hear that part 12 itself. 13 MS. RODRIGUEZ: Let me just state 14 this. The ALJ heard all of these issues and 15 they're on the record, right? And he asked Miss 16 Baytops if she understood the terms of the deal, 17 and the ALJ gives deference as to factual 18 determinations, so he reviewed your appeal, 19 modification and he determined it was not part of 20 the deal. 21 So that determination is called due 22 deference. We can table this, as you requested, 23 Mr. Blee, and hear the disk, or whatever the 24 staff provides us, and come back, you know, next 25 month with a document and a vote.</p>	<p style="text-align: right;">60</p> <p>1 who has been removed from participating but 2 suspended with pay, then any suspension that 3 previously had been imposed, based upon the 4 allegations of the tenure charges as the town 5 argued they didn't have the authority to do, 6 inherent in that is you get your two days back. 7 And in addition to that, counsel for 8 the township, on the record, when they argued 9 that the tenure charges should go forward, 10 including what previously had been disciplined, 11 they said they were going to return the money. 12 It just never happened. Now, I can appreciate 13 why it didn't happen. They were anticipating an 14 outcome where they prevailed, and in the 15 situation where they prevailed they certainly 16 would have been arguing removal and certainly 17 some substantial suspension. 18 So the two days that they had in 19 their pocket would have become part of whatever 20 the ultimate sanction was imposed if they had 21 prevailed. They didn't prevail. We settled the 22 matter, and on the record, the settlement 23 involved no suspension. That, in and of itself, 24 inherently requires, I submit, that the township 25 return the two days.</p>
<p style="text-align: right;">59</p> <p>1 MR. MAPP: I have a question. 2 MS. RODRIGUEZ: Yes. 3 MR. MAPP: Does the attorney for 4 Mrs. Baytops and Mr. Phillips concur with the 5 statement you just heard from the chair, that the 6 ALJ reviewed it and it was not a part of the 7 settlement? 8 MR. PHILLIPS: I believe what the 9 chair is indicating is that after the discussion 10 on the record of what the settlement involved, 11 there was a question posed whether my client was 12 satisfied with the settlement. 13 MS. RODRIGUEZ: Right. 14 MR. PHILLIPS: However, if we 15 understand the bases of the settlement, which is 16 on the record, the bases of the settlement is a 17 voluntary reduction in position, giving up a 18 tenured position, no suspension and there was 19 some mention, I believe, of the fact that the 20 secondary position had a particular funding line 21 and she would be going back, not back to but to 22 that funding line. 23 And the point that I'm making is 24 that if you resolve the matter with no findings 25 of wrong doing and no suspension for an employee</p>	<p style="text-align: right;">61</p> <p>1 MR. BLEE: I had another question. 2 In the hearing before the ALJ, did the suspension 3 come up? Was it part of the record? 4 MR. PHILLIPS: Yes. Because I filed 5 an extensive motion to dismiss certain components 6 of the tenure charges based upon the fact that 7 there had been prior discipline incorporating 8 those very same facts. Quite frankly, I believed 9 I was correct in what I was requesting to be 10 done. There are decisions that basically say you 11 can't refile charges of an administrative nature 12 in order to attempt to enhance punishment when 13 you've already decided on previous punishment and 14 discipline. 15 The ALJ disagreed and decided that 16 the matter would continue with the tenure charges 17 that incorporated the prior minor discipline, but 18 when you resolve the matter at the end of the 19 day, after several days of hearing, but I think 20 you infer that as a consequence of the resolution 21 of this matter, there were problems with respect 22 to their matter and I anticipated problems with 23 respect to ours, so you arrive at a resolution. 24 If the resolution is no suspension 25 and a voluntary reduction in position and no</p>

