

2013 CONSTRUCTION COORDINATING AGREEMENT

THIS 2013 CONSTRUCTION COORDINATING AGREEMENT (together with all renewals, replacements, modifications and amendments thereof, this “2013 Construction Coordinating Agreement”) is made as of the ____ day of _____, 2013, by and among **THE COUNTY OF ERIE**, a New York municipal corporation having an office and principal place of business at 95 Franklin Street, Buffalo, New York 14202 (the “County”), **ERIE COUNTY STADIUM CORPORATION**, a New York business corporation and wholly-owned subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development, a public benefit corporation having an office and principal place of business at 633 Third Avenue, New York 10017-6754 (the “ECSC”) and **BUFFALO BILLS, INC.**, a New York business corporation having an office and principal place of business at One Bills Drive, Orchard Park, New York 14127 (the “Bills”). The County, the ECSC and the Bills are hereinafter sometimes collectively referred to as the “Parties”.

RECITALS:

WHEREAS, the County is the owner of an approximately 197.65-acre parcel of real property situated in the Town of Orchard Park, New York, more particularly described on Exhibit A attached hereto and made a part hereof (the “Land”), which parcel is improved by the Stadium Complex (as such term is defined in the 2013 Stadium Lease referenced below); and

WHEREAS, pursuant to its rights as a National Football League franchisee, the Bills is the owner of the “Buffalo Bills” football team (the “Team”); and

WHEREAS, pursuant to a certain Agreement of Lease, dated as of October 15, 1971, between the County and the Bills’ predecessor in interest (as amended, the “1971 Original Lease”), the Team has used and occupied the County’s football stadium for its home games from 1973, through the expiration of the term of the 1971 Original Lease on July 31, 1998; and

WHEREAS, upon the expiration of the 1971 Original Lease, (a) the County and the ECSC entered into that certain Master Lease dated as of August 1, 1998 (together with all renewals, replacements, modifications and amendments thereof, the “1998 Master Lease”), pursuant to which 1998 Master Lease the County leased the Stadium Complex to the ECSC, which 1998 Master Lease expires on July 31, 2013, and (b) the ECSC and the Bills entered into that certain Stadium Lease dated as of August 1, 1998 (together with all renewals, replacements, modifications and amendments thereof, the “1998 Stadium Lease”), for the use and occupancy of the Stadium Complex, which 1998 Stadium Lease term expires on July 30, 2013; and

WHEREAS, pursuant to Chapter 387 of the 1998 Session Laws of New York the State of New York (the “State”) found and declared, among other things, that the refurbishment, renovation, improvement, operation, maintenance, repair and financing of the Stadium Complex constituted a public and governmental purpose for the benefit of the citizens of the County and the State, and authorized the implementation of the actions contained in the 1998 Stadium Lease and related agreements, including, without limitation, the execution and delivery of the 1998 Stadium Lease and certain other documents relating to the Stadium Complex; and

WHEREAS, the County, the State and the Bills have determined that the Team, by playing its Home Games at the Stadium Complex and otherwise being associated with the Buffalo, New York area,

encourages and fosters economic development and prosperity for the citizens of Erie County and Western New York, enhances the image of Erie County and Western New York and provides recreational and other opportunities for the citizens of Erie County and Western New York; and

WHEREAS, the citizens of Western New York have supported and enjoyed the Team since its inception such that the Team has become an integral part of the Western New York community; and

WHEREAS, the Bills desire to continue the use of the Stadium Complex so that the Team can play Home Games at the Stadium Complex beyond the expiration date of the 1998 Stadium Lease provided that certain improvements are made to the Stadium Complex; and

WHEREAS, on December 21, 2012, the New York State Urban Development Corporation d/b/a Empire State Development, a New York public benefit corporation having an office and principal place of business at 633 Third Avenue, New York, New York 10017-6754 (“ESD”), the County and the Bills entered into a Memorandum of Understanding (the “MOU”), setting forth in principle certain actions to be undertaken by each of the parties to enable the Team to continue to play the Home Games, as defined below, at the Stadium Complex through July 30, 2023; and

WHEREAS, certain of the actions contemplated by the MOU relate to the refurbishing, renovation and improvement of the Stadium Complex at a cost of approximately **ONE HUNDRED THIRTY MILLION DOLLARS (\$130,000,000)**; and

WHEREAS, under the New York State Urban Development Corporation Act, Chapter 174 of the 1968 Laws of New York, as amended (the “Act”), ESD is empowered to lease real property from municipalities and to rehabilitate and improve such real property; and

WHEREAS, pursuant to Section 12 of the Act, ESD is empowered to create subsidiary corporations and to confer upon such subsidiary corporations all “privileges, immunities, tax exemptions and other exemptions,” which ESD enjoys, including, without limitation, such privileges, immunities, tax exemptions and other exemptions that inure to ESD by virtue of ESD’s status as a public benefit corporation; and

WHEREAS, on February 6, 1998, ESD filed a Certificate of Incorporation with the New York Secretary of State forming the ECSC; and

WHEREAS, paragraph seven of such Certificate of Incorporation provides that the ECSC shall enjoy all of the “privileges, immunities, tax exemptions and other exemptions” of ESD; and

WHEREAS, the State has confirmed that the ECSC is a public benefit corporation; and

WHEREAS, prior to or simultaneously with the execution of the 2013 Stadium Lease, the Bills shall enter into various agreements, directly or indirectly, with members of the Project Team, as defined below, in connection with certain pre-construction work related to the refurbishing, renovation and improvement of the Stadium Complex, which may include agreements relating to architectural, design, engineering, surveying, environmental, code compliance, Americans with Disabilities Act compliance, and construction planning services (collectively, the “Pre-Construction Agreements”); and

WHEREAS, to implement the refurbishing, renovation and improvement of the Stadium Complex, the ECSC, the County and the Bills have agreed to enter into this 2013 Construction Coordinating Agreement; and

WHEREAS, the ECSC, the Bills and the County have agreed to pay for such refurbishing, renovation and improvements on the terms and conditions set forth in this 2013 Construction Coordinating Agreement; and

WHEREAS, the County has agreed to lease the Stadium Complex to the ECSC pursuant to that certain 2013 Master Lease, dated as of the Effective Date, between the County, as lessor, and the ECSC, as lessee (together with all renewals, replacements, modifications and amendments thereof, the “2013 Master Lease”); and

WHEREAS, the ECSC has agreed to simultaneously sublease the Stadium Complex to the Bills on the terms and conditions set forth in the 2013 Stadium Lease, dated as of the Effective Date, between the ECSC, as lessor, and the Bills, as lessee (together with all renewals, replacements, modifications and amendments thereof, the “2013 Stadium Lease”); and

WHEREAS, in its capacity as “lead agency,” the County has issued, on its own behalf and on behalf of all other involved agencies, a “negative declaration” under the New York State Environmental Quality Review Act covering the refurbishing, renovation and improvement of the Stadium Complex.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the Parties contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. RECITALS; DEFINITIONS; EXHIBITS AND SCHEDULES

1.1 Recitals. The Recitals set forth above hereby are incorporated into and made a part of this 2013 Construction Coordinating Agreement as if fully set forth herein.

1.2 Definitions. As used in this 2013 Construction Coordinating Agreement, the following terms shall have the meanings ascribed thereto:

(a) Accountant: Presently, Pricewaterhouse Coopers LLP, the Bills’ certified public accounting firm, and any replacement or successor accounting firm retained by the Bills.

(b) ACIA Reserve: The ACIA Reserve established pursuant to Section 3.7 hereof.

(c) Affirmative Action Plan: The plan agreed to by the Parties, which is attached to this 2013 Construction Coordinating Agreement as Exhibit B.

(d) Alternates: The designated groups of optional construction activities related to the Stadium Complex set forth on the list attached to this 2013 Construction Coordinating Agreement as Exhibit K, as may be modified, amended or supplemented pursuant to Section 3.8(e) hereof.

(e) Apprenticeship Law: Collectively, the Erie County Local Law No. 2-2006, known as “The Erie County Workforce Development and Diversification New York State Certified Worker Training Program” and County Executive Order #011, entitled “Apprenticeship Programs on County Construction Contracts”.

(f) Approved Alternate: Any Alternate proposed by the Bills and accepted by the ECSC and the County in accordance with Section 3.8 hereof.

(g) Architect: The architect with respect to the Project shall be Populous P.C., or such other replacement or successor architect retained by the Bills in accordance with the terms and conditions of the Architect Agreements and approved by the ECSC and County in accordance with Section 3.1(b) hereof.

(h) Architect Agreements: Any agreement that relates to the design of the Project between the Bills and/or the Architect, or between the Architect and any sub-consultant, together with all renewals, replacements, modifications and amendments thereof authorized in accordance with Section 3.1 hereof.

(i) Base Budget: The base budget amount of One Hundred Seventeen Million Dollars (\$117,000,000.00), or such other amount as may be approved by the Parties as the base budget for the Project.

(j) Bills Capital Obligations: The Bills' obligations under this 2013 Construction Coordinating Agreement to provide capital funding for its respective portion of the Budget in accordance with Section 2.4(a) hereof and to pay Project Costs attributable to the Bills' failure to timely pay or perform any of their obligations under this 2013 Construction Coordinating Agreement when the County or the ECSC, as the case may be, shall have timely paid or performed any obligations under this 2013 Construction Coordinating Agreement directly related thereto.

(k) Bills Contingency Reserve: An unfunded reserve of Four Million Six Hundred Thousand Dollars (\$4,600,000.00), maintained by the Bills for payment of Project Cost Overruns in accordance with Section 3.7(b)(ii) hereof.

(l) Bills Default: Any of the events described in Section 7.1 hereof.

(m) Bills Representative: The representative appointed by the Bills pursuant to Section 4.1 hereof.

(n) Budget: The total budget of One Hundred Thirty Million Dollars (\$130,000,000.00) for the Project as set forth in Exhibit C, which includes a Base Budget of One Hundred Seventeen Million Dollars (\$117,000,000.00), and a Project Contingency Reserve of Thirteen Million Dollars (\$13,000,000.00).

(o) Budget Surplus: The amount by which the budgeted sum for any Work Action Item exceeds the actual Project Costs incurred for such Work Action Item.

(p) Change Order: A written order directing a Contract Change which is signed by the Bills, the Architect and the CM and authorized in accordance with Section 3.6 hereof.

(q) Change Request: A written request for a Contract Change, which can take the

form of a request for either a Construction Change Directive or a Change Order.

(r) CM: LPCiminelli, Inc., or such other qualified, licensed construction manager having demonstrable experience in managing and design and construction of projects similar to the Project that is selected and approved in accordance with Section 3.1(b) hereof.

(s) CM Agreement: The Standard Form of Agreement between Owner and Construction Manager where the Construction Manager is also the Contractor (AIA A133-2009 Edition) dated as of the same date hereof, between the Bills, as Owner, and LPCiminelli, Inc., as Construction Manager, together with all renewals, replacements, modifications and amendments thereof authorized in accordance with Section 3.1 hereof.¹

(t) Commencement of the Work: The commencement of significant construction activities related to the Project.

(u) Construction Agreement: Any agreement that relates to the development, construction or equipping of the Project between the Bills and/or the CM and any Construction Provider, or between any two Construction Providers.

(v) Construction Change Directive: A written order directing a Contract Change which is prepared by the Architect, signed by the Bills and the Architect and authorized in accordance with Section 3.6 hereof.

(w) Construction Documents: Any document classified as a “Construction Document” under the CM Agreement.

(x) Construction Period: The period beginning on the Commencement of the Work and continuing until Final Completion of the Project.

(y) Construction Provider: Any contractor, subcontractor, consultant or other Person furnishing materials or construction services for the Project.

(z) Contract Change: Any Change to the Work necessitating an adjustment to the Base Budget or a modification, alteration, addition, amendment or deletion to a Construction Agreement.

(aa) Corrective Work: Any Work necessary to correct Rejected Work or to repair or replace any damage to the Project or the Stadium Complex caused by the construction of the Project.

(bb) Corrective Work Costs: All out-of-pocket fees, costs and expenses whatsoever incurred by any of the Parties in connection with the performance of the Corrective Work.

¹ Definition assumes concurrent execution of CM Agreement and that ECSC and the County will have been approved the form of agreement. If the CM Agreement will not be executed concurrently, language will need to be added to Article 3 providing for County and ECSC approval of CM Agreement.

(cc) Cost Segregation Study: A cost segregation study, the cost of which shall be borne by the Bills, that shall be completed by the Accountant with respect to the Project, and which shall identify the Qualifying Personal Property.

(dd) County Capital Obligations: The County's obligations under this 2013 Construction Coordinating Agreement to provide capital funding for its respective portion of the Budget in accordance with Section 2.2(a) hereof and to pay Project Costs attributable to the County's failure to timely pay or perform any of their obligations under this 2013 Construction Coordinating Agreement when the Bills or the ECSC, as the case may be, shall have timely paid or performed any obligations under this 2013 Construction Coordinating Agreement directly related thereto.

(ee) County Default: Any of the events described in Section 7.3 hereof.

(ff) County Representative: The representative appointed by the County pursuant to Section 4.1 hereof.

(gg) Default: Any Bills Default, County Default or ECSC Default.

(hh) Design Development Documents: Any document classified as a "Design Development Document" under the Architect Agreement.

(ii) ECSC Capital Obligations: ECSC's obligations under this 2013 Construction Coordinating Agreement to provide capital funding for its respective portion of the Budget in accordance with Section 2.3(a) hereof and to pay Project Costs attributable to ECSC's failure to timely pay or perform any of its obligations under this 2013 Construction Coordinating Agreement when the Bills or the County, as the case may be, shall have timely paid or performed any obligations under this 2013 Construction Coordinating Agreement directly related thereto.

(jj) ECSC Default: Any of the events described in Section 7.2 hereof.

(kk) ECSC Representative: The representative appointed by the ECSC pursuant to Section 4.1 hereof.

(ll) Field Change: Any change to the Work that does not result in an adjustment to the Base Budget or a modification to the applicable Construction Agreement.

(mm) Final Completion of the Project: The delivery by the Bills to the ECSC and the County of a written certification from the Architect establishing that the Project is completed and that all Punch List Items and Corrective Work have been fully and completely performed in accordance with the Plans and Specifications.

(nn) Funding Schedule: A funding schedule, attached hereto as Exhibit G, specifying the dates and timing of each Party's obligation to pay their pro rata portion of payment of Project Costs, as set forth in Sections 2.2(a), 2.3(a) and 2.4(a) hereof, to the Project Account, such funding schedule to

be modified from time to time as the Project progresses upon consent of all the Parties.

(oo) GMP: The guaranteed maximum price for the construction of the Project as set forth in the CM Agreement, as may be adjusted from time to time in accordance with Section 3.1 hereof.²

(pp) Lease Agreements: The 2013 Stadium Lease and the 2013 Master Lease.

(qq) Master Project Schedule: The schedule prepared by the CM pursuant to the CM Agreement that reflects the master schedule of the design, purchase, construction and development of the Project, the most current version of which is attached hereto as Exhibit J, as such schedule may be further modified, amended or supplemented in accordance with Section 3.2 hereof.

(rr) Plans and Specifications: The graphic and pictorial documents depicting the design, location and dimension of the Project, together with the written requirements for the materials, equipment, construction systems, standards and workmanship of the Project, including, but not limited to, the Construction Documents, Design Development Documents and the Schematic Design Documents.

(ss) Professional Agreements: The CM Agreement and the Architect Agreements.

(tt) Project: The renovation, refurbishing, improvement and equipping of the Stadium Complex as outlined in Exhibit I hereto, and as may be modified in accordance with this 2013 Construction Coordinating Agreement.

(uu) Project Account: The interest bearing account maintained by ECSC at _____, or such other bank approved by the Parties, for the receipt of funds from the Parties for payment of Project Costs.

(vv) Project Agreements: The Professional Agreements and the Construction Agreements.

(ww) Project Contingency Reserve: The Thirteen Million Dollar (\$13,000,000.00) reserve established pursuant to Section 3.7(a) of this 2013 Construction Coordinating Agreement for payment of Project Cost Overruns and funded by the Parties out of the respective payments pursuant to Sections 2.2(a), 2.3(a) and 2.4(a) hereof.

(xx) Project Cost Overrun: Any: (i) Project Costs incurred in excess of the Base Budget as a direct result of an Unforeseen Condition during the pendency of the construction of the Project; (ii) Project Costs incurred during construction of the Project which cause the total Project Costs to exceed the Base Budget and not otherwise attributable to the failure of any Party to timely pay or perform any of its obligations under this 2013 Construction Coordinating Agreement when the other Parties shall have timely paid or performed their obligations under this 2013 Construction Coordinating Agreement directly related thereto; or (iii) bidding cost overruns, in which the lowest qualifying bid with

² [NTD: Timing of delivery of GMP to be confirmed.].

respect to a Work Action Item exceeds the Base Budget amount as set forth in Exhibit C hereto for such Work Action Item.

