

**Erie County Legislature  
Amendment to COMM. 5E-18 (2017)  
March 23, 2017**

Delete the Sixth WHEREAS Clause in its Entirety.

# SUSPENSION



## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

March 6, 2017

Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

Dear Honorable Members:

After countless discussions with various stakeholders regarding the need of the Erie County Medical Center to modernize its facilities, I have decided to formally submit the following Declaration of Need as requested by the Erie County Medical Center calling on the Erie County Fiscal Stability Authority to initiate the borrowing process on behalf of the hospital.

Should your honorable body require further information, I encourage you to contact my office.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark Poloncarz", with a stylized flourish at the end.

Mark C. Poloncarz  
Erie County Executive

Enclosure  
CC: ECFSA  
ECMC

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## EXTRACT OF MINUTES

Meeting of the County Legislature of  
the County of Erie, New York.

\_\_\_\_\_, 2017

\* \* \*

A regular meeting of the County Legislature of the County of Erie, New York, was held at the Chambers of the Erie County Legislature, in the Erie County Hall, Buffalo, New York, in said County, on \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock P.M. (Prevailing Time).

The following Legislators were present:

There were absent:

Also present: Karen M. McCarthy, Clerk of the Legislature

\* \* \*

Legislator \_\_\_\_\_ offered the following resolution and moved  
its adoption:

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WHEREAS, the County of Erie is authorized pursuant to Title 6 of Article 10-C of the Public Authorities Law, constituting Chapter 43-A of the Consolidated Laws of the State of New York (the ECMCC Act”) to lend its money or credit to or in aid of the Erie County Medical Center Corporation (“ECMCC”) for the purpose of providing health related facilities or hospital facilities, and for facilities incidental or appurtenant thereto; and

WHEREAS, ECMCC’s Governing Board has adopted on October 13, 2016 its resolution requesting that the County provide financial assistance to ECMCC in order to enable ECMCC to finance a portion of the costs of various capital improvements to ECMCC healthcare facilities at the estimated maximum cost of \$120 million as described in the form of Declaration of Need set forth in section 2 of this resolution (the “Declaration of Need”), together with related costs of issuance; and

WHEREAS, the County has agreed pursuant to applicable state law and the Sale, Purchase and Operation Agreement dated January 1, 2004 between the County and ECMCC, as amended (the “SPO Agreement”) to lend its money to ECMCC to fund capital projects of ECMCC upon satisfaction of certain conditions as set forth in the SPO Agreement; and

WHEREAS, the Erie County Fiscal Stability Authority (“ECFSA”) is authorized pursuant to applicable provisions of state law and the Financing Agreement dated as of May 1, 2009, as amended, between the ECFSA and the County, to provide financing assistance to the County to finance such County loan to ECMCC, upon approval and submittal by the County to ECFSA of the Declaration of Need; and

WHEREAS, ECMCC proposes to issue to the County its Senior Revenue Bonds, Series 2017 (the “2017 ECMCC Bonds”) in the aggregate principal amount of up to \$100,000,000, pursuant to the Master Trust Indenture between ECMCC and HSBC Bank USA, National

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Association, as Master Trustee (the “Master Trustee”), dated as of August 1, 2004 as amended (the “Master Trust Indenture”) and a supplemental indenture between ECMCC and the Master Trustee (the “Third Supplemental Indenture”) in order to secure repayment of such loan by ECMCC to the County; and

WHEREAS, the financing of such County loan to ECMCC through the issuance of ECFSA bonds, with repayment of such loan secured by the 2017 ECMCC Bonds, is expected to provide significant annual debt service savings to ECMCC over the term of such bonds, and in consideration of such savings ECMCC has proposed to pay certain amounts to the County (“Points”) equal to the present value of such debt service savings; the exact amount of such Points to be determined when the ECFSA’s bonds are priced and sold to capital market investors and such present value has been finalized; and

WHEREAS, ECMCC issued its Erie County-Guaranteed Senior Revenue Bonds, Series 2004 (Federally Taxable) (the “2004 ECMCC Bonds”) pursuant to the Master Trust Indenture and the First Supplemental Indenture between ECMCC and the Master Trustee dated as of August 1, 2004; and