<p style="text-align: right;">62</p> <p>1 findings of wrong doing, then the prior 2 discipline that they imposed is inherent in that, 3 that is officiated or removed and the days that 4 were taken are returned. You know, sometimes in 5 proceedings, and the point is well taken that, 6 you know, you need to dot every I and cross every 7 T, but there are some things, particularly as an 8 attorney who's representing a person and another 9 attorney representing the other side has argued, 10 well let's go forward with this even though we 11 did this and we were wrong and you'll get your 12 two days back in a week.</p> <p>13 You rely upon certain things that 14 were said, and when you asked if we're satisfied, 15 yes, we're satisfied. No suspension, voluntary 16 reduction, no findings of wrong doing. I submit 17 that inherently requires that if you took money 18 based upon this alleged conduct, that that money 19 must be returned.</p> <p>20 MR. BLEE: I guess my follow up 21 would be every fact that you've presented today 22 to the board has been presented.</p> <p>23 MR. PHILLIPS: Has been presented to 24 the ALJ and argued, and as I said, I did not 25 agree with many of the determinations, and I</p>	<p style="text-align: right;">64</p> <p>1 in no suspension.</p> <p>2 MS. RODRIGUEZ: That was your 3 interpretation that in the no suspension --</p> <p>4 MR. PHILLIPS: No suspension means 5 no suspension. I don't think there's any 6 interpretation. No suspension and my client is 7 being paid, and you're taking money as a 8 disciplinary suspension, then that requires --</p> <p>9 MS. RODRIGUEZ: What we're going to 10 do, we're going to table this. We're going to 11 get the rest of the information and come back 12 next meeting.</p> <p>13 MR. DIROCCO: And maybe you could 14 ask if you could continue -- the best thing from 15 our perspective is for you guys and the city to 16 work out something. If you can continue to work 17 with city officials because -- I don't know why 18 they're not here. That's another thing. Maybe 19 they should be here, just for the record, and I'm 20 a little bothered by the fact that we don't have 21 one party here. I give you guys credit for being 22 here. I don't know why the city is not here.</p> <p>23 MS. RODRIGUEZ: We could ask the 24 city to submit something or --</p> <p>25 MR. PHILLIPS: They did.</p>
<p style="text-align: right;">63</p> <p>1 particularly did not agree with continuing with a 2 matter that had previously been, in essence, 3 adjudicated on a minor disciplinary matter as the 4 civil service law allows and then you're going to 5 bring tenure charges on the same subject matter.</p> <p>6 MS. RODRIGUEZ: Mr. Phillips, my 7 question to you is, why did you not bring this up 8 when you had the opportunity during the 9 settlement?</p> <p>10 MR. PHILLIPS: It was brought up 11 during the -- it wasn't brought up while we were 12 on the record during the settlement because, 13 quite frankly, I think when we say no suspension 14 is going to be imposed and there's no finding of 15 wrong doing, then the previous discipline that 16 had a suspension subject to it, should be 17 returned.</p> <p>18 Particularly, since the previous day 19 of proceedings when the judge decided to continue 20 with the tenure charges that had previously been 21 dealt with in minor discipline, counsel, Mr. 22 Lester, said hey, no problem, we'll have your two 23 days back in a week. It didn't seem like that 24 was something that needed to be addressed because 25 it had previously been addressed and was inherent</p>	<p style="text-align: right;">65</p> <p>1 MR. DIROCCO: So make a motion to 2 table this? I'll make that motion.</p> <p>3 MR. BLEE: Second.</p> <p>4 MS. MCNAMARA: Mr. Mapp?</p> <p>5 MR. MAPP: Yes.</p> <p>6 MS. MCNAMARA: Mr. DiRocco?</p> <p>7 MR. DIROCCO: Yes.</p> <p>8 MS. MCNAMARA: Mr. Close?</p> <p>9 MR. CLOSE: Yes.</p> <p>10 MS. MCNAMARA: Mr. Avery?</p> <p>11 MR. AVERY: Yes.</p> <p>12 MS. MCNAMARA: Miss Rodriguez?</p> <p>13 MS. RODRIGUEZ: Yes.</p> <p>14 MS. MCNAMARA: Mr. Blee?</p> <p>15 MR. BLEE: Yes.</p> <p>16 MS. MCNAMARA: Mr. Light?</p> <p>17 MR. LIGHT: Yes.</p> <p>18 MR. PHILLIPS: Thank you, Assistant 19 Director and the Board.</p> <p>20 (At which time those wishing to 21 testify were sworn in.</p> <p>22 MS. RODRIGUEZ: Good afternoon.</p> <p>23 MR. WITT: Good afternoon, Vice 24 Chair. Thank you for having me. My name is 25 Michael Witt. I am special counsel to the County</p>