(yy) Project Costs: All out-of-pocket fees, costs and expenses whatsoever incurred by any of the Parties in connection with the preconstruction, design, construction and equipping of the Project, including, but not limited to, all Corrective Work Costs, all fees and expenses paid by the Bills to the CM or the Architect, all CM fees and expenses, and all sums for insurance pursuant to Article 6 of this 2013 Construction Coordinating Agreement but excluding: (i) any fees or expenses incurred by any of the Parties for “in-house” personnel, (ii) any interest expenses incurred by any of the Parties in connection with obtaining financing to fund each Party’s allocable portion of the Budget and (iii) any costs incurred by any of the Parties for feasibility analysis related to the Project.

(zz) Project Damage: Any Casualty that occurs prior to Substantial Completion of the Project.

(aaa) Project Insurance Policy: Any policy of insurance required to be maintained pursuant to Section 6.1 or Section 6.2 hereof.

(bbb) Project Payment: A payment out of the Project Account for Work performed on the Project pursuant to this 2013 Construction Coordinating Agreement.

(ccc) Project Team: The term “Project Team” shall mean those third-party companies retained by the Bills in connection with the refurbishing, renovation and improvements of the Stadium Complex in connection with the Project, including, without limitation: (i) the architectural firm Populous and its subcontractors; and (ii) the construction firm LP Ciminelli Inc. and its subcontractors; provided, however, that the subcontracts governing the aforementioned subcontractors shall comply in all respects with terms of the 2013 Construction Coordinating Agreement, including, as to the ability of such subcontracts to be assigned to the County and the ECSC.

(ddd) Punch List Items: As to any Work Action Item, any uncompleted, insubstantial Work consisting of minor construction details, mechanical adjustments or decorations, the non-completion of which does not materially interfere with the use of such Work Action Item for its intended purposes.

(eee) Qualifying Personal Property: In connection with the completion of the Cost Segregation Study, all property purchased and installed at the Stadium Complex that is classified as personal property in accordance with GAAP and may be depreciated at an accelerated rate in accordance with Applicable Law.

(fff) Rejected Work: Any Work rejected by the Architect, the County, the ECSC or the Bills because of non-conformance with the Plans and Specifications, whether observed before or after Substantial Completion of the Work Action Item to which such Work relates.

(ggg) Representative: Any Party's representative appointed pursuant to Section 4.1 hereof.

(hhh) Request for Disbursement: A certified statement by the Bills requesting the disbursement of Project funds from the Project Account, substantially in the form set forth in Exhibit D hereto.

(iii) Schematic Design Document: Any document classified as a “Schematic Design Document” under the Architect Agreements.

(jjj) Special Account: A segregated account to be established and maintained by the ECSC into which all Project Insurance Policy proceeds are to be deposited.

(kkk) Substantial Completion: (a) As to any Work Action Item, the delivery by the Bills to the County and the ECSC of a Substantial Completion Certificate which certifies that, except for Punch List Items, the Work Action Item is completed in accordance with the Plans and Specifications, and describes in reasonable detail such Punch List Items, and (b) as to the Project, the delivery by the Bills to the County and the ECSC of (i) a Substantial Completion Certificate which certifies that except for Punch List Items, all Work Action Items are completed in accordance with the Plans and Specifications and describes in reasonable detail such Punch List Items, (ii) a certificate of occupancy for the Project from all applicable Governmental Authorities, and (iii) final waivers of lien and general releases from all Construction Providers.

(lll) Substantial Completion Certificate: A written certification from Architect to the County, the Bills, the ECSC and the CM as to the completion status of a Work Action Item or of the Project, as the case may be.

(mmm) Survey: Survey prepared by Nussbaumer & Clarke, Inc., dated February 6, 2013, Job No. 12J2-0512, DWG No. SC-3670.

(nnn) Unforeseen Condition: With respect to any item listed on Exhibit I hereto, a physical condition at the Stadium Complex unknown by the Bills as of December 21, 2012 and which the Bills could not have discovered by commercially reasonable means prior to the start of construction of such item.

(ooo) Work: Construction activities related to the Project.

(ppp) Work Action Items: Each Work Action Item identified in Exhibit I hereto, as modified by any Approved Alternates.

1.3 Additional Definitions. Any other capitalized terms used but not defined herein shall have the meanings ascribed thereto in Section 1.2 of the 2013 Stadium Lease.

1.4 Exhibits and Schedules. The following exhibits and schedules are attached to and made a part of this 2013 Construction Coordinating Agreement:

- EXHIBIT A - Land
- EXHIBIT B - Affirmative Action Plan
- EXHIBIT C - Budget

- EXHIBIT D - Request for Disbursement
- EXHIBIT E - Requisition Affidavit
- EXHIBIT F - CM's Insurance Requirements
- EXHIBIT G - Funding Schedule
- EXHIBIT H - Legal Opinions
- EXHIBIT I - Summary of Work Action Items comprising the Project
- EXHIBIT J - Master Project Schedule
- EXHIBIT K- Alternates

ARTICLE 2. DEVELOPMENT ACTIVITIES

2.1 Development Generally. Subject to the terms and conditions of this 2013 Construction Coordinating Agreement, including the scheduling of Work in accordance with the Master Project Schedule, the limitations set forth in the Budget and the general scope of services set forth in the CM Agreement, the Parties shall endeavor in good faith to design, construct, operate and use the Project, as contemplated in this 2013 Construction Coordinating Agreement.

2.2 Obligations of the County. In addition to the other obligations of the County set forth in this 2013 Construction Coordinating Agreement, but subject to the terms and conditions set forth herein, the County:

(a) in accordance with the Funding Schedule, shall pay or cause to be paid, Forty Million Six Hundred Fifty Four Thousand Three Hundred Fifty Dollars (\$40,654,350.00), to be deposited in the Project Account in accordance with the terms set forth herein, to fund payment of a portion of the Project Costs;

(b) shall serve as the permitting Governmental Authority for the construction of the Project, and, in such capacity, shall, subject to and in accordance with Applicable Law, promptly review all applications for necessary building permits and other construction approvals upon application by the Architect or CM on behalf of the Bills with respect to the Project, and conduct periodic inspections to close out such permits and approvals in accordance with Applicable Law;

(c) shall pay all other County Capital Obligations; and

(d) shall appoint a representative with respect to the Project in accordance with Section 4.1 hereof.

2.3 Obligations of the ECSC. In addition to the other obligations of the ECSC set forth in this 2013 Construction Coordinating Agreement, but subject to the terms and conditions set forth herein, the ECSC:

(a) in accordance with the Funding Schedule, shall pay or cause to be paid, Fifty Three Million Eight Hundred Ninety Thousand Six Hundred Fifty Dollars (\$53,890,650), to be deposited in the Project Account in accordance with the terms set forth herein, to fund payment of a portion of the Project Costs;

- (b) shall appoint a representative with respect to the Project in accordance with Section 4.1 hereof;
- (c) shall pay all other ECSC Capital Obligations; and
- (d) shall oversee the implementation of the Affirmative Action Plan.

2.4 Obligations of the Bills. In addition to the other obligations of the Bills set forth in this 2013 Construction Coordinating Agreement, but subject to the terms and conditions set forth herein, the Bills:

(a) in accordance with the Funding Schedule, shall pay or cause to be paid, Thirty Five Million Four Hundred Fifty Five Thousand Dollars (\$35,455,000.00), to be deposited in the Project Account in accordance with the terms set forth herein, to fund payment of a portion of the Project Costs;

(b) shall cause construction of the Project to proceed with reasonable diligence after the Commencement of the Work until Final Completion of the Project;

(c) shall cause the Architect in consultation with the CM to design the Project in accordance with the Professional Agreements;

(d) shall select and contract with (or cause the CM to contract with) the Construction Providers in accordance with Article 3;

(e) shall provide to the County and the ECSC “record drawings” for the Project reflecting the Project in its “as-built” condition and otherwise in such form as the County or the ECSC shall request, and the cost thereof shall constitute a Project Cost.;

(f) shall cause Project Damage, if any, to be repaired, restored and replaced in accordance with Article 5;

(g) shall implement or cause to be implemented the Affirmative Action Plan, the Project Labor Agreement, if applicable, and the Apprenticeship Law with respect to all Construction Providers and shall periodically report to the ECSC and the County the results of such implementation in accordance with the reporting obligations of the Bills to the ESD and the County specified in the Affirmative Action Plan;

(h) shall furnish the other Parties with all necessary access to the Stadium Complex for the purpose of carrying out their respective obligations hereunder in accordance with the Master Project Schedule;

(i) shall furnish the County and the ECSC, upon request, with copies of all relevant plans, specifications, drawings and other written materials in its possession with respect to the design or alteration of the Stadium Complex, including, without limitation, true, correct and complete copies of all Project Agreements;

(j) shall furnish a suitable construction trailer for the Project (complete with water, electric and telephone utility service) for the non-exclusive use of the County and the ECSC;

(k) shall pay all other Bills Capital Obligations; and

(l) shall appoint a representative with respect to the Project in accordance with Section 4.1 hereof.

2.5 Term. The term of this 2013 Construction Coordinating Agreement, unless sooner cancelled or terminated in accordance with the terms and conditions hereof, shall commence on the Effective Date and continue until (a) the Final Completion of the Project; and (b) the fulfillment of the Parties' respective obligations hereunder.

2.6 Title to Improvements; End of Term. Title to all alterations, changes, improvements and fixtures installed by or on behalf of the Bills in conjunction with the Project shall upon installation immediately vest in the County by virtue of its fee ownership of the Stadium Complex. At the expiration of the term of this 2013 Construction Coordinating Agreement, whether by reason of attainment of the Final Completion of the Project, or the earlier cancellation or termination of this 2013 Construction Coordinating Agreement in accordance with the terms and conditions hereof, the ECSC and the Bills shall deliver to the County such assignments and other documentation as the County may reasonably require in order to confirm its ownership of any such alterations, changes, improvements and fixtures subject, however, to the respective rights of the ECSC and the Bills in and to any such alterations, changes, improvements and fixtures pursuant to the terms of the Lease Agreements.

2.7 Cost Segregation Study and Qualifying Personal Property. In connection with the completion of the Project, the Parties agree that the Bills may engage the Accountant to complete the Cost Segregation Study at the end of each year of construction of the Project. Upon completion of the Cost Segregation Study at the end of each year, all Project Costs incurred with respect to Qualifying Personal Property shall be allocated to the Bills in relation to its obligation to contribute payment of its allocable share of the Budget in accordance with Sections 2.4(a) and 4.3(f) hereof, up to a maximum amount of the contribution of the Bills for payment of Project Costs to such year-end date. Notwithstanding the foregoing, the allocation of Qualifying Personal Property to the Bills shall be effective only to the extent that the County receives an opinion from its bond counsel that such allocation does not adversely affect the exclusion from gross income of any outstanding tax exempt bond of the County and will not jeopardize the County's ability to issue tax-exempt bonds to finance its share of the Project Costs. To the extent the County's bond counsel is unable to give such an opinion, the Parties shall work together to determine mutually agreeable allocations of the Project Costs.

ARTICLE 3. PROJECT CONSTRUCTION AND DESIGN

3.1 Professional Agreements. Prior to selecting or engaging (or allowing the CM or the Architect to select or engage) any other Person to serve as an additional or replacement CM or as an additional or replacement Architect in conjunction with the Project, the Bills shall submit to the other Parties for their approval (which approval shall not be unreasonably withheld or delayed in excess of fifteen (15) days), such Person's name, references, qualifications, financial statements or similar financial information and other information as such other Parties shall reasonably request. Without limiting the

generality of the foregoing, the selection and engagement of any Person to serve as a replacement or additional CM or Architect shall be done in accordance with Applicable Law. Notwithstanding the foregoing, ECSC and County consent to and agree that the Architect has permission to retain the architect and engineering companies specified on Schedule 3.1 in connection with sub-contracting certain pre-construction and construction related services with respect to the Project. Concurrently with the execution of this 2013 Construction Coordinating Agreement, the Bills shall provide ECSC and the County with true, correct and complete copies of the Professional Agreements entered into prior to the date hereof. None of the Professional Agreements shall be amended, terminated or otherwise modified without the approval of the County and the ECSC, which approval shall not be unreasonably withheld, conditioned or delayed. Each of the Professional Agreements shall grant third party beneficiary status to the County and the ECSC and permit the assignment thereof to the County, the ECSC or their designees without the need to obtain the consent from the other party or parties to such agreement.

3.2 Master Project Schedule. Pursuant to the CM Agreement, the Bills have caused the CM, in consultation with the Architect and the other Parties, to prepare the Master Project Schedule, the most current version of which is attached hereto as Exhibit J. The Parties acknowledge and agree that the Master Project Schedule has been prepared such that the Project shall be completed in phases over a two (2) year period. The Master Project Schedule will be amended from time to time by the Bills and CM as Project sequencing is determined, which amendment(s) shall be provided to the ECSC and the County for their review and comment, and, in the case of any changes in the dates for commencement of the Work or Final Completion of the Project, approval, which approval shall not be unreasonably withheld, conditioned or delayed.

3.3 Plans and Specifications.

(a) Pursuant to the terms and conditions of the Architect Agreements, the Bills shall cause the Architect to prepare the Plans and Specifications in accordance with the Master Project Schedule. Without limiting the rights of any Party pursuant to the Architect Agreements, each Party shall have the right to review and approve the Plans and Specifications, as well as any modifications or amendments thereof, in accordance with the Master Project Schedule, such approval not to be unreasonably withheld, conditioned or delayed.

(b) To the extent that the Bills seek to modify the Schematic Design Documents, Design Development Documents, Construction Documents or other Plans and Specifications, the Bills shall notify the other Parties, the Architect and the CM within the time period set forth in the Master Project Schedule for the modification and revision of such documents. Any request to modify any such document which is received after the applicable time period set forth in the Master Project Schedule shall not be incorporated into the Plans and Specifications unless each of the other Parties consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Upon approval of the Plans and Specifications by the ECSC and the County in accordance with Section 3.3(a) hereof, the Bills shall cause the CM and the Architect to prepare construction bid packages in form and content reasonably acceptable to the Parties and shall cause the CM to solicit bids from potential Construction Providers. The Bills will use commercially reasonable efforts to cause the CM to award the bids for the Work as soon as practicable, and enter into Construction Agreements with such Construction Providers, subject to the approval of the County and the

ECSC in accordance with Section 3.4(d) hereof.

(d) The approval by any of the Parties of any of the Plans and Specifications or any amendments or modifications thereof shall constitute only an approval of the aesthetic features of the Project described in the drawings, and such Party's acknowledgment that site plans and floor plans and the spatial relationship of the various parts of the plans are satisfactory to it shall not be construed as an approval of the quality of the architectural, structural or engineering design of the Project or any of its components, or an acknowledgment that the design complies with Applicable Law. Such approval shall not constitute a waiver of any warranties or guaranties set forth in any of the Professional Agreements or release the CM or the Architect from liability for any errors or omissions.

3.4 Construction Agreements.

(a) The Construction Agreements will contain the terms and conditions described in this Section 3.4 and such other terms and conditions as may be necessary or appropriate to permit the Bills to comply with their obligations under this 2013 Construction Coordinating Agreement.

(b) Each of the Construction Agreements shall grant third party beneficiary status to the County and the ECSC and permit the assignment thereof to the County, the ECSC or their designees without the need to obtain the consent from the other party or parties to such agreement.

(c) In addition to the requirements set forth elsewhere in this 2013 Construction Coordinating Agreement, the Construction Agreements shall require or provide for the development, construction and completion of the Project in accordance with the Plans and Specifications. In particular, each Construction Agreement shall contain, as appropriate, (i) a payment schedule setting forth the payment amounts to be made upon a schedule of values or the phased completion of the Work required under such Construction Agreement, (ii) procedures to withhold from payment appropriate retention amounts (including any retention amounts required by Applicable Law), (iii) requirements for the receipt of lien waivers and general releases from Construction Providers and their agents, (iv) requirements for the delivery of a "payment request certificate" from the CM and the Architect for the applicable portion of the Project certifying that the Work to which the requested payment relates has been completed in accordance with the Plans and Specifications and that such requested payment is not the subject of another outstanding or previously paid payment request, and (v) requirements affording the ECSC and the County the right to inspect the Work periodically during the course of construction and the right to reject any Work that does not conform to the Plans and Specifications. The Bills shall cause the CM to deliver to the County and the ECSC twice monthly written progress reports of any Work performed by any Construction Provider for which an invoice has been submitted to the CM for review and approval. All Construction Agreements shall comply with all applicable state, federal and local laws and shall be subject to Article 15-A of the New York State Executive Law, Section 135 of the New York State Finance Law and Article 8 of the New York State Labor Law.