WHEREAS, the County and ECMCC are parties to that certain Guaranty Agreement No. 2 dated as of August 1, 2004 (the “Guaranty”), pursuant to which the County guaranteed the punctual payment of the 2004 ECMCC Bonds; and

WHEREAS, ECMCC issued its Senior Revenue Bonds, Series 2011 registered in the name of the County as owner (the “2011 ECMCC Bonds”) pursuant to the Master Trust Indenture and the Second Supplemental Indenture between ECMCC and the Master Trustee dated as of August 1, 2011; and

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WHEREAS, pursuant to the Master Trust Indenture, the County by having issued the Guaranty is deemed the owner of the 2004 ECMCC Bonds for purposes of the Master Trust Indenture, including provisions thereof providing for, among other things, County consent to execution, delivery and performance of the Third Supplemental Indenture and the 2017 ECMCC Bonds; and

WHEREAS, the County is the owner of the 2011 ECMCC Bonds for purposes of the Master Trust Indenture, including provisions thereof providing for, among other things, County consent to execution, delivery and performance of the Third Supplemental Indenture and the 2017 ECMCC Bonds; and

WHEREAS, ECMCC may not execute and deliver the Third Supplemental Indenture and the 2017 ECMCC Bonds without such consents of the County pursuant to the Guaranty and the Master Trust Indenture;

NOW, THEREFORE, BE IT

RESOLVED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ERIE, NEW YORK, AS FOLLOWS:

Section 1. Pursuant to the provisions of the ECMCC Act and in accordance with the terms and conditions of the SPO Agreement, the County of Erie, New York (herein called “County”), is hereby authorized to make a loan to ECMCC in an aggregate amount not to exceed \$100,000,000 to fund a portion of the costs of various capital improvements to ECMCC healthcare facilities at the respective estimated costs as described in the form of Declaration of Need set forth in Section 2 hereof. The County Executive is hereby authorized on behalf of the County to execute a loan agreement between the County and ECMCC and a consent to the execution, delivery and performance by ECMCC of the Third Supplemental Indenture and the

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2017 ECMCC Bonds in order to secure repayment by ECMCC to the County of such loan. The County Executive and County Comptroller are hereby authorized to execute a loan agreement between the County and ECFSA related to the financing assistance by ECFSA to the County as described in the recitals hereto, and to execute any agreements, certificates, instruments and other documents on behalf of the County that are necessary or desirable for carrying out the transactions contemplated by such loan agreements, this Resolution and the Third Supplemental Indenture, as may be deemed necessary upon advice of counsel and other retained professionals.

Section 2. The Erie County Legislature hereby approves the following form of Declaration of Need for ECFSA financing assistance to the County to finance the County loan to ECMCC as set forth in the recitals hereof:

## **FORM OF COUNTY OF ERIE DECLARATION OF NEED**

I, Mark Poloncarz, County Executive of the County of Erie (the "County"), a municipal corporation of the State of New York, acting pursuant to Title 3 of Article 10-D of the New York Public Authorities Law (the "Act"), and further pursuant to the Financing Agreement dated as of May 1, 2009, as amended, between the Erie County Fiscal Stability Authority, a public benefit corporation of the State of New York (the "Authority") and the County (the "Agreement") HEREBY DETERMINE AND CERTIFY as follows:

1. A need for financing assistance, as described in Section 3961(1) of the Act, is hereby determined and declared to exist. The amounts of the Financeable Costs hereby requested to be undertaken are set forth on **Appendix I** hereto, which **Appendix I** is incorporated herein as an integral part of this Declaration of Need.

2. The County represents and affirms that the foregoing financing of Financeable Costs by the Authority is authorized by the Act and is consistent with the current adopted County budget and that such Financeable Costs could be financed by the County by the issuance of its bonds or notes as of the date of this Declaration of Need, there being in effect with respect to each ECMCC capital project constituting such a Financeable Cost (i) findings or other proceedings meeting the requirements of the State Environmental Quality Review Act and (ii) all proceedings necessary under the County Charter and all other applicable State law necessary to authorize the appropriation and expenditure of County funds for such purposes.

