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September 28, 2012

COUNTY OF ERIE

DAVID J. SHENK
COMPTROLLER

Hon. Joseph Lorigo
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Re: 2012 Capital Borrowing – Proceeds and Costs of Issuance

Dear Legislator Lorigo:

This correspondence is in response to your letter regarding the par amount of bonds sold by Erie County ("the County") for the 2012 capital program and related funds for the Buffalo Zoological Gardens.

Based on capital funding requests by the County Executive's departments and their projections for the County's 2012 construction needs, on March 29, 2012 your Honorable Body authorized the 2012 Consolidated Bond Resolution and the Zoo initiative at a maximum cost of $24,200,291. However, this authorization does not necessarily mean the County would sell that amount in bonds – in the past, the County has sold bonds in a lower amount, as prudent, based on discussions with the county administration on project/financial needs and market conditions.

Section 302(r) of the Erie County Charter specifies that the County Executive possesses the power to "determine annually the amount of capital borrowings required to fund capital projects which were approved by the legislature in the current or prior year budgets." Thus, once the Legislature approves a bond resolution, the County Executive informs my office of the projects to be financed and the amounts in the capital bond sale.

On August 14, 2012, the County issued $20,960,000 par amount of bonds with a premium of $3,244,665. After the costs of issuance were paid, the total funds available to the County were $23,987,689.04. This transaction was structured in this manner on the advice of the County's financial advisor and was approved by the County's bond counsel. In the past, the County sold bonds at a premium. By structuring the bond sale in this manner, my office was able to obtain the lowest interest costs for the County and to reduce the debt service expense on $3.2 million of bonds (i.e., the premium).

If the County had issued the full principal amount of Bonds authorized in the capital borrowing (consolidated bond) resolution and sold the Bonds at such a significant premium, the County would have received more than $27 million of Bond proceeds which is far in excess of the amounts authorized by the County Legislature to be expended by the County for the stated purposes. In addition, issuing bonds in an amount greater than the costs of the purposes would not have been permissible under the Internal Revenue Code of 1986, as amended. Accordingly, the County could not issue the Bonds in the full principal amounts authorized in the resolutions but rather needed to sell the amount of Bonds, which combined with the premium paid by the Underwriter, would result in an amount of proceeds to the County equal to the amounts authorized in the resolution.

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As Erie County's Chief Fiscal Officer, my office consulted with the administration on this process, and administration officials opted to reduce spending in two project accounts (Code Compliance and Mechanical/Electrical/Plumbing) administered by the Department of Public Works to offset the difference between the $24.2 million authorized and $23.99 million bond proceeds received.

In summary, the County borrowed enough to cover all projects relating to the 2012 capital borrowing and there are no project issues arising from this process.

Sincerely,

David J. Shenk
Erie County Comptroller

cc: Erie County Legislature
Erie County Executive Mark C. Poloncarz
Robert W. Keating, Director of Budget and Management