(d) The County and the ECSC shall have the right to approve the form of Construction Agreement, which approval shall not be unreasonably withheld provided such form of Construction Agreement meets the requirements of this 2013 Construction Coordinating Agreement. Upon the approval by the County and the ECSC of the form Construction Agreement, such form of agreement shall not be amended, terminated or otherwise materially modified without the written

approval of the County and the ECSC, such approval not to be unreasonably withheld, conditioned or delayed.

3.5 Field Changes.

(a) During the pendency of the construction of the Project, the Bills shall have the right to implement Field Changes in accordance with this Section 3.5(a). To the extent that the Bills seek a Field Change, the Bills shall orally notify the other Parties of the proposed Field Change and shall furnish the other Parties with an explanation of the rationale therefore. Within a reasonable period of time following the receipt of such notice given the magnitude and scope of the proposed Field Change [but in no event later than twenty-four (24) hours after the receipt of such notice], each of the other Parties shall orally notify the Bills of its approval or rejection of the proposed Field Change. In considering any proposed Field Change, each Party's approval shall not be unreasonably withheld, conditioned or delayed. In the event any proposed Field Change is disapproved by the County, such disapproval shall not be considered unreasonable to the extent it is predicated on: (i) the failure of the proposed Field Change to comply with Applicable Law or (ii) the impact of the proposed Field Change on the County's Structural Repair obligations pursuant to the terms and conditions of the Lease Agreements.

(b) Notwithstanding the terms and conditions of subparagraph (a) above, to the extent that (i) any proposed Field Change is disapproved by either the ECSC or the County on grounds other than the failure of the proposed Field Change to comply with Applicable Law or the impact of the proposed Field Change on the County's Structural Repair obligations pursuant to the terms and conditions of the Lease Agreements, and (ii) such proposed Field Change does not cause the Project Costs for the Work Action Item to which such Field Change relates to exceed the Base Budget amount for such Work Action Item or otherwise expose the ECSC or the County to additional financial liability, the Bills shall have the right to proceed with the proposed Field Change provided (i) the Bills promptly commence and diligently pursue arbitration in accordance with Article 23 of the Stadium Lease contesting the reasonableness of the disapproval thereof, and (ii) the Bills shall indemnify, defend and hold the ECSC and the County harmless from and against all Losses arising out of or incurred in connection with the Field Change (including, without limitation, the cost of restoring the Stadium Complex to its condition prior to the implementation of the Field Change if it is ultimately determined by arbitration that the disapproval was not unreasonable).

3.6 Contract Changes.

(a) Each of the County and the Bills (but not the ECSC) shall be entitled to submit from time to time Change Requests in accordance with this Section 3.6. Any Change Requests made by either the County or the Bills shall be submitted to the other Parties and shall be accompanied, at a minimum, by conceptual drawings depicting the scope of the proposed Work. Each non-requesting Party, (including, for the avoidance of doubt, the ECSC) shall notify the other Parties of its approval or rejection within a reasonable period of time following the receipt of any Change Request given the magnitude and scope of the proposed Contract Change, but in no event later than: (i) thirty (30) days following the receipt of any Change Request which affects the overall scope or function of the Project and (ii) seven (7) days following the receipt of any other Change Request. In considering any Change Request, each non-requesting Party's approval shall not be unreasonably withheld, conditioned or delayed. In the event any proposed Change Request is rejected by the County, such rejection will not be considered unreasonable to

the extent it is predicated on either the failure of the Change Request to comply with Applicable Law or the impact of the Change Request on the County's Structural Repair obligations pursuant to the terms and conditions of the Lease Agreements. In the event a Change Request is rejected by a non-requesting Party, the Non-requesting Party's rejection notification shall be accompanied by a written explanation in reasonably sufficient detail outlining the rationale for its disapproval. To the extent a Change Request is submitted by the Bills to the other Parties, which Change Request is necessitated solely by an Unforeseen Condition, such Change Request shall be considered per se reasonable and approved by the other Parties; provided, however, such Change Request must be limited in scope to only those items actually and materially impacted by the Unforeseen Condition, and otherwise tailored so as to change the scope of Work to the smallest extent possible. Any Party may initiate arbitration in accordance with Article 23 of the Stadium Lease in order to resolve any issues associated with any Change Request.

(b) If a Change Request is submitted by the Bills or the County, and approved by the non-requesting Parties as provided above, the Bills shall cause the CM and the Architect to furnish to the other Parties as promptly as possible after receipt of any such Change Request a good faith estimate of the Project Costs associated with such Change Request (or the net savings in Project Costs that would result from such Change Request) including all costs associated with the evaluation, budgeting, design and implementation of the requested change. If such estimates indicate that the Change Request would not cause total Project Costs to exceed the amount of the Base Budget, the Bills shall issue a Change Order (or cause the Architect to issue a Construction Change Directive) with respect to such Change Request, shall cause such Change Request to be incorporated into the subsequently developed Plans and Specifications and shall pay all of the Project Costs attributable to any such Change Request out of the Project Account. If such estimates indicate that the Change Request would cause total Project Costs to exceed the amount of the Base Budget, then the Bills may proceed to issue a Change Order (or cause the Architect to issue a Construction Change Directive) with respect to such Change Request; provided, however: (i) to the extent a Change Request submitted by the Bills is for a Project Cost Overrun that causes the total Project Costs to exceed the Base Budget, then the cost shall be paid for as provided for in Section 3.7(b) hereof, and (ii) to the extent that a Change Request submitted by the Bills is not for a Project Cost Overrun, then the Bills shall pay the additional Project Costs relating to such Change Request, which costs may be reimbursed to the Bills at the conclusion of the Project to the extent the Project Contingency Reserve and the Bills Contingency Reserve are not depleted.

(c) Notwithstanding the terms and conditions of subparagraphs (a) and (b) above, to the extent that (i) any proposed Contract Change is disapproved by either the ECSC or the County on grounds other than the failure of the proposed Contract Change to comply with Applicable Law or the impact of the proposed Contract Change on the County's Structural Repair obligations pursuant to the terms and conditions of the Lease Agreements, and (ii) such proposed Contract Change is estimated, as determined by the Architect and CM, to not cause the Project Costs for the Work Action Item to which such Contract Changes relates to exceed the Base Budget amount for such Work Action Item or otherwise expose the ECSC or the County to additional financial liability, the Bills shall have right to proceed with the proposed Contract Change provided (i) the Bills promptly commence and diligently pursue arbitration in accordance with Article 23 of the Stadium Lease contesting the reasonableness of the disapproval thereof, and (ii) the Bills shall indemnify, defend and hold the ECSC and the County harmless from and against all Losses arising out or incurred in connection with the Contract Change (including, without limitation, the cost of restoring the Stadium Complex to its condition prior to the implementation of the Contract Change if it is ultimately determined by arbitration that the disapproval was not unreasonable).

(d) For clarity, given the fast-track nature of the construction of the Project, the Bills shall have the right to amend the scope of Work at any time with the prior written approval of the other Parties, such approval not to be unreasonably withheld, delayed or conditioned, while preserving the general scope and character of the Project.

3.7 Budget; Project Cost Overruns; Use of Project Contingency Reserve.

(a) The Budget for the Project of One Hundred Thirty Million Dollars (\$130,000,000.00) is set forth in Exhibit C attached hereto and includes a Base Budget of One Hundred Seventeen Million Dollars (\$117,000,000.00), and the Project Contingency Reserve of Thirteen Million Dollars (\$13,000,000.00).

(b) Project Cost Overruns shall be paid as follows:

(i) First, from the Project Contingency Reserve, until that reserve has been depleted in its entirety;

(ii) Second, from the Bills Contingency Reserve, until that reserve has been depleted in its entirety; and

(iii) Third, from the ACIA Reserve, provided, however, for the sake of clarity, no Project Cost Overruns shall be paid from the ACIA Reserve if there are, at such time, no Accessible ACIA Funds. The ACIA Reserve shall be funded as follows: (i) two-thirds (2/3) from the Accessible ACIA Funds, if any; and (ii) one-third (1/3) from funds provided by the Bills.

Any additional Project Costs Overruns which are not funded and paid for in accordance with Sections 3.7(b)(i), (ii) or (ii) hereof, shall be resolved by the Bills by amending the scope of the Project, including amending scope of services to be provided under the CM Agreement (which scope amendment shall be subject to the prior written approval of the County and the ECSC, such approval not to be unreasonably withheld, conditioned or delayed).

(c) Upon request of any Party, unspent portions of the Project Contingency Reserve may be used to fund an Approved Alternate or a Change Order but only to the extent that the other Parties approve such request, which approval shall not be unreasonably withheld, conditioned or delayed. In considering any such request, a Party will be entitled to base its decision, among other things, on such Party's determination of the adequacy of the remaining portion of the Project Contingency Reserve (after taking into account such Approved Alternative or Change Order) relative to the uncompleted Work Action Items, and the likelihood of Project Cost Overruns with respect to such uncompleted Work Action Items.

3.8 Budget Surplus.

(a) If at Substantial Completion of any Work Action Item, there exists a Budget Surplus after payment of all outstanding Project Costs for such Work Action Item, provided no Bills Default has occurred and is continuing, the Bills shall have the right to apply such Budget Surplus to any Alternate designated by the Bills and approved by the ECSC and the County in accordance with this

Section 3.8. Upon making such determination, the Bills shall cause the Architect to prepare Plans and Specifications for the designated Alternate and shall cause the CM to prepare an amendment to the CM Agreement adding the designated Alternate to the scope of work set forth therein. Upon the receipt of such Plans and Specifications and proposed CM Agreement amendment, the Bills shall furnish such items to the ECSC and the County for their review and approval, which approval shall not be unreasonably withheld, conditioned or delayed in light of the fact that the Parties have, in concept, preapproved the Alternates, provided: (i) the GMP as set forth in the proposed CM Agreement amendment does not cause total Project Costs to exceed the Base Budget (unless the Bills deposit into the Project Account immediately available funds in the amount of such excess, in which case this condition shall be deemed to have been satisfied), (ii) such Alternate does not materially change the overall function or design of the Stadium Complex or shorten the useful life thereof or materially change the aesthetics, sightlines, structure or systems thereof; (iii) such Alternate does not violate any Applicable Law; and (iv) such Alternate is otherwise in compliance with the terms and conditions of the 2013 Stadium Lease and this 2013 Construction Coordinating Agreement.

(b) In the event a proposed Alternate is rejected by the ECSC or the County, the rejecting Party's notification shall be accompanied by a written explanation in reasonably sufficient detail outlining the rejecting Party's rationale for its disapproval. Any Party may initiate arbitration in accordance with Article 23 of the 2013 Stadium Lease in order to resolve any issues associated with any proposed Alternate.

(c) Upon the approval by the ECSC and the County of the Plans and Specifications and the CM Agreement amendment for any proposed Alternate, the Bills shall either amend the relevant existing Construction Agreement(s) to include such Alternate within the scope thereof or enter into new Construction Agreement(s) with respect to such Alternate. Any amendment to an existing Construction Agreement or new Construction Agreement entered into by the Bills in conjunction with an Alternate shall be subject to the terms and conditions of Section 3.4 hereof.

(d) All Project Costs incurred by the Bills in conjunction with any approved Alternate shall be paid by the Bills out of the Budget Surplus which created the right in favor of the Bills to request such Alternate. To the extent the Project Costs for any such Alternate exceed such Budget Surplus, such excess shall be offset against any Budget Surplus which may arise thereafter out of uncompleted Work Action Items. If at Substantial Completion of the Project, total Project Costs exceed the Base Budget as a result of any Approved Alternates, said excess shall be paid by the Bills.

(e) The Bills shall have the right during the term of this 2013 Construction Coordinating Agreement to amend the list of potential Alternates attached hereto as Exhibit K upon the approval of the ECSC and the County, which approval shall not be unreasonably withheld, conditioned or delayed.

(f) In addition to the right to utilize any Budget Surplus for Approved Alternates as provided above, the Bills shall have the right to allocate any Budget Surplus to any other Work Action Item yet to be completed, upon the approval of the ECSC and the County, which approval shall not be unreasonably withheld, conditioned or delayed.

(g) The Bills shall have the right during the term of this 2013 Construction Coordinating Agreement to add additional Work Action Items to Exhibit I and to utilize Budget Surplus with respect to the Project Costs relating to such additional Work Action Items upon the approval of the other Parties, which approval shall not be unreasonably withheld, conditioned or delayed.

(h) Any Budget Surplus not utilized in accordance with subparagraphs (a) through (g) of this Section 3.8 shall be added to the Project Contingency Reserve.

3.9 Payment and Performance Bonds. Pursuant to the CM Agreement, the CM is required to furnish and maintain in full force and effect, from and after the commencement of Work until Final Completion of the Project, a performance bond and a labor and material payment bond in the full amount of the GMP and otherwise in form and substance and issued by a surety satisfactory to the ECSC, the County and the Bills. The bonds shall be in favor of the ECSC, the County, the Bills and the CM and shall conform in all respects to all requirements imposed by Applicable Law. Premiums for such bonds shall constitute a Project Cost. To the extent that the GMP is not known at the time of commencement of any Work Action Item, the CM shall be required to furnish a performance bond and a labor and material payment bond in the amount of either: (i) the Project Costs applicable to the Work then being undertaken; or (ii) an estimate of the GMP made by the CM and approved by all of the Parties. Any such interim payment and performance bonds shall be in an amount, in form and substance and issued by a surety satisfactory to the ECSC, the County and the Bills, which amount shall not be less than the Project Costs associated with the Work being undertaken by the CM.

ARTICLE 4. MATTERS CONCERNING CONSTRUCTION OF THE PROJECT

4.1 Construction Representatives. The ECSC, the County and the Bills shall each appoint a representative to be actively involved in the matters contemplated by this 2013 Construction Coordinating Agreement from the date hereof until Final Completion of the Project. Each Party's representative shall be on-site or readily available by telephone. Each of the ECSC, the County and the Bills may remove and replace its Representative as and when it so desires and shall promptly notify the other Parties of any such change. Each of the Representatives shall have full access to the Stadium Complex (subject to safety considerations) and shall be permitted to review all Project Agreements and Plans and Specifications, including all drafts thereof (and to permit such other persons from the respective Representative's organization and such advisors and consultants as such Representative considers advisable or appropriate to review such Project Agreements and Plans and Specifications), and shall be notified in advance of and invited to attend all material meetings relating to the design and construction of the Project, including, without limitation, any meetings relating to the preparation of the Plans and Specifications and any periodic meetings with Construction Providers concerning the status or quality of the construction of the Stadium Complex. Each of the Representatives shall be permitted to take such other persons from the respective Representative's organization and such advisors and consultants as such Representative considers advisable or appropriate onto the Stadium Complex (subject to safety considerations) and to such meetings.

4.2 Administration of the Construction Agreements.

(a) The Bills, in cooperation with the other Parties, shall supervise, monitor and enforce the CM Agreement and the Architect Agreements and shall cause the CM to supervise, monitor

and enforce the Construction Agreements in such manner as is reasonably appropriate and necessary to complete the Project.

(b) The Bills, through the CM and the Architect, shall cause all Construction Providers to perform the Work in a good and workmanlike manner, in accordance with the Plans and Specifications and in accordance with all Applicable Laws, including but not limited to, the Americans with Disabilities Act and any other similar measures designed to ensure or enhance handicapped access to public facilities.

(c) The Bills, in cooperation with the other Parties, shall cause the CM or the Architect to obtain or procure all necessary variances, permits, licenses and certificates of occupancy necessary for the design, development, construction and occupancy of the Project.

4.3 Project Funding.

(a) Promptly after execution of this 2013 Construction Coordinating Agreement, ECSC shall establish the Project Account in accordance with the terms set forth herein. The Parties shall deposit their respective capital contributions as specified in Section 2.2(a), 2.3(a), and 2.4(a) hereof and this Section 4.3, in the Project Account in accordance with the Funding Schedule. All funds deposited in the Project Account shall be used solely for payment of Project Costs. No other funds shall be commingled with funds deposited by the Parties in the Project Account.