3. The County reaffirms the provisions of the Agreement, including but not limited to each of the covenants, agreements and indemnities therein and agrees herein to provide prompt notice of any fact or circumstances which would with the passage of time or

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otherwise give rise to any violation or contravention of the terms of this Declaration of Need, the Agreement or any financial plan submitted to or approved by the Authority.

4. Pursuant to the Act, the financing plan reflected in this Declaration of Need and the Agreement, the Authority is hereby requested to finance, in whole or in part, the Financeable Costs set forth in **Appendix I** hereto, including the ECMCC capital projects identified therein or as may be designated in the County's capital budget, if any, as in effect from time to time. In no event shall the amount of such financing in any fiscal year exceed the amount of the Declaration of Need for such year, as it may be amended from time to time by an amended Declaration of Need.

5. The County understands and agrees to provide the Authority with any supporting data, descriptions or materials which the Authority requests in connection with any Financeable Costs referred to in this Declaration of Need.

All terms in this Declaration of Need not otherwise defined herein shall have the meanings set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this \_\_\_\_\_ day of March, 2017.

\_\_\_\_\_  
County Executive  
County of Erie

I hereby certify that the form and  
substance of this Declaration  
of Need have been duly approved by the  
Erie County Legislature

\_\_\_\_\_  
Clerk of the Erie County Legislature



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## **Appendix I to County of Erie Declaration of Need Submitted to the Erie County Fiscal Stability Authority on March \_\_, 2017**

### **Summary of Uses of 2017 ECFSA Bond Proceeds to be loaned by Erie County to Erie County Medical Center Corporation**

#### **Trauma Center**

ECMCC is home to Western New York's Adult Trauma and Burn Center and is proud to have recently earned accreditation from the American College of Surgeons (ACS) as the Level I Adult Trauma Center for our region without any cited deficiencies. ECMCC is also the region's only Comprehensive Psychiatric Emergency Department for the eight counties that make up Western New York. While these services have received many accreditation and third party measures that affirm the quality of care being delivered, the main Emergency Department needs to be reconfigured to meet current volume demands and improve technology to keep up with current trends that keep it state-of-the-art. The ECMCC favorable survey results were based on the quality of the physicians and nurses providing care that have developed life saving care coordination so that patient care is never compromised; however, the work processes are not as cost efficient as what a new physical plant could accomplish. The ACS surveyors strongly encouraged ECMCC to have a new physical plant in operation at the time of its next survey. ECMCC has worked with an accomplished architectural firm to evaluate various alternatives and has concluded that a new structure on the ground floor should be constructed in front of the current emergency department space for easier access for over 65,000 patient visits per year. Another factor in the decision to build a new emergency department, rather than renovate, was to be the least disruptive to current operations. The costs of the project include the cost to construct the new building as well as purchase and install the equipment required to support the service, including state-of-the-art imaging, patient monitors and others.

#### **Land Acquisition and Parking**

The new Emergency Department and Trauma Center structure will displace parking spaces for patients and employees and put pressure on an already crowded system of parking. The current crowded parking is the result of the investments that ECMCC has made in its clinical programs and the growth we have enjoyed in terms of patients seeking ECMCC as their choice for health care services as well as the employees that support the provision of that health care. The costs for this project include the acquisition of land immediately adjacent to the ECMCC campus and the transformation of that land into necessary and suitable parking.

#### **Energy Projects**

There are several components of the ECMCC tower that are the original equipment installed at the time of its construction. They include emergency back-up generators for electricity as well as

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boilers and chillers. In addition, while some limited modifications have been made over time, there are many energy controls and management systems that require upgrade that will provide energy savings over time. The projects funded by the bond proceeds include the replacement equipment and its installation in the ECMCC tower.

## **Building Envelope**

Similar to the energy projects noted above, the windows and other building exterior components are the originals installed at the time of construction of the tower. The costs of the project include the evaluation of the entire building envelope including windows and roofs and the replacement of the necessary components.