<p style="text-align: right;">66</p> <p>1 of Hudson, New Jersey. I am here to address the 2 matter of Executive Order Number TAD 70. I am 3 the person who drafted the Executive Order. I am 4 the person who corresponded with the director of 5 DLGS, so I'm the guy that you get here today to 6 talk about this.</p> <p>7 This is an appeal of decision of the 8 director of DLGS, actually two different 9 decisions, that were made that the county is 10 appealing and this deals with the Executive Order 11 and let me just very briefly set the background 12 of how this matter came up. Earlier in 2017, the 13 Office of the State Comptroller was reviewing 14 Hudson County's contracting practices.</p> <p>15 I believe we had a contract that met 16 the minimum threshold value and the 17 representative of the office was making sure 18 everything was okay. At the time, Hudson County 19 had an Executive Order in place, which was TAD 20 46, which had two requirements in it. For 21 contracts over \$500,000 in value, that for Public 22 Works contracts, I should say, of over \$500,000 23 in value, that in order to be a successful bidder 24 on the project, the bidder had to have an 25 apprenticeship program in place approved by the</p>	<p style="text-align: right;">68</p> <p>1 TAD 70, specifically to address those points that 2 were brought up by DLGS, and I think that we 3 accomplished that. So we sent a copy of it -- 4 TAD 70 was passed by the County Board of 5 Freeholders. We sent a copy to the director of 6 DLGS as a courtesy because we did not believe 7 that it is a pre-qualification, and that, again, 8 is the first thing we're appealing from Director 9 Cunningham's decision.</p> <p>10 We believe it is a minimum 11 requirement and nothing more similar as to you 12 have to provide your business license. You have 13 to provide your certification for 14 anti-discrimination, mandatory language like 15 that, and it's nothing more. As far as the 16 substance goes though, we also disagreed with the 17 opinion that the apprenticeship program was 18 anti-competitive, and I just want -- I know you 19 have the papers, and obviously if you have any 20 specific questions, I will be happy to answer 21 them.</p> <p>22 Very briefly though, the county is 23 responsible for making sure that construction 24 projects that it does are performed safely and 25 they're performed competently and that is all</p>
<p style="text-align: right;">67</p> <p>1 federal government or the state government and 2 also that there was a minimum safety training in 3 place as well.</p> <p>4 The comptroller noted to Hudson 5 County that he thought there was a previous 6 similar requirement somewhere in the state that 7 DLGS had reviewed and found was not acceptable. 8 It was a pre-qualification that was 9 anti-competitive. So sure enough, we did a 10 little research, found the Local Finance bulletin 11 that did in fact discuss that and said exactly 12 what I just said, that such a requirement for an 13 apprenticeship program was anti-competitive and 14 not allowable.</p> <p>15 So the one previous case where this 16 happened was actually Mercer County. Mercer 17 County passed an ordinance and had similar 18 requirements, but for a much lower threshold 19 value. I believe their threshold was like 3500 20 dollars, something very, very low, so I sent an 21 OPRA request in to DLGS for the opinion letter on 22 that and got it and took a look at that and saw 23 exactly why DLGS had said that this was not -- 24 that what Mercer County was not allowable. 25 So we drafted TAD 46, which became</p>	<p style="text-align: right;">69</p> <p>1 TAD70 is designed to do. And again, these large 2 scale projects, half a million dollars is the 3 minimum buy end for TAD 70 to kick into effect.</p> <p>4 If it does, and if the project 5 requires craft work, then we will require that 6 there be an apprenticeship program, or TAD has an 7 alternate which says if your company does not 8 have an apprenticeship program, we will accept 9 certification from you that the craft employees 10 that you're going to use have certain minimum 11 experience.</p> <p>12 Craft workers are people who do 13 specialized work. They're welders, they're 14 electricians, people of that nature. They're 15 people who direct other people. The county 16 simply believes that if a job requires somebody 17 like that, we want to make sure that that person 18 is properly trained, that they are safely trained 19 and that's it. There's no other goal beyond that 20 then to make sure that that kind of work for a 21 public project gets done properly.</p> <p>22 Now, if it's a \$500,000 contract for 23 landscaping, this Executive Order doesn't kick 24 into place. It's, again, only those contracts 25 that require specialized work. In addition, we</p>