(b) In accordance with the Funding Schedule, the ECSC shall deposit, or shall cause to be deposited, into the Project Account, Fifty Three Million Eight Hundred Ninety Thousand Six Hundred Fifty Dollars (\$53,890,650) as provided in Section 2.3(a) hereof;

(c) ECSC shall deposit, or cause to be deposited, into the Project Account, any other ECSC Capital Obligations for which ECSC is liable pursuant to this 2013 Construction Coordinating Agreement in excess of the amounts of forth in Section 4.3(b) hereof;

(d) In accordance with the Funding Schedule, the County shall deposit, or shall cause to be deposited, into the Project Account, Forty Million Six Hundred Fifty Four Thousand Three Hundred Fifty Dollars (\$40,654,350.00) as provided in Section 2.2(a) hereof;

(e) The County shall deposit, or cause to be deposited, into the Project Account, any other County Capital Obligations for which the County is liable pursuant to this 2013 Construction Coordinating Agreement in excess of the amounts of forth in Section 4.3(d) hereof;

(f) In accordance with the Funding Schedule, Bills shall deposit into the Project Account, Thirty Five Million Four Hundred Fifty Five Thousand Dollars (\$35,455,000.00) as provided in Section 2.4(a) hereof, less Project Costs incurred by the Bills in connection with certain pre-construction work and design related to the Project prior to the Effective Date, the amount of which is agreed by the Parties to be \$2,261,465; and

(g) The Bills shall deposit into the Project Account any other Bills Capital Obligations for which the Bills is liable pursuant to this 2013 Construction Coordinating Agreement in excess of the amounts of forth in Section 4.3(f) hereof.

(h) For purposes of ascertaining whether a Party has timely paid its respective obligations pursuant to Sections 2.2(a), 2.3(a) or 2.4(a) hereof, such Party will be deemed to have per se failed to timely pay such obligation if any portion of such obligation is not funded by the date specified therefor in the Funding Schedule and such obligation shall remain outstanding for three (3) Business Days' following receipt of notice from any other Party of such delinquency (upon such third Business Day, a "Payment Breach"). In the event of Payment Breach, the Party who has failed to timely pay shall be responsible to the other Parties for any damages resulting therefrom commencing from the date of Payment Breach but the other Parties shall have no other remedies unless such Payment Breach becomes a Default as set forth in the following sentence. For the avoidance of doubt, such damages shall be agreed upon by the Parties or, failing such agreement, shall be determined by final decision of the arbitrators following arbitration conducted in accordance with Article 23 of the Stadium Lease. In the event any Party shall have failed to timely pay its respective obligations pursuant to Section 2.2(a), 2.3(a) or 2.4(a) hereof, and such non-payment continues without cure for thirty (30) days after written notice and results in a Default (either outright or after completion of arbitration pursuant to Article 23 of the Stadium Lease), the Parties shall use the date of Payment Breach for the purpose of calculating any damages resulting from such Default and shall have default remedies as set forth in Section 7.4 hereof.

4.4 Disbursement Procedure.

(a) At least five (5) days prior to the submission of a Request for Disbursement, the Bills shall convene a job meeting with the County and the ECSC to review the proposed requisition for Project Payment.

(b) At least thirty (30) days prior to the date on which the Bills desire to make a Project Payment, the Bills shall submit to ECSC and the County a Request for Disbursement, executed by the Bills and certified by the CM and the Architect, accompanied by:

(i) a project status cost control report, in form acceptable to ECSC and the County, showing the percentage completion of each line item in the Budget and the amount, if any, by which each line item is above or below the amount indicated in the Budget;

(ii) a list of all Construction Providers by name and trade, the total amount of the applicable contract, the amount theretofore paid to the Construction Provider and the amount presently being requisitioned for payment to each Construction Provider;

(iii) an acknowledgement of payment and waiver of lien or release of lien for Work performed and material furnished through the date of the preceding disbursement subject to any applicable retention;

(iv) written certification from the Architect that (i) any Work which forms the basis for the Request for Disbursement has been approved by all applicable Governmental Authorities and complies with all Applicable Law and (ii) that in the Architect's opinion, the Work completed was

completed to the Architect's satisfaction and is in accordance with the Plans and Specifications; and

(v) an executed affidavit in the form attached hereto as Exhibit E.

(c) Requests for Disbursement shall be submitted in triplicate to the ECSC, two copies of which shall be forwarded to _____, Empire State Development Corporation, 633 Third Avenue, New York, New York 10017, and the other copy of which shall be provided to the ECSC Field Representative, and in triplicate to the County, two copies of which shall be forwarded to, Commissioner of Public Works, Erie County, Rath Building, 95 Franklin Street, Buffalo, New York 14202 and the other copy of which shall be provided to the County Field Representative.

(d) A Request for Disbursement with respect to a Project Payment to be paid to Persons other than the CM or a Construction Provider shall include copies of invoices or receipted bills for each item included therein.

(e) Upon completion of their review of the Request for Disbursement and all related documents, and provided that the County and ECSC are satisfied that the payments to which the Request for Disbursement relate were in proper form, amount and other respects, subject to compliance with Section 4.4(b) above, ECSC shall transfer the requisite sum from the Project Account by wire transfer to the Bills not later than the dates such payments are due under the terms and conditions of the Project Agreements.

(f) Notwithstanding anything contained herein to the contrary, without the prior written consent of the ECSC and the County, the Bills shall not make any advance payments to Construction Providers for materials or equipment related to the Project not delivered to or stored at the Stadium Complex. ECSC and the County acknowledge that the some of the materials and equipment to be incorporated into the Project may have long lead times. Accordingly, such materials and equipment may be ordered early and stored at the Stadium Complex, provided such materials are insured against loss or damage under the builder's risk policy to be issued in accordance with the CM Agreement.

4.5 Right of Audit.

(a) The Bills shall keep and maintain within the Stadium Complex complete and accurate records and accounts of the Project, including, but not limited to, all Construction Agreements, all Construction Documents and all invoices, receipts, payment requisitions and any and all related documents for the performance of the Work. The Bills shall preserve such records and accounts for a period of at least six (6) years from the Final Completion of the Project.

(b) ECSC, the County and their designees, shall each have the right, at its sole cost and expense, from time to time, upon three (3) Business Days' notice, to inspect, audit and duplicate the records and accounts of the Bills described in the preceding paragraph.

(c) The provisions of this Section 4.5 shall survive the expiration or termination of this 2013 Construction Coordinating Agreement.

4.6 Liens. The Bills shall discharge all mechanics and public improvement liens that may arise as a result of the Project within thirty (30) days of notice of the existence of the lien. In the event that a public improvement lien is filed with ECSC, ESDC or the County with respect to the Project, and in the case of any such lien filed with the County, a copy thereof is provided to the ECSC, then ECSC shall withhold payment to the Bills in the amount of the lien until such time that the lien has been discharged by the Bills or the Bills have provided ECSC with an acceptable security bond in the amount of the lien.

4.7 County Work. To the extent the County, in fulfillment of its responsibilities pursuant to the terms of Lease Agreements, seeks to perform any construction renovation or repair work of the Stadium Complex, such work shall be coordinated with the scheduling of the Work so as to avoid to the degree practicable any interference with the performance of the Work. Notwithstanding anything contained herein or in the Stadium Lease to the contrary, to the extent that a Structural Repair is necessitated as a result of any Work, such Structural Repair shall be promptly initiated by the Bills and the cost of the same shall constitute a Project Cost.

ARTICLE 5. DAMAGE TO THE PROJECT

5.1 Damage or Destruction Prior to Substantial Completion. If, at any time prior to Substantial Completion of the Project, Project Damage occurs, the Bills shall, to the extent of available Project Insurance Policy proceeds, commence and thereafter proceed as promptly as possible to repair, restore and replace the Project Damage so as to cause the same to be repaired in accordance with the Plans and Specifications. To the extent that available Project Insurance Policy proceeds are insufficient to cause the Project to be repaired to its condition existing immediately prior to such Project Damage, the Bills shall use funds from the Project Account to fund such repair and shall amend the scope of services to be provided under the CM Agreement (which amendment shall be subject to the prior written approval of the County and the ECSC, such approval not to be unreasonably withheld, conditioned or delayed).

5.2 Insurance Proceeds. All proceeds from insurance maintained in accordance with this 2013 Construction Coordinating Agreement and paid on account of any Project Damage shall be deposited into the Special Account. The ECSC shall maintain the Special Account and all funds deposited therein to fund the repair, restoration and replacement obligations under this 2013 Construction Coordinating Agreement. The ECSC shall not permit any funds deposited into the Special Accounts to be withdrawn prior to the completion of the repair, restoration or replacement of all of the Project Damage, except for the purpose of making payments into the Project Account from time to time as repair, restoration or replacement work progresses in amounts equal to the sum of the cost of labor and materials incorporated into and used in such work and builders', architects' and engineers' fees and other charges in connection with such work in accordance with the procedures set forth herein for the construction of the Work.

ARTICLE 6. PROJECT INSURANCE

6.1 Property Insurance. The Bills shall procure and maintain, or cause the CM to procure and maintain, a builders' risk renovations form policy covering the Project. The expense of the builders' risk policy shall be deemed a Project Cost. Such policy shall provide "all-risks" replacement cost coverage (and, in the case of builders' risk, shall be written on a completed value basis) as customarily provided by policies written on such basis in an amount not less than \$78,500,000 or the aggregate dollar value of all

Work being undertaken at the Stadium Complex at any given time during the term of this 2013 Construction Coordinating Agreement, if larger. The purchase of flood and earthquake coverage is not required. Such policy shall also cover repair or reconstruction costs beyond replacement cost in order to comply with changes in Applicable Law or building code, subject to reasonable sublimits if full policy limits are not commercially available.

6.2 Liability and Workers' Compensation Insurance. To the extent commercially available and permitted by Applicable Law, throughout the Construction Period, the ECSC shall, at its sole cost and expense, keep and maintain, or cause to be kept and maintained, a policy or policies providing the following types of coverages:

(a) Commercial general liability insurance covering bodily injury, property damage, personal injury and advertising injury liability with limits of \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 in the aggregate for products/completed operations, \$1,000,000 each person or organization for personal injury and advertising injury and \$2,000,000 general aggregate;

(b) (i) Workers' compensation and (ii) employers' liability insurance providing statutory coverage complying with the New York State Workers' Compensation Law;

(c) Automobile liability insurance covering owned, non-owned and hired autos with a combined single limit of \$1,000,000 per accident; and

(d) Excess umbrella liability insurance covering bodily injury, property damage, personal injury and advertising injury liability with limits of not less than \$4,000,000 per occurrence and aggregate with such coverage applying in excess of the coverages described in clauses (a), (b) (ii), and (c).

6.3 Requirements of Project Insurance Policies.

(a) Each Project Insurance Policy shall be written with companies that are nationally recognized and, if underwriting primary coverage, that have a policyholder's rating of at least "A" and a FSC rating of at least XII as listed at the time of issuance by A.M. Best Insurance Reports, or such other ratings as the ECSC, the County and the Bills may mutually agree, and are qualified to issue such insurance in the State of New York.

(b) Each Project Insurance Policy shall be endorsed to provide that it may not be canceled, terminated, reduced or materially changed unless at least 60 days' advance notice thereof has been provided to the Parties, except in the case of cancellation or termination due to nonpayment of premium, in which case only 10 days' advance notice shall be required.

(c) The Project Insurance Policy described in Section 6.1 hereof shall include a waiver of any recourse against the County and the ESDC for payment of any premiums or assessments under such policy. Each Project Insurance Policy described in Section 6.2 hereof shall include waivers of any recourse against the County and the Bills for payment of any premiums or assessments under such policy.

(d) Each Project Insurance Policy described in Section 6.2 (a), (c) and (d) hereof covering third-party liability shall contain a “cross-liability” or a “severability of interest” provision/endorsement providing that, except with regard to the limits of insurance, each insured under the policy will be treated as though the policy applied separately to each insured.

(e) The Project Insurance Policies shall not have deductibles in excess of \$25,000 unless the Parties mutually agree to such higher deductible.

(f) The Project Insurance Policy obtained in accordance with Section 6.1 hereof shall name the County, the ECSC, the Bills and all Construction Providers as named insureds. Each Insurance Policy maintained in accordance with Sections 6.2 (a) and (d) hereof shall name the County and the Bills as additional insureds with respect to premises and operations.

(g) With regard to the Project Insurance Policy described in Section 6.1 hereof, the Bills shall deliver, or cause to be delivered, to the other Parties certificates of insurance and any other documentation reasonably required by such other Parties evidencing the existence of such Project Insurance Policy and the various amendments thereto required herein, such delivery to be made at least three (3) Business Days prior to the Commencement of Work. Within twenty-one (21) days after the issuance of any additional policies or amendments or supplements to the Project Insurance Policy materially affecting the coverage afforded thereunder, the Bills shall deliver to the other Parties revised certificates of insurance reflecting any such addition, amendment or supplement. If the Project Insurance Policy expires by its terms prior to the Final Completion of the Project, the Bills shall deliver to the other Parties certificates of insurance and any other documentation reasonably required by such other Parties evidencing the existence of the renewal or replacement of such Project Insurance Policy, such delivery to be made at least three (3) business days prior to the expiration of such Project Insurance Policy; provided that the Bills may instead deliver a facsimile of the binder of insurance, such facsimile delivery to be made on or prior to the expiration of such insurance policy, and within ten (10) days after the expiration of such insurance policy, the actual certificate of insurance and any other required documentation shall be furnished to the other Parties.

(h) With regard to the Project Insurance Policies described in Section 6.2 hereof, the ECSC shall deliver, or cause to be delivered, to the other Parties certificates of insurance and any other documentation reasonably required by such other Parties evidencing the existence of such Project Insurance Policies described in Section 6.2 and the various amendments thereto required herein, such delivery to be made at least three (3) Business Days prior to the Commencement of Work. Within twenty-one (21) days after the issuance of any additional policies or amendments or supplements to any of these Project Insurance Policies materially affecting the coverage afforded thereunder, the ECSC shall deliver to the other Parties revised certificates of insurance reflecting any such addition, amendment or supplement. With respect to any Project Insurance Policy that expires by its terms prior to the Final Completion of the Project, the ECSC shall deliver to the other Parties certificates of insurance and any other documentation reasonably required by such other Parties evidencing the existence of the renewal or replacement of such Project Insurance Policy, such delivery to be made at least three (3) business days prior to the expiration of such Project Insurance Policy; provided that the ECSC may instead deliver a facsimile of the binder of insurance, such facsimile delivery to be made on or prior to the expiration of such insurance policy, and within ten (10) days after the expiration of such insurance policy, the actual certificate of insurance and any other required documentation shall be furnished to the other Parties.

6.4 CM's Insurance. To the extent commercially available and permitted by Applicable Law, the Bills shall cause the CM to maintain a policy or policies providing the coverages as set forth on Exhibit F attached hereto and to otherwise comply with the requirements set forth therein.

ARTICLE 7. DEFAULT

7.1 Bills Default. Any of the following events shall constitute a "Bills Default":

(a) The Bills file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admit the material allegations of any such petition by answer or otherwise, or are dissolved or make an assignment for the benefit of creditors;

(b) involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of the Bills is instituted against the Bills, or a receiver or trustee is appointed for all or any material portion of the property of the Bills, and such proceeding is not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment;

(c) the Bills breach any of the agreements, terms, covenants, or conditions that this 2013 Construction Coordinating Agreement requires the Bills to perform, and such breach continues for a period of thirty (30) days after written notice from either the ECSC or the County to the Bills or, if such breach cannot be cured reasonably within such thirty (30) day period, if the Bills fail to diligently commence to cure such breach within thirty (30) days after written notice from the ECSC or the County and to diligently complete such cure thereafter;

(d) the Bills breach any of the agreements, terms, covenants or conditions set forth in the 2013 Stadium Lease that the Bills is required to perform or observe pursuant to the terms thereof and said breach continues beyond any applicable notice and cure period;

(e) if construction of the Project does not commence by _____, 2013³ or if the Work is discontinued for a period of 30 days or more subject to Force Majeure (other than discontinuations of the Work attributable to the phasing of the Project to accommodate the 2013 NFL Season);

(f) any representation or warranty made by the Bills herein proves to be false or inaccurate in any material respect when made; or

(g) if, at any time, the Bills fails to pay the CM or the Architect or any other Project Expense for sums owing for which a withdrawal from the Project Account was made by the Bills, within thirty (30) days after receipt by the Bills of such sums.

³ At CCA execution, this blank will be completed with date that is the 90th day following CCA execution.

7.2 ECSC Default. Any of the following events shall constitute an “ECSC Default”:

(a) The ECSC files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors, and ESD does not thereafter assume performance of ECSC’s outstanding obligations hereunder pursuant to the terms of that certain Four Party Agreement of even date herewith by and among ECSC, ESD, the County and the Bills;

(b) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of the ECSC are instituted against the ECSC, or a receiver or trustee is appointed for all or any material portion of the property of the ECSC, such proceeding is not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment and ESD does not thereafter assume performance of ECSC’s outstanding obligations hereunder pursuant to the terms of that certain Four Party Agreement of even date herewith by and among ECSC, ESD, the County and the Bills;

(c) The ECSC breaches any of the agreements, terms, covenants, or conditions that this 2013 Construction Coordinating Agreement requires the ECSC to perform, and such breach continues for a period of thirty (30) days after written notice from either the Bills or the County to the ECSC or, if such breach cannot be cured reasonably within such thirty (30) day period, if the ECSC fails to diligently commence to cure such breach within thirty (30) days after written notice from the Bills or the County and to diligently complete such cure thereafter;

(d) The ECSC breaches any of the agreements, terms, covenants or conditions set forth in either the 2013 Master Lease or the 2013 Stadium Lease that the ECSC is required to perform or observe pursuant to the terms thereof and said breach continues beyond any applicable notice and cure period; or

(e) Any representation or warranty made by the ECSC herein proves to be false or inaccurate in any material respect when made.

