COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

February 12, 2013

James Sampson, Chairman
Erie County Fiscal Stability Authority
295 Main Street, Room 946
Buffalo, New York 14203

Re: Erie County Comptroller Stefan Mychajliw's Memorandum Regarding the 2013-2016 Revised Erie County Four Year Financial Plan

Dear Chairman Sampson:

I am writing in response to Erie County Comptroller Stefan Mychajliw's February 11, 2013 memorandum ("Memorandum") and his oral remarks to the Erie County Fiscal Stability Authority ("ECFSA") on February 11th regarding this administration's revised 2013-2016 Four Year Financial Plan ("Plan") which we transmitted to ECFSA on February 7, 2013.

I need to preface my comments by pointing out the numerous factual errors, misrepresentations, and misunderstandings expressed by Mr. Mychajliw in his Memorandum. It appears that in just his first month on the job, Mr. Mychajliw has ignored the genuine fiscal condition of Erie County and has opined, with scant evidence or analysis behind his comments, that ECFSA should declare a control period on Erie County. Mr. Mychajliw makes such a statement based on his fundamental misunderstanding of cash flow and budgeting and based on several modest changes to the out years of the Plan necessitated by the County Legislature's December 2012 amendments to the 2013 Budget.

It is unnecessary to go into extraneous detail regarding Mr. Mychajliw's fundamental misunderstandings of cash flow and budgeting, as they have been previously corrected in a letter to Mr. Mychajliw dated January 16, 2013. However, I must point out several matters of concern to my office.

In oral testimony before the Erie County Legislature's Finance and Management Committee on January 31, 2013, Mr. Mychajliw and his Deputy Comptroller Gregory Gach noted that the County's cash flow difficulties in December 2012 and early January 2013 were due to timing issues with the County's receipt of state aid payments from New York State and agreed with my office that the temporary cash flow situation was principally due to delayed State payments to Erie County. Now, in his Memorandum analyzing the administration's Plan, Mr. Mychajliw is asserting in writing that is not the case, and instead, that the cash flow problem is a budget problem.

In mixing supposition and personal opinion with a scattering of facts, Mr. Mychajliw suggests that a transitory cash flow situation and manageable projected $8 million budget gaps in 2014-2016 are equivalent to the 2004-2005 situation that found the County with a more than $200 million cumulative budget gap and the Red/Green budget crisis. I find it disappointing and potentially dangerous for the County's chief financial officer to engage in such erroneous speculation with no grounding in any facts. We have concerns with the potential unintended consequences from such rash and ill-founded comments, including from rating agencies.

In his Memorandum, Mr. Mychajliw wrote: "The administration issued an additional $35 million in borrowing via a Revenue Anticipation Note (RAN) in 2012 with the specific intent to pay the $29 million Intergovernmental Transfer (IGT) payment to the Erie County Medical Center (ECMCC). The administration reached a deal to "kick the can" and delay the payment to 2013, ***but it appears the $35 million was spent in 2012 to try to balance the budget***"(emphasis added).

Comptroller Mychajliw's statement is demonstrably false, as the 2012 audited financial statements from the Comptroller's independent outside auditors Drescher & Malecki LLP will demonstrate when they are released in June 2013. The County did not, does not, and cannot legally under federal and state regulations, utilize the proceeds from revenue anticipation notes for budgetary purposes, but only for cash flow, as Erie County has done and will continue to do. I would further note that it was not the Poloncarz administration that issued the 2012 RAN, but the ECFSA acting on behalf of the County Comptroller's Office, using cash flow projections made in 2012 by Gregory Gach, Mr. Mychajliw's new Deputy Comptroller. If there was an error in the County Comptroller's 2012 cash flow projections, it started and ended with Mr. Gach.

Furthermore, Mr. Mychajliw wrote: "Can you imagine the devastating impact on the 2012 budget if that $29 million IGT payment had to be made as previously scheduled last year? The harsh fiscal realities facing the Erie County budget were not dealt with head on." As ECFSA is aware, in 2012 the County reached an agreement with Erie County Medical Center Corporation ("ECMCC") providing a $28 million stabilization option for IGT payments in which the County is held harmless from spikes above $16.2 million in annual payments. Under the agreement, which was approved by not only ECMCC and the County Legislature (unanimously) but also the New York State Supreme Court, the County will now pay a net of $16.2 million annually for 2012, 2013 and 2014 (which amount was provided for in the 2012 and 2013 budgets). Mr. Mychajliw's comment is factually incorrect and his assertion is wrong.

Additionally in his Memorandum, Mr. Mychajliw engages in a lengthy discussion of sales tax and the final 2012 sales tax revenues for the County in which he refers to "fiscal instability." Unfortunately, this assertion is also made with little factual basis. It is true, as we mentioned at the February 11th ECFSA Finance Committee meeting, that the County fell just barely below budget for 2012 on sales tax. The County's budgeted sales tax revenue for 2012 – a projection which was established by Mr. Gach when he was Budget Director for the Collins administration in 2011 – was $411.0 million. The County ended 2012 with $410.7 million in revenue, or $300,000 less than budgeted. While disappointing, that variance is only .0007% (seven ten thousandths of a percent) under the 2012 Budget. This is hardly something to be panicking about or use as justification in demanding ECFSA impose a control period.

