

## **Erie County Fiscal Stability Authority**

Resolution No. 07-107

### **COMMENTING ON AND DISAPPROVING GENERAL OBLIGATION BORROWING AND RELATED CONTRACT REQUEST SUBMITTED BY THE ERIE COUNTY COMPTROLLER**

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority (“ECFSA”) to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to “oversee [Erie] County’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability;” and

WHEREAS, section 3961 of the New York Public Authorities Law (“Public Authorities Law”) permits Erie County (the “County”), pursuant to a request made by and through the County Executive after authorization by the County Legislature, to “undertake a financing of costs” through the ECFSA; and

WHEREAS, section 3962 of the Public Authorities Law empowers the ECFSA “to issue bonds, notes or other obligations . . . to pay any financeable costs;” and

WHEREAS, over time, through various capital project resolutions, the County Legislature has authorized the issuance of bonds to finance capital expenditures and has delegated the power to issue those bonds to the County Comptroller; and

WHEREAS, by adopting Resolution 07-23 on March 26, 2007, Resolution 07-58 on June 15, 2007, and Resolutions 07-82 and 07-83 on August 30, 2007, the ECFSA urged the County Executive, the County Comptroller, and the County Legislature to seek opportunities to fund the County’s capital expenditures with proceeds of bonds issued by the ECFSA, upon considering the fiscal benefits that will result; and

WHEREAS, on July 19, 2007, the County Comptroller issued a Request for Proposals seeking qualified financial institutions to underwrite Erie County’s 2007 general obligation borrowing in an amount not to exceed \$50,930,000; and

WHEREAS, the County Comptroller received responses to this request from 15 financial institutions and reviewed the responses parallel to a review by First Southwest Company, the County’s financial advisor; and

WHEREAS, on August 29, 2007, First Southwest Company recommended that the County select Citigroup Global Markets, Inc., to act as senior managing underwriter, and Sterne Agree and Merrill Lynch to act as co-managers for an Erie County general obligation borrowing to fund the County’s 2007 capital needs/requirements; and

WHEREAS, by adopting Resolution 07-83 on August 30, 2007, the ECFSA gave its preliminary approval for the issuance of its tax exempt and/or taxable bonds, for the benefit of the County in an amount not to exceed \$52,000,000 including costs of issuance; and

WHEREAS, on October 4, 2007, the County Executive requested County Legislature approval of an ECFSA general obligation borrowing on behalf of the County, as required by section 3961 of the Public Authorities Law, in order to enable the ECFSA to realize savings for County taxpayers; and

WHEREAS, the County Legislature has yet to act on the County Executive's request; and

WHEREAS, section 3959(2)(i) of the Public Authorities Law mandates that during a control period no proposed borrowing by the County shall be made unless first reviewed, commented upon and approved by the ECFSA; and

WHEREAS, the ECFSA first imposed a control period upon the County of Erie (the "County") by adopting Resolution 06-49 on November 3, 2006, and renewed and continued the control period by adopting Resolution 07-04 on January 11, 2007, as required by section 3959(1)(e) of the Public Authorities Law upon finding that the County had violated section 3957(1) of the Public Authorities Law; and

WHEREAS, on October 26, 2007, pursuant to section 3959(2)(i) of the Public Authorities Law, the County Comptroller requested ECFSA approval for issuance of \$51,930,000 in Erie County general obligation bonds to fund the County's 2007 capital needs/requirements; and

WHEREAS, also on October 26, 2007, the County Comptroller, a "Responsible Official" as defined in Resolution 07-10, submitted a "Contract Approval Request" as required by Resolution 07-10 to enter into any and all contracts and agreements with Citigroup Global Markets, Inc., to act as senior managing underwriter for the borrowing, Sterne Agree and Merrill Lynch to act as co-managers, and any other party (bond counsel, underwriter's counsel, paying agent, etc.) as necessary to effectuate the closing of the borrowing; and

WHEREAS, in accordance with the Public Authorities Law, the ECFSA has reviewed the County's proposed borrowing; and

WHEREAS, the County Comptroller has yet to assure the ECFSA that the County can obtain terms for a bond issuance by the County that are equal to or better than those available to the ECFSA as set forth in Resolution 07-83; and

WHEREAS, the County's financial circumstances and anticipated future financial circumstances should cause the County, in the interest of responsible fiscal management, to request pursuant to Public Authorities Law that the ECFSA undertake a bond issuance to fund capital expenditures;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA disapproves issuance of \$51,930,000 in Erie County general obligation bonds to fund the County's 2007 capital needs/requirements; and

BE IT FURTHER RESOLVED that the ECFSA disapproves the related request to enter into any and all contracts and agreements to effectuate closing of Erie County's 2007 general obligation borrowing; and

BE IT FURTHER RESOLVED that the ECFSA reiterates its prior recommendation, that, in the interest of responsible fiscal management and to take advantage of the ECFSA's bond rating, County officials take all the steps necessary to request pursuant to the Public Authorities Law that the ECFSA undertake a bond issuance to fund the County's 2007 capital needs/requirements; and

BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to the County Executive, the County Comptroller, the County Legislature, the Director of the State Division of the Budget, the New York State Comptroller, the Chair of the State Assembly Ways and Means Committee and the Chair of the State Senate Finance Committee, as required by section 3959(2)(i) of the Public Authorities Law.

This resolution shall take effect immediately.

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Stanley J. Keysa  
Secretary

Date: November 2, 2007