7.3 County Default. Any of the following events shall constitute a “County Default”:

(a) County files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;

(b) The County breaches any of the agreements, terms, covenants, or conditions that this 2013 Construction Coordinating Agreement requires the County to perform, and such breach continues for a period of thirty (30) days after written notice from either the Bills or the ECSC to the County or, if such breach cannot be cured reasonably within such thirty (30) day period, if the County fails to diligently commence to cure such breach within thirty (30) days after written notice from the Bills or the ECSC and to diligently complete such cure thereafter;

(c) The County breaches any of the agreements, terms, covenants or conditions set forth in either the 2013 Master Lease or the 2013 Stadium Lease that the County is required to perform or observe pursuant to the terms thereof and said breach continues beyond any applicable notice and cure period; or

(d) Any representation or warranty made by the County herein proves to be false or inaccurate in any material respect when made.

7.4 Default Remedies.

(a) Upon the occurrence of any one or more Bills Defaults, the County and ECSC shall have the option to: (i) cease funding their respective unfunded portions of the Budget, (ii) to withdraw all of their respective undisbursed funds from the Project Account; provided, however, neither the County nor ECSC shall have the right to withdraw any funds from the Project Account that represent Project Costs funded by the Bills, (iii) to terminate this 2013 Construction Coordinating Agreement and to demand and receive an assignment of the Project Agreements and cause the Project to be completed, or (iv) or to exercise any of its other rights or remedies existing at law, in equity or otherwise, including, but not limited to, the recovery of any funds disbursed by the County or ECSC to the Bills under this 2013 Construction Coordinating Agreement plus interest accruing thereon at the Default Interest Rate. Notwithstanding the foregoing, neither the ECSC nor County may exercise their right to terminate this 2013 Construction Coordinating Agreement unless and until the existence of the Bills Default (after the expiration of the applicable cure period) has been confirmed by final decision of the arbitrators following arbitration conducted in accordance with Article 23 of the Stadium Lease.

(b) Upon the occurrence of any one or more ECSC Defaults, (A) the Bills shall have the option to: (i) cease funding its respective unfunded portions of the Budget, (ii) to withdraw any funds from the Project Account funded by the Bills; provided, however, the Bills shall have no right to withdraw any from the Project Account that represent Project Costs funded by the ECSC or the County, (iii) to terminate this 2013 Construction Coordinating Agreement; and/or (iv) exercise any of their other rights or remedies existing at law, in equity or otherwise; and (B) the County shall have the option to: (i) withdraw all of its respective portion of undisbursed funds from the Project Account; provided, however, the County shall not have the right to withdraw any funds from the Project Account that represent Project Costs funded by the Bills; and/or (ii) exercise any of its other rights or remedies existing at law, in equity or otherwise. Notwithstanding the foregoing, the Bills may not exercise their right to terminate this 2013 Construction Coordinating Agreement unless and until (i) they shall have furnished the County with a notice of the ECSC Default and the County has failed to cure such ECSC Default within thirty (30) days following the furnishing of such notice (unless said ECSC Default cannot be cured within said thirty (30) day period, in which case said period shall be extended as long as the County is diligently pursuing a cure), and (ii) the existence of such ECSC Default (after the expiration of the applicable cure period) has been confirmed by final decision of the arbitrators following arbitration conducted in accordance with Article 23 of the Stadium Lease.

(c) Upon the occurrence of any one or more County Defaults, (A) the Bills shall have the option to: (i) cease funding its allocable portion of the Project Costs not yet incurred, (ii) to withdraw funds from the Project Account funded by the Bills; provided, however, the Bills shall have no

right to withdraw any funds from the Project Account that represent Project Costs funded by the ECSC or County, (iii) to terminate this 2013 Construction Coordinating Agreement; and/or (iv) exercise any of their other rights or remedies existing at law, in equity or otherwise; and (B) the ECSC shall have the option to: (i) withdraw all of its respective portion of undisbursed funds from the Project Account; provided, however, the ECSC shall not have the right to withdraw any funds from the Project Account that represent Project Costs funded by the Bills; and/or (ii) exercise any of its rights or remedies existing at law, in equity or otherwise. Notwithstanding the foregoing, the Bills may not exercise their right to terminate this 2013 Construction Coordinating Agreement unless and until (i) the Bills shall have furnished the ECSC with a notice of the County Default and the ECSC has failed to cure such County Default within thirty (30) days following the furnishing of such notice (unless said County Default cannot be cured within said thirty (30) day period, in which case said period shall be extended as long as the ECSC is diligently pursuing a cure), and (ii) the existence of such County Default (after the expiration of the applicable cure period) has been confirmed by final decision of the arbitrators following arbitration conducted in accordance with Article 23 of the Stadium Lease.

(d) For purposes of determining ownership of any undisbursed funds in the Project Account following occurrence of a Bills Default, an ECSC Default or a County Default, to the extent a Party is otherwise entitled to withdraw its respective portion of such undisbursed funds pursuant to this Section 7.4, ownership of such unexpended funds shall be based upon the ratio which such Party's actual contribution(s) to the Project Account pursuant to Section 2.2(a), 2.3(a) or 2.4(a), as the case may be, bears to the sum of all Parties' actual contributions to the Project Account.

ARTICLE 8. DISPUTE RESOLUTION

8.1 Arbitration. All disputes arising under or relating to this 2013 Construction Coordinating Agreement, or the breach thereof, shall be resolved by arbitration, conducted in Buffalo, New York, in accordance with the procedures outlined in Article 23 of the Stadium Lease. Notwithstanding the foregoing, as a condition precedent to the institution of any arbitration with respect to such disputes, the Party seeking to initiate arbitration shall notify the other Parties of its intention to commence arbitration, whereupon each Party's executive representative designated as hereinafter provided shall meet in person or by telephonic conference within five (5) Business Days in an attempt to resolve any such claim, dispute, or other matter in controversy. If within five (5) Business Days of such meeting, the claim, dispute or other matter in controversy remains unresolved, the Party seeking to initiate arbitration may proceed in accordance with Article 23 of the Stadium Lease. For the purposes of any mandatory pre-arbitration meetings provided for above, the Bills hereby designate Jeffrey Littmann as its initial executive representative, the County hereby designates Richard Tobe as its initial executive representative and ECSC hereby designates Howard Glaser as its initial executive representative. Each Party may replace its designated executive representative upon written notice to the other Parties delivered in accordance with Section 12.6 hereof.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the ECSC. The ECSC represents and warrants to the County and the Bills that:

(a) the ECSC is a business corporation duly organized and validly existing corporation under the laws of the State of New York, has been declared to be a public benefit corporation

by the legislature of the State of New York, is in good standing under the laws of the State of New York, and has all requisite corporate power and authority to execute, deliver and perform its obligations under the Stadium Agreements;

(b) the ECSC is a duly organized subsidiary corporation of the ESD and, pursuant to the Act, possesses the “privileges, immunities, tax exemptions and other exemptions which inure to the ESD by virtue of the ESD’s status as a public benefit corporation;

(c) the ECSC has all requisite power and authority to execute, deliver and perform its obligations under the Stadium Agreements;

(d) the Stadium Agreements have been duly authorized, executed and delivered by the ECSC and constitute the legal, valid and binding obligations of it, enforceable against it in accordance with the terms hereof and thereof, except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the rights of creditors generally and by general principles of equity;

(e) the ECSC has obtained all authorizations, consents or approvals required for the execution, delivery and performance by it of the Stadium Agreements;

(f) to the best of its knowledge, the execution, delivery, and performance of the Stadium Agreements by the ECSC do not conflict with, nor will they result in a breach or violation of (with or without due notice and/or lapse of time, or both), any of the terms, conditions or provisions of: (i) any Applicable Law, (ii) any order of any Governmental Authority, or (iii) any charter document, indenture, mortgage, material contract or other material agreement or instrument to which the ECSC is a party or by which the ECSC or its properties is bound;

(g) the ECSC may, in compliance with Applicable Law, lease the Stadium Complex to the Bills pursuant to the terms of the 2013 Stadium Lease; and

(h) There are no actions, suits or proceedings pending, or to the best knowledge of the ECSC threatened, against or affecting it or the Project, which, if adversely determined, would impair the ability of the ECSC to perform its obligations under the Stadium Agreements, and it is not in default with respect to any judgment, decision, order, writ, injunction, decree or demand of any Governmental Authority.

9.2 Representations and Warranties of the County. The County represents and warrants to the ECSC and the Bills that:

(a) the County is a municipal corporation duly organized and existing under New York law;

(b) the County has all requisite municipal power and authority to execute, deliver and perform its obligations under the Stadium Agreements;

(c) the Stadium Agreements have been duly authorized, executed and delivered by

the County and constitute the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof, except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the rights of creditors generally and by general principles of equity;

(d) the County has obtained all authorizations, consents or approvals required for the execution, delivery and performance by it of the Stadium Agreements without any further legislative action;

(e) to the best of its knowledge, the execution, delivery, and performance of the Stadium Agreements by the County do not conflict with, nor will they result in a breach or violation of (with or without due notice and/or lapse of time, or both), any of the terms, conditions or provisions of (i) any Applicable Law, (ii) any order of any Governmental Authority or (iii) any charter document, indenture, mortgage, material contract or other material agreement or instrument to which the County is a party or by which the County or its properties is bound;

(f) the County may, in compliance with Applicable Law, lease the Stadium Complex to the ECSC pursuant to the terms of the 2013 Master Lease; and

(g) There are no actions, suits or proceedings pending, or to the best knowledge of the County threatened, against or affecting it or the Project, which, if adversely determined, would impair the ability of the County to perform its obligations under the Stadium Agreements, and it is not in default with respect to any judgment, decision, order, writ, injunction, decree or demand of any Governmental Authority related to the Stadium Complex.

9.3 Representations and Warranties of the Bills. The Bills represent and warrant to the ECSC and the County that:

(a) the Bills is a business corporation duly organized and validly existing corporation under the laws of the State of New York, are in good standing under the laws of the State of New York, and has all requisite corporate power and authority to execute, deliver and perform their obligations under the Stadium Agreements;

(b) the Stadium Agreements have been duly authorized, executed and delivered by the Bills and constitute the legal, valid and binding obligations of it, enforceable against it in accordance with the terms hereof and thereof, except to the extent enforceability is limited by bankruptcy, reorganization and other similar laws affecting the rights of creditors generally and by general principles of equity;

(c) the Bills has obtained all authorizations, consents, or approvals required for the execution, delivery and performance by it of the Stadium Agreements;

(d) to the best of its knowledge, the execution, delivery and performance of the Stadium Agreements by the Bills do not conflict with, nor will they result in a breach or violation of (with or without due notice and/or lapse of time, or both), any of the terms, conditions or provisions of (i) any Applicable Law, (ii) any order of any Governmental Authority or (iii) any charter document, indenture, mortgage, material contract or other material agreement or instrument to which it is a party or by which it

or any of its properties are bound;

(e) the Bills may, in compliance with Applicable Law and with all contractual obligations of the Bills, lease the Stadium Complex pursuant to the terms of the 2013 Stadium Lease;

(f) the Bills is the valid and legal holder of, and have the exclusive rights with respect to, the Franchise, which Franchise is in full force and effect; and

(g) There are no actions, suits or proceedings pending, or to the best knowledge of the Bills threatened, against or affecting it or the Project, which, if adversely determined, would impair the ability of the Bills to perform its obligations under the Stadium Agreements, and it is not in default with respect to any judgment, decision, order, writ, injunction, decree or demand of any Governmental Authority.

ARTICLE 10. PERMITS AND LICENSES.

10.1 Legal Opinions. Simultaneously with the execution and delivery of this 2013 Construction Coordinating Agreement, the ECSC, the County and the Bills will cause their respective legal counsel to deliver to the other Parties legal opinions in the respective forms attached hereto as Exhibits H-1 through H-3.

10.2 Permits and Licenses. All fees for the issuance of permits and licenses for the Project shall constitute Project Costs.

ARTICLE 11. INDEMNIFICATION

11.1 Indemnification of the ECSC. Except to the extent that any injury or damage to persons or property on the Stadium Complex is caused by or results from the negligence or deliberate act of the ECSC, any Affiliate of the ECSC or their respective employees, contractors, agents, guests or invitees, the Bills will neither hold nor attempt to hold the ECSC, any Affiliate of the ECSC or their respective employees or agents liable for, and the Bills will indemnify, defend and hold harmless the ECSC, all Affiliates of the ECSC and their respective employees and agents from and against, any and all Losses incurred in connection with or arising from the negligence or deliberate act of the Bills or their employees, contractors, agents, guests or invitees in the conjunction with the Project or any component thereof. If any action or proceeding is brought against the ECSC, any Affiliate of the ECSC, or their respective employees or agents by reason of any such claim for which the Bills have indemnified any party hereunder, the Bills, upon written notice from such indemnified party, will defend the same at the Bills' expense, with counsel reasonably satisfactory to such indemnified party.

11.2 Indemnification of the County. Except to the extent that any injury or damage to persons or property on the Stadium Complex is caused by or results from the negligence or deliberate act of the County, any Affiliate of the County or their respective employees, contractors, agents, guests or invitees, the Bills will neither hold nor attempt to hold the County, any Affiliate of the County or their respective employees or agents liable for, and the Bills will indemnify, defend and hold harmless the County, all Affiliates of the County and their respective employees and agents from and against, any and all Losses

incurred in connection with or arising from the negligence or deliberate act of the Bills or their employees, contractors, agents, guests or invitees in the conjunction with the Project or any component thereof. If any action or proceeding is brought against the County, any Affiliate of the County, or their respective employees or agents by reason of any such claim for which the Bills have indemnified any party hereunder, the Bills, upon written notice from such indemnified party, will defend the same at the Bills' expense, with counsel reasonably satisfactory to such indemnified party. For the avoidance of doubt, for purposes of this 2013 Stadium Lease, any person attending a Game or Bills' Event at the Stadium Complex shall be considered an invitee of the Bills and not of the County or ECSC.

11.3 Survival. The provisions of this Article 11 will survive the expiration or termination of this 2013 Construction Coordinating Agreement.

11.4 Exercise of Certain Remedies. The Parties agree that significant costs will be incurred by the County, the ECSC and the Bills to maintain the insurance coverages required by this 2013 Construction Coordinating Agreement and the 2013 Stadium Lease. Accordingly, each Party agrees to pursue all available recoveries under such policies with respect to any loss suffered by, as applicable, an indemnified party and covered, in whole or in part, by such insurance policies before asserting any claim for Losses against another Party or its Affiliates.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1 Public Sector Capacity. Except for its obligations set forth in Section 2.2(a) hereof, in entering into this 2013 Construction Coordinating Agreement, the County is acting in a proprietary rather than a governmental capacity. Nothing contained herein shall limit the County from exercising its governmental or police powers with respect to the protection of the public health, safety or welfare.

12.2 Exculpatory Provisions. All covenants, stipulations, promises, agreements and obligations of the Parties contained herein shall be deemed to be covenants, stipulations, provisions, agreements and obligations of the Party making such covenant, stipulation, promise, agreement or obligation and not of any member, director, officer, employee or agent of such Party in his or her individual capacity, and no recourse shall be had for any claim hereunder against any such member, director, officer, employee or agent.

12.3 Assignment. Without the prior written consent of the other Parties, no Party may assign their interests in this 2013 Construction Coordinating Agreement to any Person. Notwithstanding the foregoing, (a) the Bills shall have the right to assign their rights under this 2013 Construction Coordinating Agreement to a Permitted Assignee; and (b) the ECSC shall have the right to assign this 2013 Construction Coordinating Agreement to ESDC or an Affiliate. To the extent that any assignment is approved or permitted hereunder, such assignment shall not relieve the assigning Party from any liability or obligation pursuant to this 2013 Construction Coordinating Agreement.

12.4 No Construction Against Drafting Party. The County, the ECSC and the Bills acknowledge that each of them and their counsel have had an opportunity to review this 2013 Construction Coordinating Agreement, have mutually contributed to the drafting of this 2013 Construction Coordinating Agreement, and that this 2013 Construction Coordinating Agreement will not be construed against any of the parties as the drafting party.