<p style="text-align: right;">70</p> <p>1 also believe that for those large scale 2 contracts, that everybody working on that project 3 should have the minimum safety training required 4 by both OSHA and POSHA. POSHA is for public 5 employees, and this is our point. 6 If the county were doing these 7 projects themselves, we would absolutely have to 8 have minimum safety training for every person 9 working on that job, no doubt about it. 10 Likewise, if we contract things out, we want to 11 make sure that everybody on these large scale 12 projects that require specialized work, has 13 minimum safety training. 14 For your day laborer, just a general 15 grunt laborer for a construction project, that is 16 10 hour OSHA training. That's for everybody, 17 that training is required. For craft workers, it 18 is minimum OSHA 30 hour training because, again, 19 that's a specialized job and it's people who are 20 supervising other people so you want to make sure 21 they know what they're doing as well. 22 Again, the reason behind this we 23 think is obvious. If something goes wrong, the 24 county is on the hook for it. And what's the 25 first thing that a lawyer suing us is going to</p>	<p style="text-align: right;">72</p> <p>1 it's anti-competitive to small business because, 2 obviously, if you're a large business, you can 3 afford to have a apprenticeship training program. 4 It's a little bit easier for you to do. That's 5 why we put an alternate in. We're not saying 6 that you have to just have an apprenticeship 7 program. We're saying that, okay, you can hire 8 people who haven't gone through that program, but 9 we want them to have seven years of experience. 10 Why did we choose seven years? 11 Because apprenticeship programs, and this is from 12 the state of New Jersey itself, apprenticeship 13 programs usually last between four to six years 14 for this kind of job with the average being four 15 years. 2,000 hours a year of on the job 16 experience through the apprenticeship program, so 17 you're looking at somebody who has had 18 8,000 hours of training if it's an apprenticeship 19 program. 20 We think that seven years, we 21 discounted the years. Maybe the person is not 22 working full-time. Maybe they're only working 23 1500 hours a year, but we still want to have that 24 minimum level of competency, that minimum level 25 of experience, and that's why we chose that. For</p>
<p style="text-align: right;">71</p> <p>1 ask? Were your people qualified? Were your 2 people properly trained for safety? And if we 3 can't answer both of those questions yes, then 4 we're just going to open a checkbook, and that 5 lawsuit is never going to see the light of a 6 courtroom, and really it's as simple as that. 7 If there were any board member who 8 was having work on their house, you would want to 9 make sure the contractor had people who knew what 10 they were doing, right? Of course you would. 11 You're not going to just go and grab the first 12 person off the street who says, yeah, I'll do 13 that for \$20,000. You want to make sure they 14 know what they're doing. 15 You're going to check their 16 references, you're going to check to make sure 17 they're using the right equipment, that they're 18 doing the job safely, that once they leave, your 19 house isn't going to fall down on you and that's 20 all the county is asking for here. And if there 21 are any questions on this, again, there were 22 specific questions that the director of DLGS 23 raised. 24 I don't believe this is 25 anti-competitive. In particular, the comment was</p>	<p style="text-align: right;">73</p> <p>1 the safety training, again, we just want the 2 people we hire to have the same training that our 3 own people would have to have if they were doing 4 the exact same job. Nothing more. And that's 5 really about it. 6 MS. RODRIGUEZ: Anybody have any 7 questions? 8 MR. LIGHT: What are you really 9 asking of us at this point in time to resolve 10 concerns that you have? 11 MR. WITT: Well, what we're asking, 12 again, is we do not believe this is a 13 pre-qualification that requires DLGS approval, so 14 that's the first thing we're asking. 15 MR. LIGHT: So you're asking that 16 that be waived; is that correct? 17 MR. WITT: We're asking that this 18 board find that it's not a pre-qualification 19 requirement, not that it would be waived. It 20 would not be required. 21 MR. LIGHT: Because the director 22 required it. 23 MR. WITT: Exactly. Because the 24 director said, yes, it would be required. The 25 second thing I guess that we're asking for is</p>