As we have stated in our testimony to ECFSA on February 11th, and as the Division of Budget and Management stated in Legislature budget hearings in November and December 2012, the 2013 sales tax revenue target was at the large end of the range of projections for sales tax. We remain optimistic about the revenue source, but concede risks with the projection and have said so. During 2013, the Division of Budget and Management will be closely monitoring sales tax, as does ECFSA's staff, and will make any necessary budgetary adjustments based on actual sales tax data and receipts as the year progresses. If sales tax revenues are lagging, we will report on that and act accordingly.

We find it disappointing that Mr. Mychajliw was either unwilling or unable to offer meaningful data and commentary as part of his Memorandum. Instead of a thorough analysis of the Plan and the 2013 Budget, most of his document rehashes extraneous cash flow arguments that he has made in the media since January 3, 2013. The administration would welcome a serious, balanced and substantive discussion with the Comptroller's Office about ways to address the 2013 structural budget gap and ways to reduce spending or enhance revenues in the out years of the Plan. We find it disappointing and a disservice to residents and taxpayers that Comptroller Mychajliw has shown little willingness to actually engage in meaningful discussions with the administration on the 2013 Budget and Plan, as further evidenced by his Memorandum.

The only real discussion of the Plan was the Comptroller's review of sales tax projections and debt service projects for the out years of the Plan. Indeed, as we stated on February 11th at the ECFSA Finance Committee meeting, the revised Plan assumes lower sales tax revenues in 2014-2016, as would be reasonably expected based on the decreases realized in 2012 sales tax revenue which occurred in February 2013 after the 2013 Budget was adopted. In addition, the Plan's assumptions for future year's debt service costs had to be reduced once the Legislature rejected the property tax increase and thus such revenue was no longer available to be used as a funding source for future year's debt service. The Plan assumes lower borrowing amounts for annual capital projects but includes the new debt service expense associated with the special borrowing of $40 million for the Ralph Wilson Stadium improvements which the County

Legislature unanimously approved in the Buffalo Bills memorandum of understanding in January 2013. Contrary to Mr. Mychajliw's insinuation, the Legislature is fully aware of this new debt service expense as they approved the Bills' memorandum of understanding after the 2013 Budget was adopted.

In general we find it disappointing that, in his analysis, Comptroller Mychajliw not only provides little factually correct data to support is opinions but also offers no suggestions for solutions to closing gaps and actually attacks the potential gap closers available to the County, subject to legislative approvals. He questions the use of a modest amount of appropriated fund balance ($5 million in 2014 and $2 million in 2015 out of an available $83 million) to help close gaps, but offers no alternatives for gap closers. If Mr. Mychajliw is against the use of a small amount of fund balance, and is opposed to real cuts to recurring expenses, then seemingly, one must assume that he supports a property tax increase or is content with structurally unbalanced budgeting.

Finally, several times, Mr. Mychajliw makes references and insinuations to a 2012 deficit while offering no data, quantification or basis for his claims, other than the previously-mentioned and discredited 2012 RAN commentary. I think we can all agree that any public claims about critical financial issues affecting Erie County deserves a more thoughtful and serious approach, especially for the County's elected chief financial officer.

Our revised Plan for 2013-2016 offers options for County policymakers to take, should they be so willing, to realistically and structurally close budget gaps for 2013-2016 through a mix of revenue enhancement and reductions in spending. Additionally, Mr. Mychajliw's belief that the County is headed down the path towards a "red" and "green" budget situation appears to be ill-informed and poorly researched. Nothing could be farther from truth. The Plan we have submitted for your approval simply offers a number of potential options for closing projected budget gaps for consideration by the Legislature. That is why the narrative heading was entitled "potential gap closers." Rather than "kicking the can" down the road, as Mr. Mychajliw wrote in his Memorandum, this administration is committed to fiscal stability and, if necessary, painful choices to balance the budget.

Let me be clear: as we stated in our oral testimony on February 11th, the County Executive does not support any cuts to vital quality of life and other County services that the residents of our community support. Far from it, we wish for those services to remain. However, with significant increases in State and other mandated expenses, no increase in the property tax levy rate since 2009 and a loss of assessment growth, the County may be left without any other options but to cut those programs and services that are not mandated. The County Legislature cannot have it both ways: not developing new recurring revenue and not making real, structurally balanced reductions in spending. Choices, even painful ones, must be made. The County Executive made it clear during deliberations on the 2013 Budget and afterwards that he is prepared to lead the deliberations that will produce a solution, perhaps, a painful solution, that gains a majority of support in the Legislature.

If you have any questions regarding the Plan before your February 19, 2013 board meeting please do not hesitate to contact me. Thank you in advance for your assistance and courtesies.

Sincerely yours,

Robert W. Keating
Director of Budget and Management

MCP/tc

cc: Erie County Legislature
Erie County Comptroller Stefan Mychajliw
Mark C. Poloncarz, Erie County Executive