12.5 No Waiver. No failure of any Party to require, and no delay by any Party in requiring, any other Party to comply with any provision of this 2013 Construction Coordinating Agreement shall constitute a waiver of the right to require such compliance. No failure of any Party to exercise, and no delay by any Party in exercising, any right or remedy under this 2013 Construction Coordinating Agreement shall constitute a waiver of such right or remedy. No waiver by any Party of any right or remedy under this 2013 Construction Coordinating Agreement shall be effective unless made in writing. Any waiver by any Party of any right or remedy under this 2013 Construction Coordinating Agreement shall be limited to the specific instance and shall not constitute a waiver of such right or remedy in the future.

12.6 Notices. Unless otherwise provided in this 2013 Construction Coordinating Agreement, any agreement, notice, request, consent, approval, instruction or other communication to be given hereunder by any Party to the others shall be in writing and (i) delivered personally (such delivered notice to be effective on the date it is delivered), (ii) mailed by certified mail, postage prepaid (such mailed notice to be effective four (4) days after the date it is mailed); (iii) sent by recognized overnight courier service (such couriered notice to be effective one (1) day after it is delivered to such service); or (iv) sent by facsimile transmission with a confirmation sent by way of one of the above methods (such facsimile notice to be effective on the date that confirmation of such transmission is received), addressed to the Party for whom it is intended at its address set forth in Section 1.2 of the 2013 Stadium Lease; provided that any Party may designate in a writing to the other Parties any other address, or telecopier number to which, and any other Person to whom or which, a copy of any such notice, request, instruction or other communication should be sent.

12.7 Severability. If any provision of this 2013 Construction Coordinating Agreement proves to be illegal, invalid, or unenforceable, the remainder of this 2013 Construction Coordinating Agreement will not be affected by such finding, and in lieu of each provision of this 2013 Construction Coordinating Agreement that is illegal, invalid, or unenforceable, a provision will be added as a part of this 2013 Construction Coordinating Agreement as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12.8 Written Amendment Required. No course of performance or other conduct hereafter pursued, accepted or acquiesced in, and no oral agreement or representation made in the future, by any Party to this 2013 Construction Coordinating Agreement, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall modify or terminate this 2013 Construction Coordinating Agreement, impair or otherwise affect any obligation of any Party pursuant to this 2013 Construction Coordinating Agreement or otherwise operate as a waiver of any such right or remedy. No modification of this 2013 Construction Coordinating Agreement or waiver of any such right or remedy shall be effective unless made in writing duly executed by the duly authorized representatives of the Parties to this 2013 Construction Coordinating Agreement.

12.9 Entire Agreement. The Stadium Agreements, including the joinders, exhibits, schedules and addenda thereto, if any, contain the entire agreement between the Parties concerning the Stadium Complex, and there are no promises, agreements, conditions, understandings, inducements, representations or warranties, oral or written, express or implied, between them other than as expressly set forth in the Stadium Agreements or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the County, the ECSC, the ESD, the Bills and/or the

NFL. No promises or representations, except as contained in Stadium Agreements, have been made to the ECSC respecting the condition or the manner of operating the Stadium Complex. This 2013 Stadium Lease and the other Stadium Agreements supersede and replace in its entirety the MOU.

12.10 Captions. The captions of the various articles and sections of this 2013 Construction Coordinating Agreement are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.

12.11 Jurisdiction; Dispute Resolution. Each Party hereby consents to the jurisdiction of the courts of the State of New York and/or the United States District Court for the Western District of New York in any action or proceeding arising under or relating to this 2013 Construction Coordinating Agreement (with Buffalo, New York as the venue for any action or proceeding). Each Party agrees not to institute suit against the others in a court in any jurisdiction, except as stated above, without the other Parties' consent. The Parties further agree that all matters with respect to the validity, construction or interpretation of this 2013 Construction Coordinating Agreement shall be governed by the internal law of the State of New York, without reference to any conflict of laws provisions.

12.12 Binding Effect. The covenants, conditions, and agreements contained in this 2013 Construction Coordinating Agreement will bind and inure to the benefit of the County, the ECSC and the Bills and their respective successors and permitted assigns.

12.13 Counterparts. This 2013 Construction Coordinating Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Any Party may execute this 2013 Construction Coordinating Agreement by facsimile or pdf signature and the other Parties shall be entitled to rely on such facsimile or pdf signature as evidence that this 2013 Construction Coordinating Agreement has been duly executed by such Party. Any Party executing this 2013 Construction Coordinating Agreement by facsimile or pdf signature shall immediately forward to the other Parties an original signature page by overnight mail.

12.14 Applicable Standard. Any approval, consent, decision or election to be made or given by a Party hereunder may be made or given in such Party's sole judgment and discretion, unless a different standard (such as reasonableness) is provided for explicitly.

12.15 Additional Assurances. From time to time after the date of this 2013 Construction Coordinating Agreement, without further consideration and subject to the other terms of this 2013 Construction Coordinating Agreement, the Parties shall promptly execute and deliver such other instruments and take such other action as any other Party reasonably may request to consummate the transactions contemplated hereby.

12.16 No Third Party Beneficiaries. This 2013 Construction Coordinating Agreement is solely for the benefit of the Parties, and their successors and permitted assigns and no provisions of this 2013 Construction Coordinating Agreement shall be deemed to confer upon any other Person any remedy, claim, liability, reimbursement, cause of action or other right.

12.17 No Merger. The terms and provisions of this 2013 Construction Coordinating Agreement (including, without limitation, the representations, warranties and covenants) shall not merge, be extinguished or otherwise affected by the delivery and execution of any document delivered pursuant to any Stadium Agreement unless such document shall specifically so state and shall be signed by the Parties.

12.18 Non-Discrimination Covenants. Each of the Parties represents and warrants that it will not discriminate against employees or applicants for employment with respect to the Project because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and that it shall undertake a program (or continue any existing programs) to ensure that minority members and women are afforded equal opportunities without discrimination with respect to such employment.

12.19 Project Labor Agreement. Pursuant to the CM Agreement, the Bills shall cause the CM to provide an analysis of the types and quantities of labor required for the Project, and assist in the implementation of a project labor agreement with respect to the Project, as may be appropriate.

12.20 WBE/MBE. During the design, development and construction of the Project, the ECSC shall be primarily responsible for monitoring (a) the employment of minority and women-owned business enterprises by the CM, the Architect and the Construction Providers and (b) the compliance by the CM, the Architect and the Construction Providers with respect to minority and woman workforce participation goals as set forth in the Affirmative Action Plan.

12.21 Limited Liability of ECSC. Notwithstanding anything contained herein to the contrary, the liability and obligation of ECSC to perform and make good the obligations contained herein shall not be enforced by any Proceeding wherein damages or any money judgment shall be sought against ECSC, ESD or the State; provided, however, that the foregoing limitation shall not be construed so as to limit the ability of any Party to commence a Proceeding against ECSC or, if applicable, in accordance with the terms of the Four Party Agreement dated the date hereof among the County, the Bills, ESD and the ECSC, against ESD, seeking:

- (a) Recovery for Losses arising out of the negligence or willful misconduct of ECSC;
- (b) Recovery for Losses arising out of the negligence or willful misconduct of any employee of ECSC or ESD;
- (c) Recovery for Losses arising out of the negligence or willful misconduct of any Person at the Stadium Complex at the behest, request or invitation of ECSC (including any guest or invitee in conjunction with an ECSC sponsored Civic Event but excluding the Bills or their employees, contractors, agents, licensees, guests or invitees);
- (d) Recovery of any Project Insurance Policy proceeds;
- (e) Reimbursement from ECSC for Operating Expenses and Game Day Expenses in accordance with Section 9.4 and Section 9.5 of the 2013 Stadium Lease;
- (f) Payment by the ECSC of Working Capital Assistance in accordance with Section 11.1 of the 2013 Stadium Lease;

(g) Payment by ECSC pursuant to Section 2.3 of this 2013 Construction Coordinating Agreement; and/or

(h) Payment by the ECSC, of Capital Improvement Allowance payments in accordance with Article 10 of the 2013 Stadium Lease.

12.22 Automatic Termination. In the event the 2013 Stadium Lease is cancelled or terminated for any reason, this 2013 Construction Coordinating Agreement shall automatically terminate, except for the provisions hereof which, by their terms, survive the termination or cancellation of this 2013 Construction Coordinating Agreement. Upon such termination, the Bills shall assign to the ECSC and the County all of the Bills right, title and interest in and to the Plans and Specifications and the Professional Agreements, and shall otherwise surrender the Property to the ECSC in accordance with Section 19.1 of the 2013 Stadium Lease.

12.23 Apprenticeship Law. During the design, development and construction of the Project, the Bills shall be primarily responsible for monitoring compliance by the CM, the Architect and the Construction Providers with the Apprenticeship Law.

[signature page to 2013 Construction Coordinating Agreement follows]

[signature page to 2013 Construction Coordinating Agreement]

IN WITNESS WHEREOF, the Parties have executed this 2013 Construction Coordinating Agreement as of the day and year set forth above.

COUNTY OF ERIE

By: _____
Mark Poloncarz, County Executive

Approved as to Form:

County Attorney

Approved as to Content:

Deputy County Executive

ERIE COUNTY STADIUM CORPORATION

By: _____
Its: _____

BUFFALO BILLS, INC.

By: _____
Its: Russell H. Brandon, Chief Executive Officer/President

SCHEDULE 3.1

1. DiDonato Associates, P.E., P.C.;
2. Kideney Architects, P.C
3. Carmina Wood Morris, AE, P.C.

EXHIBIT A

LAND

Being all that tract or parcel of land located on the east side of Abbott Road in the Town of Orchard Park, County of Erie, State of New York and being part of Lots 39 and 40, Township 9, Range 7 of the Holland Land Company's survey and further bounded and described as follows:

Beginning at a point on the centerline of Abbott Road, said point being Two Hundred Fifty-Five and Fifty-Three hundredths feet (255.53') south of the centerline of Southwestern Boulevard as measured along the centerline of Abbott Road and said point of beginning being on the extension southwesterly of the southerly line of lands conveyed to Penn Mutual Life Insurance Company by Liber 6132 of Deeds at Page 195;

thence northeasterly at an angle with the centerline of Abbott Road measured from the south to the east of $115^{\circ}47'49''$ and parallel with Southwestern Boulevard a distance of Two Hundred Thirty-Six and Sixty-Five hundredths feet (236.65') to the southeast corner of Liber 6132 of Deeds at Page 195;

thence north along the east line of Liber 6132 of Deeds at Page 195 and its extension north and being parallel with Abbott Road a distance of Two Hundred Fifty-Five and Fifty-Three hundredths feet (255.53') feet to the centerline of Southwestern Boulevard;

thence northeast along the centerline of Southwestern Boulevard at an included angle with the last described line of $115^{\circ}47'49''$ a distance of Two Hundred Fifty-Four and Twenty-Six hundredths feet (254.26') to a point on the south line of lands conveyed to Charles Druse by Liber 471 of Deeds at Page 317;

thence continuing along the centerline of Southwestern Boulevard a distance of Three Hundred Sixty-One and Thirty-One hundredths feet (361.31');

thence south at right angles to the south line of Charles Druse by Liber 471 of Deeds at Page 317 a distance of One Hundred Ninety-One and Thirty-Five hundredths feet (191.35') to said south line;

thence east at right angles with the last described line and along the said south line a distance of One Thousand Seventy-Eight and Seventy-Seven hundredths feet (1,078.77') to the east line of Lot 40, Township 9, Range 7;

thence south along the east line of Lot 40, Township 9, Range 7 and at an included angle with the last described line of $90^{\circ}50'18''$ a distance of Two Thousand Seven Hundred Thirty-Five and Twenty-Four hundredths feet (2,735.24') to the southeast corner of Lot 40, Township 9, Range 7;

thence continuing in a straight line a distance of Sixty-Six and Four hundredths feet (66.04') to the northeast corner of Lot 39, Township 9, Range 7;

thence west at an included angle with the last described line of $88^{\circ}00'47''$ and along the north line of Lot 39, Township 9, Range 7 a distance of ninety-six and ninety-seven hundredths feet (96.97') to the northeast corner of lands conveyed to the Town of Orchard Park by Liber 8087 of Deeds at Page 67;

thence southwest at a deflection to the left of $77^{\circ}41'52''$ and along an easterly line of lands conveyed by Liber 8087 of Deeds at Page 67, a distance of Five Hundred Twenty and Seven hundredths feet more or less ($520.07' \pm$) deeded and Five Hundred Nineteen and Sixty-Eight hundredths feet (519.68') measured to an angle point in said easterly line;

thence southwest along said easterly line and at an included angle with the last described line of $173^{\circ}23'30''$ a distance of Two Hundred One and Forty-Seven hundredths feet (201.47') to the southeast corner of said lands conveyed by Liber 8087 of Deeds at Page 67;

thence west at an included angle with the last described line of $110^{\circ}41'58''$ a distance of One Hundred Seventy-Six and Twenty hundredths feet (176.20') to the southwest corner of said lands conveyed by Liber 8087 of Deeds at Page 67;

thence north at right angles to the last described line a distance of One Hundred Eighty-One and Seventy-Five hundredths feet (181.75');

thence west at a deflection to the left of $90^{\circ}0'$ deeded and $89^{\circ}46'49''$ measured a distance of Six Hundred Twenty-Seven and no hundredths feet (627.0') deeded and Six Hundred Twenty-Three and Forty-One hundredths feet (623.41') measured to a point One Thousand One Hundred Eleven and Forty-Four hundredths feet (1,111.44') north of the centerline of Big Tree Road as measured at right angles with this described line;

thence south at right angles with the last described line a distance of Eight Hundred Sixty and Eighty-Four hundredths feet (860.84') to a point Two Hundred Fifty and Sixty hundredths feet (250.60') north of the centerline of Big Tree Road as measured along the extension south of this described line;

thence west at right angles with the last described line a distance of One Hundred Seventy-Seven and Thirty-Nine hundredths feet (177.39');

thence south at right angles with the last described line a distance of Two Hundred Twenty and Sixty-Four hundredths feet (220.64') to the centerline of Big Tree Road;

thence westerly along the centerline of Big Tree Road and at an included angle with the last described line of $80^{\circ}24'47''$ a distance of One Hundred Ninety-Two and Fifty-Three hundredths feet (192.53');

thence westerly along the centerline of Big Tree Road and at a deflection to the left of $0^{\circ}20'00''$ a distance of Forty-Eight and Twenty-Two hundredths feet (48.22');

thence north at an included angle with the last described line of $99^{\circ}15'20''$ a distance of One Thousand Five Hundred Seventy and Eighty hundredths feet (1,570.80') deeded and One

Thousand Five Hundred Ninety-Two and Forty-Seven hundredths feet (1,592.47') measured to the north line of Lot 39, Township 9, Range 7;

thence west along the north line of Lot 39 a distance of Five Hundred Fifty-Two and Ninety-Five hundredths feet (552.95') to the centerline of Abbott Road as now laid out;

thence northeast at an included angle with the last described line of $80^{\circ}08'15''$ a distance of Six Hundred Ninety-Seven and Eighty-One hundredths feet (697.81') to an angle point in the centerline of Abbott Road as now laid out;

thence northeasterly along the centerline of Abbott Road as now laid out and at a deflection to the left of $1^{\circ}29'56''$ a distance of Seven Hundred Sixty-Eight and Ninety-Three hundredths feet (768.93') to a point of curve in the centerline of Abbott Road as now laid out;

thence northerly along a curve to the left having a radius of One Thousand Nine Hundred Nine and Eighty-Six hundredths feet (1,909.86') and a central angle of $15^{\circ}50'16''$ an arc length of Five Hundred Twenty-Three and Four hundredths feet (523.04') to the point of tangency;

thence northwesterly along the center line of Abbott Road and tangent to the last described line a distance of Two Hundred Eighty-Two and Eighty-One hundredths feet (282.81') to the point of beginning;

Excepting from the above described parcel the "burial ground lot" further bounded and described as follows:

Commencing at the intersection of centerlines of Abbott Road and Southwestern Boulevard;

thence southwest along the centerline of Abbott Road and its extension a distance of Eight Hundred One and Fifty hundredths feet (801.50');

thence southeasterly at a deflection to the right of $16^{\circ}33'49''$ a distance of Two Hundred Ten and Eighty-Eight hundredths feet (210.88') record and Two Hundred Seventeen and Fifty-Five hundredths feet (217.55') measured;

thence east at an angle with the last described line measured from the north to the east of $79^{\circ}55'55''$ a distance of Eight Hundred Sixty-One and Twenty-Seven hundredths feet (861.27') record and Eight Hundred Sixty-Three and Sixteen hundredths feet (863.16') measured to the point of beginning;

thence continuing east a distance of One Hundred Forty and Fifteen hundredths feet (140.15');

thence north at an included angle with the last described line of $88^{\circ}46'27''$ a distance of Eighty-Two and Forty-Four hundredths feet (82.44');

thence west at an included angle with the last described line of $91^{\circ}13'33''$ a distance of One Hundred Forty and Fifteen hundredths feet (140.15');

thence south at an included angle with the last described line of $88^{\circ}46'27''$ a distance of Eighty-Two and Forty-Four hundredths feet (82.44') to the point of beginning and containing 0.27 acres, more or less.

