Erie County Fiscal Stability Authority

Resolution No. 08-56

CALLING UPON ERIE COUNTY TO REQUEST THE ECFSA TO ISSUE BONDS TO FUND THE COUNTY'S 2007 AND 2008 CAPITAL EXPENDITURES

A. The Need to Finance Erie County's Capital Expenditures

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 ("Section 3961") permits Erie County (the "County"), pursuant to a request made by and through the County Executive after approval 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 [such] financeable costs;" and

WHEREAS, financing of the County's 2007 and 2008 capital expenditures (the "Capital Expenditures") would cost a total of $87,580,000; and

WHEREAS, the County Legislature has not yet approved, and the present County Executive has not yet issued, a request for the ECFSA to finance such costs; and

WHEREAS, the County may also require bond financing to satisfy a potential $23 million intergovernmental transfer ("IGT") payment to the Erie County Medical Center Corporation ("ECMC") in 2008, and to fund additional capital projects; and

WHEREAS, the County may issue bonds during a control period, but only upon advance review, comment, and approval by the ECFSA, pursuant to Public Authorities Law section 3959(2)(i);

B. Erie County's Dismal Bond Rating

WHEREAS, Fitch Ratings ("Fitch") and Moody's Investors Service ("Moody's") have assigned the ECFSA bond ratings of AA and Aa2, respectively; and

WHEREAS, in contrast, Fitch and Moody's have respectively assigned the County bond ratings of BBB- and Baa3, one grade above junk status; and

WHEREAS, the bond ratings assigned by Fitch and Moody's to the ECFSA are seven grades higher than the bonds ratings assigned to Erie County; and

WHEREAS, Fitch and Moody's each have assigned Erie County the lowest bond rating of any county in New York State; and

WHEREAS, along with eight other counties – none of which has a population greater than 70,000 according to 2007 estimates from the United States Census Bureau – Erie County has the lowest general obligation bond rating of any county in the United States of America; and

WHEREAS, on account of its significantly higher bond rating, the ECFSA can issue new debt at a lower cost and interest rate than the County can, and thereby reduce the County's cost of borrowing and save taxpayer dollars; and

WHEREAS, for this reason, the ECFSA on August 30, 2007, adopted Resolutions 07-82 and 07-83, which recommended that the County finance the costs of capital borrowing through the ECFSA; and

WHEREAS, on the basis of the comparative analysis set forth in the attached Schedule A to this Resolution, the ECFSA has since determined that the County would save $1,941,526 at present value, or $2,771,553 on a budgetary basis over the life of the bonds, if it elects to finance the Capital Expenditures via issuance of ECFSA bonds; and

WHEREAS, such financing would yield far greater savings for County taxpayers than would have the "mirror bond transaction" originally authorized by the County Legislature on December 31, 2007, and by the ECFSA upon its adoption of Resolution 08-12 on January 4, 2008, but later abandoned by the County in March 2008;

C. Responding to Misconceptions About the Permanence of the ECFSA

WHEREAS, Public Authorities Law section 3952(3) ("Section 3952(3)") provides that the ECFSA "shall continue until its control, advisory or other responsibilities, and its liabilities have been met or otherwise discharged, which in no event shall be later than December thirty-first, two thousand thirty nine;" and

WHEREAS, only the New York State Legislature may act to amend Section 3952(3), and thereby to extend the life of the ECFSA beyond December 31, 2039; and

WHEREAS, notwithstanding Section 3952(3), some elected officials have argued that such bonding would guarantee the ECFSA's existence, potentially as a "hard" control board, for as long as such ECFSA bonds remain outstanding; and

WHEREAS, in reality, no provision in Title 3 of Article 10-D of the Public Authorities Law (the "ECFSA Act") requires such an outcome; and

WHEREAS, pursuant to Public Authorities Law section 3959(1), the ECFSA shall terminate the control period presently in effect over Erie County, "when it determines that none of the conditions which would permit the [ECFSA] to impose a control period exist;" and

WHEREAS, once the ECFSA makes such a determination, it must end the control period, even if bonds previously issued by the ECFSA have not yet been refunded, discharged, or otherwise defeased; and

WHEREAS, in previous public comments before the ECFSA, County Comptroller Mark Poloncarz has cited the continued existence of the New York City Municipal Assistance Corporation ("MAC") in an attempt to demonstrate how the ECFSA could exist beyond December 31, 2039, provided that ECFSA-issued bonds have not yet been refunded, discharged, or defeased as of that date; and

WHEREAS, Public Authorities Law section 3033(1) requires the MAC to "continue for a term ending the <u>later</u> <u>of</u> July first, two thousand eight <u>or</u> <u>one</u> <u>year</u> <u>after</u> <u>all</u> <u>its</u> <u>liabilities</u> <u>have</u> <u>been</u> <u>fully</u> <u>paid</u> <u>and</u> <u>discharged</u>" (emphasis added); and

WHEREAS, because the MAC has not yet fully paid and discharged its outstanding debt service obligations, the Public Authorities Law mandates that it continue to exist beyond July 1, 2008; and

WHEREAS, by contrast, the ECFSA Act contains no similar provision that would require the ECFSA's existence until some time after payment and discharge of all its liabilities; and

WHEREAS, any concern that ECFSA bonding to finance the County's Capital Expenditures would necessitate the ECFSA's existence beyond December 31, 2039, is therefore unsubstantiated; and

WHEREAS, the County Comptroller has also contended that ECFSA bonding will require the ECFSA's expenditure of funds to retain professional services and to employ personnel to oversee the service of its debt; and