<p style="text-align: right;">74</p> <p>1 laid out in what I just said, which is an 2 acknowledgement that this is a good idea. This 3 is an idea that everybody should be doing. It's 4 just not Hudson County, it's not just Mercer 5 County; that when you have these large public 6 projects, putting this building up, for example, 7 that you have people who are actually qualified 8 to do the job, that you have people who have the 9 minimum safety requirements. 10 Obviously, we would like more, but 11 we know that we can't require more. We know that 12 may be getting anti-competitive because there is 13 a cost obviously associated with OSHA 10 and OSHA 14 30. It's not that much. OSHA 10, the going rate 15 is 65 dollars for the class right now, and I 16 can't remember what it is for OSHA 30, but that's 17 not too much to ask for public safety when you're 18 spending public dollars. 19 And the other thing I would ask is 20 that if there are any additional questions that 21 were raised by DLGS, we'd be happy to answer 22 them. We'd be happy to redo TAD 70 so it 23 addresses all those concerns, and we believe that 24 we have. 25 MR. DIROCCO: I was going to ask</p>	<p style="text-align: right;">76</p> <p>1 to make sure we're not directing them to one 2 particular business. We want to make sure -- 3 MS. RODRIGUEZ: Or the trades. 4 MR. DIROCCO: Exactly. 5 MS. RODRIGUEZ: Or the trades. 6 MR. DIROCCO: And that's the public 7 policy behind requiring that, so when a decision 8 comes back that, yeah, we think this goes over 9 the line, now suddenly you want to say, well, we 10 don't really need your approval anyway. That's 11 problematic. 12 MR. WITT: And again, it's a great 13 question, it's a great point, but again, the 14 county does not consider this to be a 15 pre-qualification. We're not saying once you 16 meet this standard you are now available and able 17 to bid on any contract for the county you want. 18 It only comes into play on these particular 19 contracts. 20 MS. RODRIGUEZ: On public dollars. 21 MR. WITT: On public dollars. And 22 again, with regard to your point, Madam Chair, 23 with regard to steering towards the trades. 24 MS. RODRIGUEZ: No, no, no. That's 25 not what I said. That's not what I said.</p>
<p style="text-align: right;">75</p> <p>1 you, you submitted the Executive Order with the 2 pre-qualification provisions to the division, 3 correct? 4 MR. WITT: We did, but we did not -- 5 MR. DIROCCO: But you submitted it 6 and now you're saying we don't need your 7 approval. I don't understand. To me, it's a 8 little bit, it's troubling that you're saying we 9 don't need to comply with your requirements, yet, 10 here, please bless this. 11 MR. WITT: And that's a great 12 question. Under Local Public Contracts Law, if 13 you're going to have pre-qualifications for 14 contracting, you do need to submit them to the 15 director of DLGS for approval. 16 MR. DIROCCO: And why is that? 17 MR. WITT: Because they want to make 18 sure that it's not anti-competitive and these 19 kind of things. 20 MR. DIROCCO: So then when the 21 decision comes back that it is, certainly you 22 don't need their approval. This is where I'm 23 struggling here. If the policy is, and we all 24 have to agree with, which is if we're talking 25 about spending significant public funds, we got</p>	<p style="text-align: right;">77</p> <p>1 MR. WITT: Okay. 2 MS. RODRIGUEZ: Make the correction. 3 I was just including the trades, but I wasn't 4 saying steering to anybody. Public dollars are 5 public dollars. 6 MR. WITT: Right. 7 MS. RODRIGUEZ: And that's why it 8 comes here. You know, that's why it comes to the 9 Division of Local Government Services because 10 when we're talking about public dollars, that's 11 exactly what they are. And so I didn't say that 12 steering to the trades or apprenticeship programs 13 or whatever. 14 MR. WITT: Right. And that is why 15 we put the alternates in, so it doesn't have to 16 be an apprenticeship program but you do have to 17 certify that your people know what they're doing 18 and they have the experience there. 19 MS. RODRIGUEZ: Right. 20 MR. WITT: So getting back to is it 21 a pre-qualification, is it not a 22 pre-qualification. Yes, we don't believe it is, 23 but we recognize the role that DLGS plays. We 24 recognize the role that Local Finance plays, so 25 we didn't want to just say, you know what, forget</p>