Also excepting from the above described parcel the southerly half of Southwestern Boulevard, said having a full right-of-way width of 100' as conveyed to the County of Erie by Liber 2062 of Deeds at Page 496;

Also excepting from the above described parcel that portion of lands lying within the above described parcel along Big Tree Road as conveyed by Edna Oaks to the State of New York by Liber 4287 of Deeds at Page 256 and shown on Map 25-R-1, Parcel 31;

The remaining parcel containing 138.98 acres more or less.

Also conveying the following described parcel

Being all that tract or parcel of land located on the west side of Abbott Road in the Town of Orchard Park, County of Erie, State of New York and being part of Lots 39 and 40, Township 9, Range 7 of the Holland Land Company's survey and further bounded and described as follows:

Commencing at the centerline of Abbott Road at its intersection with the centerline of Southwestern Boulevard;

thence $S 5^{\circ}19'26'' E$ along the centerline of Abbott Road a distance of Five Hundred Thirty-Eight and Thirty-Four hundredths feet (538.34') to a point of curve in the centerline of Abbott Road as now laid out;

thence southerly along a curve to the right having a radius of One Thousand Nine Hundred Nine and Eighty-Six hundredths feet (1,909.86') and being the centerline of Abbott Road as now laid out an arc length of Nineteen and no hundredths feet (19.00') to its intersection with the north line of lands formerly conveyed to E.I. DuPont DeNemours & Company by Liber 1295 of Deeds at Page 469 and the point of beginning;

thence southerly along a curve to the right forming the centerline of Abbott Road as now laid out having a radius of One Thousand Nine Hundred Nine and Eighty-Six hundredths feet (1,909.86') an arc length of Five Hundred Four and Four hundredths feet (504.04') to a point of tangency;

thence $S 10^{\circ}22'02'' W$ along the centerline of Abbott Road as now laid out and tangent to the last described curve a distance of Seven Hundred Sixty-Eight and Ninety-Three hundredths feet (768.93') to an angle point;

thence $S 11^{\circ}51'58'' W$ along the centerline of Abbott Road as now laid out a distance of One Thousand Sixty-One and Seventy-Two hundredths feet (1,061.72') to the southeast corner of lands conveyed to the County of Erie by Liber 7551 of Deeds at Page 607;

thence N 78°41'03" W a distance of Three Hundred Twenty and no hundredths feet (320.00') to an angle point in lands conveyed to the County of Erie by Liber 7551 of Deeds at Page 607;

thence S 11°51'58" W along an east line of lands conveyed to the County of Erie by Liber 7551 of Deeds at Page 607 and parallel with the centerline of Abbott Road a distance of Three Hundred Twenty and no hundredths feet (320.00') to the northwest corner of lands conveyed by James F. Piridy and wife to the County of Erie by Liber 8070 of Deeds at Page 377;

thence S 78°41'03" E a distance of One Hundred Twenty and no hundredths feet (120.00') to a point;

thence S 11°51'58" W and parallel with the centerline of Abbott Road a distance of One Hundred Forty and no hundredths feet (140.00') to a point;

thence S 78°41'02" E a distance of Two Hundred and no hundredths feet (200.00') to the centerline of Abbott Road at the northeast corner of lands of the County of Erie as shown on SK 217-90 and known as Parcel No. 1, said point being Six Hundred Seventy-Five and Ten hundredths feet (675.10') north of the centerline of Big Tree Road as measured along said centerline of Abbott Road;

thence S 11°51'58" W along said centerline of Abbott Road as shown on SK 217-90 a distance of Four Hundred Fifty-Five and Fifteen hundredths feet (455.15') to the southeast corner of lands of the County of Erie as shown on SK 217-90 and known as Parcel No. 1;

thence N 78°21'07" W a distance of Three Hundred Eighty-Two and Twenty-Six hundredths feet (382.26');

thence N 28°01'26" W a distance of Sixty-Nine and Thirty-Six hundredths feet (69.36');

thence N 80°00'42" W a distance of Ninety-Three and Forty hundredths feet (93.40');

thence N 76°20'34" W a distance of One Hundred Fifty and Thirteen hundredths feet (150.13');

thence N 85°10'45" W a distance of One Hundred and Sixty-Six hundredths feet (100.66');

thence N 80°36'35" W a distance of Fifty and One hundredths feet (50.01');

thence N 11°18'00" E a distance of Three and no hundredths feet (3.00');

thence N 84°44'22" W a distance of Fifty and Twenty-Eight hundredths feet (50.28');

thence N 11°18'00" E a distance of One and Fourteen hundredths feet (1.14');

thence N 81°18'40" W a distance of Thirty-Five and Three hundredths feet (35.03') to a point;

thence N 11°51'58" E and parallel with the centerline of Abbott Road a distance of Eight Hundred Seventy-One and Sixteen hundredths feet (871.16') to a point on the extension west of the north line of lands conveyed by James F. Piridy to Frank Nucherno by Liber 8815 of Deeds at Page 624;

thence S 78°41'02" E and along the extension west of lands conveyed by Liber 8815 of Deeds at Page 624 a distance of Two Hundred Nineteen and Eighty-Four hundredths feet (219.84') to a point on the extension south of the west line of lands conveyed to E.I. DuPont DeNemours & Company by Liber 1295 of Deeds at Page 469;

thence N 00°01'46" E and along the west line of lands conveyed by Liber 1295 of Deeds at Page 469 and its extension south and also north a distance of Two Thousand One Hundred Ninety-Two and Eighty-Six hundredths feet (2,192.86') to the southerly line of Southwestern Boulevard being 100' wide;

thence N 64°45'18" E along the southerly line of Southwestern Boulevard a distance of One Hundred and no tenths feet (100.0');

thence S 0°01'46" W a distance of Fifty-Nine and Fourteen hundredths feet (59.14') to the north line of lands conveyed to E.I. DuPont DeNemours & Company;

thence S 89°14'02" E along the said north line a distance of Nine Hundred Fifty-Eight and Eighty-Two hundredths feet (958.82') to the point of beginning;

The remaining parcel containing 58.65 acres more or less.

EXHIBIT B

AFFIRMATIVE ACTION PLAN

I. General Provisions

- A. Empire State Development and its subsidiary the Erie County Stadium Corporation (collectively “ESD”) are required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. Section 313(3) of Article 15-A includes leases in the definition of State contracts.
- B. Buffalo Bills, Inc. (hereinafter “Contractor”), as the contractor to the subject contract (the “Contract”) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Contractor agrees to include in any, contract or subcontract, including a lease or sublease, purchase order or other agreement (“Bills Subcontract”), such provisions as may be necessary to effectuate the provisions of Article 15-A, Section 313, including but not limited to requiring the contracting party to, (A) make a good faith effort to solicit active participation by enterprises identified in the directory of NYS certified businesses found at the following internet address: <http://www.esd.ny.gov/mwbe.html>, and (B) require the party to agree as a condition of entering into such contract, to be bound by the provisions of NYS Executive Law 15-A, Section 316 regarding enforcement of the MWBE Regulations with respect to work in connection with the Bills Subcontract.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract. Should such failure occur, ESD may elect to initiate enforcement proceedings as allowed by this Contract which may include liquidated or other appropriate damages as set forth herein. In addition, ESD reserves the right, as provided for in New York State Executive Law, Article 15-A, to issue a complaint to the New York State Division of Minority and Women Business Development where sanctions or penalties may be imposed for Contractor’s failure to meet the requirements established herein.

- E. Contractor will furnish to ESD access to its books, records and accounts and to all information and reports required, as may be relevant, for the purposes of investigation to ascertain compliance with the requirements set forth herein. Under no circumstances shall Contractor be obligated to provide ESD access to all its financial records.

II. Contract Goals

- A. For purposes of this Contract, ESD hereby establishes an overall goal of not less than 23% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 13% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation.
- B. The MWBE participation goals shall apply to all project costs which shall include: 1) the \$130 million Budget for the Project as defined in the 2013 Construction Coordinating Agreement which amount shall be reduced in accordance with Section II(D); 2) all Game Day Expense Reimbursements and all Operating Expense Reimbursements as defined in the 2013 Stadium Lease (collectively the “Annual Reimbursements”); and 3) the Annual Capital Improvement Allowance as defined in the 2013 Stadium Lease. Project costs for MWBE participation goals shall not include Working Capital Assistance as defined in the 2013 Stadium Lease.
- C. The parties agree that goals for MWBE participation for any Capital Improvement as defined in the 2013 Stadium Lease shall be subject to MWBE goals in accordance with the following process:
 - I. The County shall provide ESD and the Contractors written notice of any Capital Improvement in accordance with Article 10 of the 2013 Stadium Lease.
 - II. Upon receipt of said written notice, in consultation with the County, ESD shall establish MWBE participation goals for the work to be performed.
 - III. The County shall enforce the MWBE participation goals with respect to such Capital Improvement in accordance with this Exhibit B and shall be bound by the terms herein with respect thereto.
- D. The \$130 million Budget subject to MWBE goals shall be reduced by \$13,693,941 for budget items where no reasonable MWBE utilization is available. The MWBE utilization goal of 23% shall apply only to the remaining \$116,306,059 for a MWBE participation dollar value goal of \$26,750,394.
- E. The MWBE participation goals for the Annual Reimbursements shall apply to all funds provided by ESD and the County but shall exclude the amount of such funds that are allocated by the Contractor to pay for utilities and insurance. In year 1, the Annual Reimbursements are expected to be \$4,731,000 and shall be reduced for MWBE participation purposes by \$2,143,981. The aggregate MWBE participation of 23% shall apply to the remaining \$2,587,019 for a year 1 MWBE participation dollar value goal of \$595,014. The amount excluded for costs associated with utilities and

insurance shall be adjusted annually in accordance with Section 9.5 of the 2013 Stadium Lease.

- F. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Women Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- G. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor will send to each employment agency, labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under this Section.
- C. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall require that all Bills Subcontracts providing services with funds paid for in whole or in part from ESD or the County of Erie shall have an EEO/Workforce goal of 13.2% for Minority Group Members according to the provisions of Executive Law Article 15-A, §310(8) and 6.9% for Woman.
3. The Contractor shall submit an EEO policy statement to the ESD with the executed Contract.
4. If Contractor or subcontractor does not have an existing EEO policy statement, the ESD may provide the Contractor or subcontractor a model statement (see EXHIBIT B-1: MWBE Participation/Equal Employment Opportunity Policy Statement). Exhibits G-1 through G-7 are attached hereto and incorporated herein.
5. The Contractor's EEO policy statement shall include the following language:
6. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - a. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - b. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - c. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
7. If ESD determines that the Contractor and/or its subcontractors are not in compliance with the requirements of this Section 3 and ESD is unsuccessful in its efforts to resolve the matter and bring the Contractor or subcontractor into compliance with the requirements, ESD may file a complaint with the Director of the Division of Minority and Women's Development in the Department of

Economic Development ("Director") according to the provisions of Executive Law Article 15-A, §§ 313 & 316l.

8. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by any of the subcontractors or the subcontractors willful and intentional disregard of the requirements of this Section 3 may include a determination that the subcontractor shall be ineligible to submit a bid to any contracting agency or be awarded any contract for up to one year following the final determination.

D. EXHIBIT B-2: Staffing Plan

To ensure compliance with this Section and with the Apprenticeship Law as defined in the 2013 Construction Coordinating Agreement, the Contractor shall submit to ESD and the County a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of the executed Contract.

E. EXHIBIT B-3: Work Force Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the ESD and the County of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- F. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic,

marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that prior to the Initial Construction Commencement Date, Contractor shall submit to ESD an MWBE Utilization Plan (EXHIBIT B-4).
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
- D. Contractor further represents and warrants that Contractor will submit necessary updates and amendments to the Utilization Plan as required by ESD. Contractor shall provide ESD notice of any updates, changes or amendments to the Utilization Plan.

V. Waivers

- A. For Waiver Requests Contractor should use the Waiver Request Form (EXHIBIT B-5).
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If ESD, upon review of the MWBE Utilization Plan and updated Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Monthly MWBE Contractor Compliance Report

Contractor is required to submit a Monthly MWBE Contractor Compliance and Payment Report (EXHIBIT B-6) to ESD and the County by the 10th day following each end of each

month over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

1.1 VII. Liquidated Damages - MWBE Participation

- A. Where ESD determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, ESD may assess liquidated damages pursuant to Executive Law Article 15-A, §316-a.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made, which requires the payment of liquidated damages, Contractor shall pay such liquidated damages to ESD within sixty (60) days after they are assessed by ESD unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of ESD, unless such enforcement is subsequently stayed as a result of the filing of appropriate judicial proceedings.

VIII. Apprenticeship Law Certification

In accordance with the Apprenticeship Law as defined in the 2013 Construction Coordinating Agreement, the Contractor shall submit to the County the New York State Certified Apprenticeship Training Program Certification in Compliance with Exhibit B-7.

EXHIBIT C

BUDGET

<u>Scoreboard & Videoboard Work Action Item</u>		Subtotal
New HD Video Display to east end zone	\$8,318,473	
Total of Scoreboard & Videoboard Work Action Item		\$8,318,473
<u>IT & AV Work Action Items</u>		
Total of IT & AV Work Action Items		\$13,240,369
<u>Commissary Building Work Action Item</u>		
New commissary building and connector	\$8,472,520	
Total of Commissary Building Work Action Item		\$8,472,520
<u>West Entrance & Retail Building Work Action Item</u>		
Relocation and expansion of Team Store to new west end plaza	\$4,996,375	
Total of West Entrance & Retail Building Work Action Item		\$4,996,375
<u>Site Improvements Work Action Items</u>		
Total of Site Improvements Work Action Items		\$9,919,183
<u>Stadium Renovation Work Action Items:</u>		
Stadium Food Service Equipment	\$8,707,046	
Point of Sale System	\$1,927,200	
Renovation of Toilet Rooms – all levels	\$4,646,047	
Renovation of Concession Stands & Concourses	\$9,098,191	
Graphics & Signage	\$5,119,235	
Deferred Maintenance	\$4,740,120	
General Stadium Renovations	\$7,333,057	
Total of Stadium Renovation Work Action Items:		\$41,570,896
<u>Training Center Work Action Items</u>		
Total of Training Center Work Action Items		\$8,699,463
<u>Operations Building Work Action Item</u>		
New operations and storage complex	\$2,314,846	
Total of Operations Building Work Action Item		\$2,314,846
<u>Furniture, Fixtures & Equipment Work Action Item</u>		
New furniture, fixtures and equipment	\$1,500,000	
		<u>\$1,500,000</u>
	SUB-TOTAL:	\$99,032,125*
	CM General Conditions/General Requirements:	\$3,810,425
	CM Fees:	\$3,086,450
	A/E Fees:	\$8,700,000
	Other Soft Costs:	<u>\$2,371,000</u>
	TOTAL BASE BUDGET:	\$117,000,000
	PROJECT CONTINGENCY RESERVES:	<u>\$13,000,000</u>
	TOTAL BUDGET:	<u>\$130,000,000</u>

EXHIBIT D

REQUEST FOR DISBURSEMENT

The undersigned Buffalo Bills, Inc. (the "Bills"), pursuant to the 2013 Construction Coordinating Agreement by and among Erie County Stadium Corporation (the "ECSC"), the County of Erie and the Bills dated as of _____ (the "Agreement"), hereby requests a disbursement of funds from the Project Account in the amount of \$ _____ for payment of Project Costs. Attached hereto is (i) a Bills Affidavit, dated the same date as this request, in the form of Exhibit E to the Agreement, and (ii) a Project Status Cost Control Report, in the form required by the ECSC, together with all other documents required to be furnished herewith under the Agreement. All capitalized terms not otherwise defined herein have the meanings assigned to them in the Agreement.

BUFFALO BILLS, INC.

By: _____

8. All of the current aggregate disbursement (Paragraph 2) has been expended for the sole purpose of paying Project Costs, and no part of said aggregate disbursement has been used, and the funds to be received pursuant to the Request for Disbursement submitted herewith shall not be used, for any other purpose.

9. To the best of affiant's knowledge, all of the statements and information set forth in the Request for Disbursement are true and correct in every material respect at the date hereof, and all Project Costs certified in said Request for Disbursement accurately reflect the precise amounts due, exclusive of permissible retainages. All the funds to be received pursuant to said Request for Disbursement shall be used solely for the purposes of paying the items of Projects Costs specified therein or for reimbursing the Bills for such items previously paid by the Bills.