WHEREAS, if the County were to issue bonds to fund its capital projects, the County would incur such expenditure regardless; and

WHEREAS, by requesting the ECFSA to issue bonds to fund such projects instead, the County would still reap nearly $2 million in present value savings for County taxpayers in connection with bonding for the Capital Expenditures, and even greater savings could be achieved through the subsequent issuance of ECFSA bonds;

D. <u>Responding to the County Executive's Objections to ECFSA Financing</u>

WHEREAS, notwithstanding the cost savings that the ECFSA can produce by bonding to finance the County's Capital Expenditures, County Executive Christopher Collins has declared his opposition to such financing in correspondence dated March 28, 2008, to the ECFSA (the "March 28 Letter"); and

WHEREAS, the March 28 Letter purported that the Public Authorities Law required ECFSA approval of a four-year financial plan for the County as a condition precedent to the issuance of ECFSA bonds; and

WHEREAS, this conclusion relied upon Section 3961, which requires consistency between ECFSA financing and "the adopted budget and financial plan of the county <u>required</u> under sections 3956 and 3957 . . ., as applicable" (emphasis added); and

WHEREAS, the County must adopt a budget for each fiscal year within the time frames established by Article 26 of the County Charter; and

WHEREAS, with regard to four-year financial plans, Public Authorities Law section 3957 ("Section 3957") only <u>requires</u> the County Executive to submit one to the ECFSA "not later than the date required for submission of [his proposed] budget to the [County] legislature pursuant to the county charter;" and

WHEREAS, because Section 3957 does <u>not</u> <u>require</u> the ECFSA to adopt or approve a four-year financial plan for the County, the word "adopted" in the third sentence of Section 3961 must modify "budget," but not "financial plan;" and

WHEREAS, Section 3961 only compels any financing of County costs by the ECFSA to comply with (i) the County's adopted budget for fiscal year 2008, and with (ii) the 2008-2011 financial plan that County Executive Joel Giambra submitted to the ECFSA in October 2007; and

WHEREAS, the March 28 Letter also purported that the ECFSA needed to "formulate and adopt its own modifications to the 2008-2011 Erie County financial plan," as another precondition to the issuance of ECFSA bonds; and

WHEREAS, Public Authorities Law section 3959(2)(a) does empower the ECFSA to modify the County's four-year financial plans, but only as the ECFSA deems "necessary;" and

WHEREAS, the ECFSA has deemed any unilateral effort to amend the County's 2008-2011 financial plan as unnecessary and impracticable, in the absence of reasonable assurance that the County would implement the ECSFA's modifications; and

WHEREAS, the March 28 Letter also claimed that the ECFSA needed to establish a Debt Service Reserve Fund before issuing any bonds on behalf of the County; and

WHEREAS, the ECFSA in fact must create such a Fund only in the event of a precipitous drop in County sales tax revenues, a contingency that the County has repeatedly asserted to be unlikely; and

WHEREAS, it has not been determined that such a Fund will be needed at the inception of an ECFSA bond issue; and

WHEREAS, in the March 28 Letter, the County Executive also objected to a provision of the "mirror bond transaction," whereby the County would agree that its gross sales tax revenues would equal at least twice its yearly debt service on the contemplated mirror bonds; and

WHEREAS, such a proviso should not prevent the County from bonding through the ECFSA, because the County's sales tax revenues are significantly greater than its anticipated debt service; and

WHEREAS, in the March 28 Letter, the County Executive also claimed that "a fixed interest rate [could not] be established" for the proposed mirror bonds; and

WHEREAS, a fixed rate could have been established, had the County not insisted on achieving its unsubstantiated hope of converting its bonds in the future to retire ECFSA bonds;

WHEREAS, notwithstanding the concerns raised by the County Executive in the March 28 Letter, the County can realize maximum savings on the costs of financing the Capital Expenditures by requesting the ECFSA to issue the necessary bonds on its own; and

WHEREAS, the County's financial circumstances and anticipated future financial circumstances should cause the County, in the interest of responsible fiscal management, to make such a request pursuant to Section 3961; and

WHEREAS, if the County can alternatively prove its ability to issue bonds pursuant to terms equal to or better than those available to the ECFSA, the ECFSA would be favorably inclined to approve a request from the County to undertake such an issuance to fund the Capital Expenditures;

E. <u>Resolutions</u>

NOW, THEREFORE, BE IT RESOLVED that the ECFSA again recommends that the County request the ECFSA, pursuant to Section 3961, to issue bonds to fund the County's contemplated Capital Expenditures; and

BE IT FURTHER RESOLVED that the ECFSA would consider approval of the County's issuance of bonds to finance those Capital Expenditures, provided the County Comptroller can provide reasonable assurance to the ECFSA that the County's All-In Total Interest Cost ("All-In TIC"), which includes the costs of issuance, the underwriter's discount, and bond insurance, associated with a bond issue to fund the Capital Expenditures would not exceed the ECFSA's All-In TIC; and

BE IT FURTHER RESOLVED that the ECFSA would be inclined to reject any proposed County bond issuance that would not satisfy this criterion; and

BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to the Governor, the Director of the State Division of the Budget, the New York State Comptroller, each member of the New York State Assembly and New York State Senate who represents a portion of the County, the County Executive, the County Comptroller and the County Legislature.

This resolution shall take effect immediately.

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Stanley J. Keysa
Secretary

Date: May 2, 2008