

Erie County Fiscal Stability Authority

Resolution No. 08-12

**AUTHORIZING THE SALE AND ISSUANCE OF
SERIES 2008A REVENUE BONDS**

WHEREAS, Chapter 182 of the New York Laws of 2005 (the “ECFSA Act”), as amended, 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, on December 31, 2007, the Erie County Legislature adopted a resolution, pursuant to New York Public Authorities Law (“Public Authorities Law”) section 3961(1), that authorized the ECFSA to issue an initial series of general obligation bonds (“Series 2008A Bonds”), to be secured by County sales tax revenues (the “December 31 Resolution”); and

WHEREAS, the proceeds of the Series 2008A Bonds would finance up to \$51,930,000 in costs arising from the County’s 2007 capital program; and

WHEREAS, the December 31 Resolution further authorized the County to “issue general obligation mirror bond debt in the same amount” to the ECFSA, upon issuance of the Series 2008A Bonds; and

WHEREAS, then-County Executive Joel A. Giambra also requested the ECFSA to undertake the financing of costs authorized by the December 31 Resolution; and

WHEREAS, pursuant to Public Authorities Law sections 3961 and 3962, the December 31 Resolution, subject to the County Executive’s subsequent request that the ECFSA provide financing, enables the ECFSA to issue bonds to finance the County’s 2007 capital program;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA shall plan to sell and issue \$51,930,000 in Series 2008A Bonds, to be secured by County sales tax revenues, whereby the proceeds of such Bonds shall finance up to \$51,930,000 in costs arising from the County’s 2007 capital program; and

BE IT FURTHER RESOLVED that the ECFSA shall plan to issue the Series 2008A Bonds under the following circumstances:

- (1) Pursuant to Public Authorities Law section 3961(2), the County Executive shall request that the ECFSA provide financing to the County, as authorized by the December 31 Resolution.
- (2) On the same day that the ECFSA issues the Series 2008A Bonds, the County will also issue general obligation “mirror” bonds (the “Mirror Bonds”) having substantially the same coupons, prices, and/or yields; payment dates; and maturity dates as the Series 2008A Bonds.
- (3) The Mirror Bonds will not be pledged to the repayment of the Series 2008A Bonds.

(4) After their issuance, the Mirror Bonds shall be considered assets held by the ECFSA, unless and until the County receives notice that two (2) bond Rating Agencies have rated the County in any “A” category, including, but not limited to, “A3” or “A-.” Receipt of such notice on or before February 1, 2028, shall constitute a “Benchmark Event.” The “Rating Agencies” shall include Moody’s, Fitch, Standard & Poors, and their successors and assigns, and, should one or more of these entities no longer exist, any other nationally recognized agency approved by the Insurer for the Series 2008A Bonds and the Mirror Bonds.

(5) If and only if a Benchmark Event occurs on or before February 1, 2028, the owners of interests in the Series 2008A Bonds will exchange their ownership interests in such Bonds for ownership interests in the Mirror Bonds, pursuant to the following procedure:

(a) Within five (5) days after the occurrence of the Benchmark Event, the County will notify the Trustee and the Insurer for the Series 2008A Bonds and the Mirror Bonds, so that they might commence the mandatory exchange process.

(b) Within ninety (90) days after receiving notice of the Benchmark Event, the Trustee will complete the exchange via the DTC Book-entry System.

(c) Upon such exchange, the Series 2008A Bonds shall be defeased.

(6) If the Benchmark Event does not occur on or before February 1, 2028, no exchange in ownership interests in the Series 2008A Bonds for ownership interests in the Mirror Bonds shall take place.

(7) A single Insurer will agree to issue a policy to insure (i) the Series 2008A Bonds until their maturity or retirement; and (ii) the Mirror Bonds, in the event that the Series 2008A Bonds are defeased upon the occurrence of the Benchmark Event, as discussed above. The Insurer will further agree not to charge any additional costs upon any transfer of insurance from the Series 2008A Bonds to the Mirror Bonds.

(8) The ECFSA will use County sales tax revenues to make debt service payments on the Series 2008A Bonds, once the ECFSA has used such revenues to pay its operating expenses.

(9) The County’s paying agent will deposit debt service payments on the Mirror Bonds with the Trustee, pursuant to a schedule providing for regular payments that will take place three (3) or fewer days prior to each ECFSA debt service payment on the Series 2008A Bonds.

(10) If, on any day when the ECFSA receives County sales tax revenues, the Trustee has on deposit sufficient funds to satisfy fully the next debt service payment due on the Series 2008A Bonds, the ECFSA will not deposit any such sales tax revenues with the Trustee for the purpose of paying debt service. Rather, it will transfer to the County any sales tax revenues that remain after the ECFSA has used them to pay operating expenses.

BE IT FURTHER RESOLVED that the ECFSA shall enter with the County into any and all agreements necessary to effectuate the issuance of the Series 2008A Bonds and the Mirror Bonds, which agreements shall be in a form that is satisfactory to the ECFSA in its sole discretion; and

BE IT FURTHER RESOLVED that the ECFSA authorizes its Bond Counsel, Phillips Lytle LLP, to prepare for ECFSA approval any and all documentation that is necessary to effectuate the issuance of the Series 2008A Bonds, including, but not limited to, indentures, a financing agreement, offering circulars, a purchase agreement by and among the ECFSA and its underwriter(s), and a continuing disclosure agreement.

This resolution shall take effect immediately.

Date: January 4, 2008

Stanley J. Keysa
Secretary