<p style="text-align: right;">78</p> <p>1 them, we're going to do what we want. We 2 submitted it to the director to get his opinion 3 on it and he had very good comments. I believe 4 that we addressed those comments, and if there 5 are further comments, we would certainly address 6 those as well.</p> <p>7 We do want to make sure this is not 8 anti-competitive. There is nothing in this 9 Executive Order that says a small business can't 10 partner with a larger business that does have an 11 apprenticeship program. They can be the general 12 and the other people can be the subs. They can 13 put together any kind of business or they can do 14 the training. They can get the minimum safety 15 training and they can do the certifications, and 16 we're good with that. In fact, we even made the 17 forms up for it and that's our point.</p> <p>18 MR. CLOSE: I think you talked about 19 safety earlier. I presume on jobs over half a 20 million dollars you're getting people because 21 they have a vested interest on hiring safe people 22 and coming to you and only those types of 23 individual firms are going to be coming forward 24 because they have the wherewithal, the resources, 25 the checklist as you talked about, the equipment</p>	<p style="text-align: right;">80</p> <p>1 MR. AVERY: Just to follow up on 2 that point. Someone in Hudson County is going to 3 check the qualifications of every potential 4 employee of a contractor that bids on a job?</p> <p>5 MR. WITT: It's the craft workers. 6 And, yes, we will.</p> <p>7 MR. AVERY: I'm a little confused. 8 MR. WITT: The applicant will 9 certify that they have the training, and that 10 only is going to apply to the craft workers, but 11 as far as the training, same certification. And 12 if we find out that somebody who gets the job 13 does not have that training, that's going be a 14 problem between us and the bid.</p> <p>15 MR. AVERY: What's your recourse? 16 To require that employee to get training or to 17 cancel the contract?</p> <p>18 MR. WITT: Or they're going to have 19 to replace that employee with somebody who does 20 have the proper training.</p> <p>21 MR. LIGHT: The contractor. 22 MR. WITT: Right.</p> <p>23 MR. AVERY: I guess I'm also a 24 little concerned about your definition of what a 25 craft employee is. Plumbers are licensed by the</p>
<p style="text-align: right;">79</p> <p>1 to perform the job. 2 MR. WITT: Exactly.</p> <p>3 MR. CLOSE: Plus, they're also 4 providing you, I'm presuming your contract 5 provides surety bonds and other forms of 6 insurance that if you get sued you're simply 7 going to subrogate the claim back against those 8 policies and or against the surety bond, so there 9 does seem to be some protections in place as well 10 with those additional tools. Are there not?</p> <p>11 MR. WITT: There should be, and 12 that's actually an excellent point as well 13 because I can check to make sure the company has 14 the proper equipment to do the job, but are you 15 telling me that I can't check that they have the 16 people that are trained to use that equipment? 17 That's what I want to be able to check. That's 18 it. I just want to make sure they can use the 19 equipment properly.</p> <p>20 So if I can do that and that's not a 21 pre-qualification, I don't think this is either, 22 and if this board decides it is a 23 pre-qualification, then the county will gladly 24 submit it according to the procedure in the Local 25 Public Contracts Law.</p>	<p style="text-align: right;">81</p> <p>1 state of New Jersey. Electricians are licensed 2 by the state of New Jersey. You could have the 3 same type of protection for those types of jobs 4 by just saying that they require a licensed 5 plumber.</p> <p>6 And my experience with major public 7 contractors, there's also the requirement for a 8 safety plan and a safety office to be present on 9 site, so I'm not sure what you're getting up 10 front that you don't get on the back I guess is 11 my point.