## **Elevators**

Continuing on the theme noted above related to original equipment, there are several elevators that are originals and in need of replacement. The replacement elevators funded by the project will not only save energy costs, but will also save on the significant repair and maintenance costs being incurred.

## **Clinics**

The outpatient Orthopedic clinic (The Center for Orthopedic Care) has recently been renovated to accommodate the significant growth of patients seeking their care at ECMCC. The hospital's remaining clinics are in need of similar renovations to reflect the state-of-the-art practice of medicine and to accommodate the continuing growth in health care service lines throughout ECMCC. In addition, with the reconfiguration of the health care system shifting patients from inpatient services to outpatient services, including the mandated DSRIP initiative, the volume of patients requiring care at the ECMCC clinics is expected to continue to grow well into the future.

## **Education Center**

As a major teaching hospital affiliate of the University at Buffalo School of Medicine and Dentistry, as well as other affiliated teaching programs in other medical professions, ECMCC requires dedicated space with which to meet its mission as an educational institution. The education center funded by the proceeds will not only provide this much needed space, but will also provide space for staff education and training to maintain their professional skills and continue to learn best practices in the provision of health care as the science evolves.

## **Nursing Unit Renovations**

With the reconfiguration of the health care system and the shift from inpatient services to outpatient and other services, ECMCC must reposition itself for the most cost-effective and productive use of its physical plant in generating sufficient revenues to support the operations of ECMCC. The renovations funded by the proceeds will position ECMCC to use its space in the most cost effective fashion as patient care units are transformed to meet the needs of the community.

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## Bond Proceeds Capital Expenditure

	<u>Total</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Useful Life</u>
Trauma Center / ED Project	45	3	20	22		30
Land Acquisition and Parking	3	1	2			30
Energy Projects						
Energy Controls / Management	13		13			25
Boilers and Chillers	15			15		40
Generators	<u>10</u>		10			40
Total Energy Projects	38					
Building Envelope	15		2	5	8	30
Elevators	3		1	1	1	25
Clinics	5		1	2	2	25
Education Center	1			1		25
Nursing Unit Renovations	<u>10</u>	<u>-</u>	<u>2</u>	<u>4</u>	<u>4</u>	<u>25</u>
Total Capital Requirements	120	4	51	50	15	20
Capital Campaign Funding	<u>(20)</u>	<u>-</u>	<u>-</u>	<u>(10)</u>	<u>(10)</u>	
Net Capital Requirements	<u>100</u>	<u>4</u>	<u>51</u>	<u>40</u>	<u>5</u>	

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Section 3. Certified copies of this resolution be forwarded to the County Executive's Office, the County Attorney's Office, the Division of Budget and Management, the Comptroller's Office, and Todd Miles, Esq. Harris Beach PLLC; Milan Tyler, Esq. Phillips Lytle LLP and Anthony Colucci, Esq., ECMCC General Counsel.

Section 4. This Resolution shall take effect immediately upon approval by the County Executive.

\* \* \*

\* \* \*

The adoption of the foregoing resolution was seconded by Legislator \_\_\_\_\_  
\_\_\_\_\_ and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

THE RESOLUTION WAS DECLARED ADOPTED.

\* \* \*

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Dated: Buffalo, New York,

\_\_\_\_\_, 2017

The foregoing Resolution is hereby approved

\_\_\_\_\_  
County Executive

I, Karen M. McCarthy, HEREBY CERTIFY that the County Executive of Erie County approved a Resolution of which the foregoing is a certified copy and returned the same for filing in the office of the Erie County Legislature.

\_\_\_\_\_, 2017.

\_\_\_\_\_  
Karen M. McCarthy  
Clerk of the Erie County  
Legislature

APPROVED AS TO FORM:

By \_\_\_\_\_  
Erie County Attorney

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## CERTIFICATE

I, Karen M. McCarthy, Clerk of the Erie County Legislature, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the Erie County Legislature duly called and held on \_\_\_\_\_, 2017, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said County Legislature and is a true, complete and correct copy thereof.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed the corporate seal of said County  
this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Karen M. McCarthy  
Clerk of the Erie County  
Legislature