</p> <p>12 MR. WITT: Well, we get the 13 assurance up front, but again, that is exactly 14 the point about what is a craft worker that the 15 director of DLGS brought up with both Mercer 16 County and with regard to Hudson County. And for 17 us, because I had the benefit of seeing that 18 comment on the Mercer County ordinance, we put in 19 a definition of what a craft worker is. And the 20 way I crafted it is I took a definition from the 21 federal government definition of craft worker and 22 blended it in with the state's definition as 23 well.</p> <p>24 Because I don't want to, when we're 25 going through this analysis, I don't want to be</p>

<p style="text-align: right;">82</p> <p>1 arguing about, well, what's a craft worker, so 2 let's use two established definitions, put them 3 together, one from the feds and one from the 4 state and that should be good enough to go and it 5 will be workers who fall under that area. 6 MR. DIROCCO: I commend the county 7 for taking steps to make sure that they're 8 properly trained and workers are working on their 9 jobs and these are entities that are vetted. I 10 think that's all great, and I mean that. I'm 11 earnest when I say it. I commend the county for 12 taking those steps, but I think -- and the EO is 13 drafted carefully calibrated to get to those 14 points. 15 But you have a nine pages Executive 16 Order, nine pages of specificity with regard to 17 apprenticeship, training, all these specific 18 requirements through this nine page document, you 19 know, but now you're telling me that it's simple. 20 There is simple measures, these are not over the 21 top, these are not significant requirements. 22 It's a simple -- just to make sure 23 that these folks are trained that you have nine 24 pages of requirements. I'm having a little 25 trouble that that is not so specific and so</p>	<p style="text-align: right;">84</p> <p>1 MR. CUNNINGHAM: Members, what I can 2 commit to you, I'll work with the Attorney 3 General's office in the interim and that will 4 allow a refined recommendation to come back 5 before the board and action can be taken at a 6 subsequent meeting. 7 MR. WITT: Again, thank you very 8 much for your time. 9 MS. RODRIGUEZ: Motion to adjourn? 10 MR. CLOSE: So moved. 11 MR. BLEE: Second. 12 MS. RODRIGUEZ: All ayes? 13 BOARD MEMBERS: Aye. 14 (Hearing Concluded at 12:56 p.m.) 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">83</p> <p>1 directed that it couldn't possibly ever be 2 considered to be anti-competitive. I'm having a 3 little bit of difficulty there. It is so 4 lengthy, so comprehensive. 5 And I give you credit as an attorney 6 for drafting a very complex document, but it's 7 that comprehensive. It's a little difficult for 8 us to believe that it's not so specific as to 9 below the line of competitiveness, my comments. 10 MS. RODRIGUEZ: I too commend the 11 county, especially for safeguards when it 12 pertains to public dollars. I definitely 13 remember back in 2002 putting programs together 14 specifically for apprenticeship and allowing 15 people into these programs that otherwise 16 wouldn't be allowed to, so I do commend the 17 county for doing something like this, and I thank 18 you for being here today. Anybody else have any 19 questions? 20 MR. WITT: Thank you very much for 21 your time. 22 MR. BLEE: I make a motion to uphold 23 the director's decision. 24 MS. RODRIGUEZ: He was just 25 presenting.</p>	<p style="text-align: right;">85</p> <p>1 CERTIFICATE 2 3 I, LAUREN ETIER, a Certified Court 4 Reporter, License No. XI 02211, and Notary Public 5 of the State of New Jersey, that the foregoing is 6 a true and accurate transcript of the testimony 7 as taken stenographically by and before me at the 8 time, place and on the date hereinbefore set 9 forth. 10 I DO FURTHER CERTIFY that I am neither a 11 relative nor employee nor attorney nor council of 12 any of the parties to this action, and that I am 13 neither a relative nor employee of such attorney 14 or council, and that I am not financially 15 interested in the action. 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">   Notary Public of the State of New Jersey My Commission Expires June 14, 2018 Dated: March 28, 2018 </p>

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