10. To the best of affiant's knowledge, nothing has occurred subsequent to the date of the Agreement which has resulted in or may result in the creation of any lien, charge or encumbrance upon the premises or the Project or any part thereof or upon any assets of or funds appropriated to the State ESD or the Corporation, or County.

11. All conditions to the disbursements referred to above and to be made in accordance with the Request for Disbursement submitted herewith in addition to those to which reference is made in this Affidavit have been met in accordance with the terms of the Agreement.

BUFFALO BILLS, INC.

By: _____

EXHIBIT F

CM'S INSURANCE REQUIREMENTS

1. INSURANCE

Prior to commencing the Project, the CM shall obtain the following insurance for the coverages listed below, written for not less than the limits specified for each coverage or required by law, whichever is greater.

A. COMMERCIAL GENERAL LIABILITY

Bodily Injury and Property Damage Limit	\$2,000,000 each occurrence
Products/Completed Operations Limit	\$4,000,000 aggregate
Personal Injury & Advertising Injury Limit	\$2,000,000 each person
General Aggregate	\$4,000,000 organization

No exclusions for Contractual Liability, Premises/Operations, Products/Completed Operations, explosion, collapse and underground hazards or Personal Injury shall be permitted.

The foregoing insurance is collectively referred to herein as the "CGL Insurance".

B. AUTOMOBILE LIABILITY

Owned, Hired and Non-Owned Autos Combined Single Limit for Bodily Injury & Property Damage	\$1,000,000 each Accident
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The foregoing insurance is referred to herein as the "Automobile Liability Insurance".

C. EXCESS & UMBRELLA LIABILITY

Combined Single Limit for Bodily Injury & Property Damage	\$50,000,000 each Occurrence
--	------------------------------

The foregoing insurance is referred to herein as the "Excess Liability Insurance".

D. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

Statutory coverage complying with New York Workers' Compensation Law

The foregoing insurance is referred to herein as the "Statutory Insurance." The CGL Insurance, Automobile Liability Insurance, Excess Liability Insurance and Statutory Insurance policies are collectively referred to herein as the "Policies."

E. ADDITIONAL INSUREDS

The Parties and their respective officers, employees and agents shall be named as Additional Insureds on a direct primary basis under the policies for the CGL Insurance and Excess Liability Insurance.

- F.** The required coverages for each Policy shall be maintained by the CM without interruption from the date of commencement of the Project until one year after the date of final payment, except that: (i) the CM shall maintain Completed Operations coverage for at least two (2) years after the date of final payment; and (ii) the CM shall cause all other Construction Providers to maintain Completed Operations coverage for at least one (1) year after the date of final payment to such Construction Provider.
- G.** The Policies shall be written with companies that are nationally recognized and, if underwriting primary coverage, that have a policyholder's rating of at least "A" and a FSC rating of at least XII as listed at the time of issuance by A.M. Best Insurance Reports, or such other ratings as the Parties may mutually agree, and are qualified to issue such insurance in the State of New York.
- H.** The CGL Insurance, Automobile Liability Insurance, and Statutory Insurance shall be endorsed to provide that they may not be canceled, terminated, reduced or materially changed unless at least 60 days' advance notice thereof has been provided to the Parties, except in the case of cancellation or termination due to non-payment of premium, in which case only 10 days' advance notice shall be required. In addition, the Excess Liability Insurance policy shall also provide that it cannot be cancelled or terminated for non-payment of premium without 10 days' advance notice to the Parties.
- I.** The Policies shall include waivers of any recourse against the Parties for payment of any premiums or assessments under any Policy.
- J.** The CGL Insurance policy, the Automobile Liability Insurance policy, and the Excess Liability Insurance policy shall contain a "cross-liability" or a "severability of interest" provision/endorsement providing that, except with regard to the limits of insurance, each insured under the policy will be treated as though the policy applied separately to each coverage.
- K.** The Policies shall not have deductibles in excess of \$25,000 unless the Parties mutually agree to such higher deductible.
- L.** With respect to the Policies, the CM shall deliver, or cause to be delivered, to the Parties certificates of insurance and any other documentation reasonably required by such Parties evidencing the existence of the Policies and the various amendments thereto required herein, such delivery to be made at least three (3) business days prior to the commencement of Project. Within twenty-one (21) days after the issuance of any additional policies or amendments or supplements to the Policies materially affecting the coverage afforded thereunder, the CM shall deliver to the Parties revised certificates of insurance reflecting any such addition, amendment or supplement. With respect to any Policy that expires by its terms prior to the final completion of the Project, the CM shall deliver to the Parties certificates of insurance and any other documentation reasonably required by such Parties evidencing the existence of the renewal or replacement of such

Policy, such delivery to be made at least three (3) business days prior to the expiration of such Policy.

- M. On a monthly basis the CM shall deliver a certificate of insurance to the Parties confirming the Excess Liability Insurance has not been cancelled, terminated, reduced, or materially modified.

2. INDEMNIFICATION

The CM Agreement shall provide that the CM agrees to defend, indemnify and hold harmless Owner, ECSC, the County, and the Architect for claims for personal injury or property damage caused by: (a) the negligence of the CM; (b) the violation of a statute, ordinance, rule or regulation by the CM; (c) products furnished or used by the CM in connection with the Project; and/or (d) a breach of the CM Agreement by CM. The evidence of insurance provided by the CM to the Owner, ECSC and the County shall specifically acknowledge that the contractual liability coverage referenced above covers the liability assumed under this indemnification.

3. CONSTRUCTION PROVIDERS (OTHER THAN THE CM)

The CM shall take all necessary steps to ensure that the requirements set out in Sections 1, 2, 4 and 6 are included in the contracts between the CM and any Construction Providers, except that such Construction Providers need not maintain the same Excess Liability Insurance (although the CM will endeavor to have such Construction Providers maintain the highest limit reasonably practical). The CM shall cause all Construction Providers (other than the CM) to comply with these insurance requirements by obtaining from such Construction Providers certificates of insurance verifying that all aspects of the requirements herein have been fulfilled. Failure of the CM to comply with the foregoing requirements shall be a material breach of this 2013 Construction Coordinating Agreement. Notwithstanding the foregoing, with respect to all Construction Providers at the Project (other than the CM), the minimum CGL Insurance limits set forth in Section 1 A shall be reduced to \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

4. CERTIFICATES OF INSURANCE

- A. The certificates of insurance running in favor of the "County of Erie" shall be sent to:

Commissioner of Public Works
95 Franklin Street, Room 1408
Buffalo, New York 14202

Or such other place designated by the County in writing from time to time.

- B. The referenced coverage must comply with all specifications of the CM Agreement, except to the extent the same are not in compliance with this Exhibit F, in which case the terms and conditions of this Exhibit F shall control.
- C. The certificates must be executed by an insurance company and/or agency or broker which is licensed by the Insurance Department of the State of New York. If executed by a broker, notarized copy of authorization to bind or certify coverage must be attached.
- D. The CGL Insurance policy, the Automobile Liability Insurance policy, and the Excess Liability Insurance shall provide that:

"The insurance company or companies issuing the policies shall have no recourse against the County of Erie, the Erie County Stadium Corporation or the Buffalo Bills, Inc. for payment of any premiums or for assessments under any form of policy."

"The insurance shall apply separately to each insured (except with respect to the limit of liability)."

5. CONSTRUCTION MANAGER'S CERTIFICATES SHALL BE ENDORSED VERBATIM AS FOLLOWS:

- A. "Acknowledgement: Insurance companies providing these coverages acknowledge that the named insured is entering into a contract with Buffalo Bills, Inc., in which the named insured, LPCiminelli, Inc., agrees to defend, hold harmless and indemnify Buffalo Bills, Inc., the Erie County Stadium Corporation, the County of Erie and their respective officers, directors, officials, employees and volunteers against all claims resulting from the work performed, material handled and services rendered to the extent set forth in the terms of the said contract. The contractual liability coverage evidenced above covers the liability assumed by the named insured, LPCiminelli, Inc., under its contract with Buffalo Bills, Inc."
- B. "Prior to non-renewal or cancellation of these policies, at least sixty (60) days advance written notice shall be given to the additional insureds requesting this certificate, before such change shall be effective."

6. CERTIFICATES FROM EACH CONSTRUCTION PROVIDER (OTHER THAN THE CM) SHALL BE ENDORSED VERBATIM AS FOLLOWS, UNLESS SUCH ENDORSEMENTS ARE NOT AVAILABLE FROM SUCH CONSTRUCTION PROVIDER'S REGULAR INSURANCE CARRIER:

- A. "Acknowledgement: Insurance companies providing these coverages acknowledge that the named insured is entering into a subcontract with the LPCiminelli, Inc., in which the named insured agrees to defend, hold harmless and indemnify LPCiminelli, Inc., Buffalo Bills, Inc., Erie County Stadium Corporation, the County of Erie and their respective officials, employees and volunteers against all claims resulting from work performed, material handled and services rendered to the extent set forth in the terms of the said subcontract. The contractual liability coverage evidenced above covers the liability assumed under the named insured under its subcontract with LPCiminelli, Inc."
- B. "Prior to non-renewal or cancellation of these policies, at least sixty (60) days advance written notice shall be given to the additional insureds requesting this certificate, before such change shall be effective."

EXHIBIT G

FUNDING SCHEDULE

			20-Apr-13	20-Jul-13	20-Oct-13	20-Jan-14	20-Apr-14	20-Jul-14	20-Oct-14	20-Jan-15	Total
Project Account Funding			\$9,665,380	\$9,747,886	\$8,584,014	\$37,367,067	\$49,853,545	\$12,609,691	\$299,750	\$1,872,667	\$130,000,000
Erie County Share	\$40,654,350	31.272577%	\$3,022,613	\$3,048,415	\$2,684,442	\$11,685,645	\$15,590,488	\$3,943,375	\$93,740	\$585,631	\$40,654,350
ECSC Share	\$53,890,650	41.454346%	\$4,006,720	\$4,040,922	\$3,558,447	\$15,490,273	\$20,666,461	\$5,227,265	\$124,259	\$776,302	\$53,890,650
Buffalo Bills Share	\$35,455,000	27.273077%	\$2,636,047	\$2,658,548	\$2,341,125	\$10,191,149	\$13,596,596	\$3,439,051	\$81,751	\$510,734	\$35,455,000
Total	\$130,000,000	100.00000%	\$9,665,380	\$9,747,886	\$8,584,014	\$37,367,067	\$49,853,545	\$12,609,691	\$299,750	\$1,872,667	\$130,000,000
Buffalo Bills Share			\$2,636,047								
Less: Credit for Pre-Construction Work			\$(2,261,465) ⁴								
Net Buffalo Bills Funding			\$347,582								

⁴ Subject to final adjustment at CCA signing with back up information to be supplied by the Bills

EXHIBIT H
LEGAL OPINIONS

EXHIBIT I
SUMMARY OF WORK ACTION ITEMS COMPRISING THE PROJECT

Scoreboard & Videoboard Work Action Item

New HD Video Display to east end zone

IT & AV Work Action Items

Expansion of live game sound into concourse restrooms

Upgraded Tele/Data infrastructure to meet modern requirements

New data distribution system to support IPTV and distributed TV monitors

Commissary Building Work Action Items

New commissary building and connector

West Entrance & Retail Building Work Action Items

Relocation and expansion of Team Store to new west end plaza

Site Improvements Work Action Items

New Commissary Building and connector associated sitework

New stadium entry plazas including security fence

Steel canopies for new stadium entry plazas

Training Facility associated sitework

New Operations Building associated sitework

Stadium Renovation Work Action Items

Stadium Food Service Equipment

Point of Sale System

Renovation of Toilet Rooms – all levels

Renovation of Concession Stands & Concourses

Graphics & Signage

Deferred Maintenance

General Stadium Renovations

Training Center Work Action Items

New fire alarm detection and notification system in Training Facility

Training facility modernization through expansion and upgrades

Operations Building Work Action Items

New operations and storage complex

Furniture, Fixtures & Equipment Work Action Items

New furniture, fixtures and equipment

See Exhibit I-1 for a listing of the Work Action Items as originally contemplated by the Parties and Exhibit I-2 for a reconciliation of the Work Action Items as originally contemplated by the Parties and the Work Action Items as modified and re-characterized as set forth on Exhibit I.

EXHIBIT I-1

WORK ACTION ITEMS AS ORIGINALLY CONTEMPLATED BY THE PARTIES

1. Expansion of live game sound into concourse restrooms
2. New HD Video Display to east end zone
3. Expanded video control room including full conversion to High Definition
4. Upgraded Tele/Data infrastructure to meet modern requirements
5. New data distribution system to support IPTV and distributed TV monitors
6. East End Zone Renovation including main concourse expansion and addition of a new commissary building.
7. Intentionally Omitted.
8. Intentionally Omitted.
9. New destination concession and restroom areas on the upper concourse
10. Relocation and expansion of Team Store to new west end plaza
11. New stadium entry plazas including wrought iron security fence
12. Steel canopies for new stadium entry plazas
13. Enhanced graphics and way finding throughout the entire stadium and gates
14. Various infrastructure repairs and maintenance items
15. Refurbish and enhance existing press box area
16. Concourse life safety improvements to enhance code compliance
17. Install galvanized intermediate aisle rails in upper bowl
18. New fire alarm detection and notification system in Training Facility
19. Add ADA compliant wheelchair seating in 300 level seating areas
20. Add ADA compliant wheelchair seating in east and west end zones

21. Install handrails on both sides of vomitory ramps on main concourse
22. Cosmetically upgrade and refurbish all exiting toilet rooms
23. Renovate concession stands to meet modern requirements
24. New equipment for renovated concession stands
25. Deploy full POS system for all existing and new concession stands
26. Renovation of post-game interview room, field tunnel and storage areas
27. Intentionally Omitted
28. Upgraded lighting throughout the main concourse
29. Relocate writing press to tower club and convert old press box to 50 yard line club
30. Repurpose operations area to field level staging area
31. Cosmetically upgrade stadium suites
32. Add radiant heat to sideline club seats and newly added areas of main and upper concourse
33. Renovation of Time Warner tower club area
34. Intentionally Omitted
35. Enhanced tailgate experience in parking lots
36. Training facility modernization through expansion and upgrades
37. New operations and storage complex

SCHEDULE I-2
Reconciling Work Action Items as Originally Contemplated by the
Parties to Work Action Items as set forth in this CCA

<u>Technology:</u>	<u>Budget</u> <u>Allocation</u>	<u>CCA Work Action</u> <u>Item</u>
1. Expansion of live game sound into concourse restrooms	\$601,000	IT & AV
2. New HD Video Display to east end zone	8,764,000	Scoreboard & Videoboard
3. Expanded video control room including full conversion to High Definition	5,092,000	General Stadium Renovations
4. Upgraded Tele/Data infrastructure to meet modern requirements	6,604,000	IT & AV
5. New data distribution system to support IPTV and distributed TV monitors	4,194,000	IT & AV
	\$25,255,000	
 <u>Upgrades – Ingress, Egress, Circulation, Restrooms and Food Service:</u>		
6. East End Zone Renovation including main concourse expansion and addition of a new commissary building.	\$8,331,000	Commissary Building & Site Improvements
7. Intentionally Omitted.	-	
8. Intentionally Omitted.	-	
9. New destination concession and restroom areas on the upper concourse	4,442,000	Renovations of Concessions & Toilet Rooms
	\$12,773,000	
 <u>Branding – Front Profile, Team Store, Way finding and Sponsor Activations Plaza:</u>		
	<u>Budget</u> <u>Amount</u>	<u>CCA Work Action</u> <u>Item</u>
10. Relocation and expansion of Team Store to new west end plaza	\$2,641,000	West Entrance & Retail Building
11. New stadium entry plazas including wrought iron security fence	7,108,000	Site Improvements

12.	Steel canopies for new stadium entry plazas	1,083,000	Site Improvements
13.	Enhanced graphics and way finding throughout the entire stadium and gates	3,197,000	Graphics & Signage
		\$14,029,000	

Thorough Renovation of Present Space:

14.	Various infrastructure repairs and maintenance items	\$10,451,000	Deferred Maintenance & ADA Upgrades
15.	Refurbish and enhance existing press box area	706,000	General Stadium Renovations
16.	Concourse life safety improvements to enhance code compliance	1,195,000	Renovation of Concession Stands & Concourses
17.	Install galvanized intermediate aisle rails in upper bowl	954,000	Deferred Maintenance & ADA Upgrades
18.	New fire alarm detection and notification system in Training Facility	210,000	Training Center
19.	Add ADA compliant wheelchair seating in 300 level seating areas	165,000	Deferred Maintenance & ADA Upgrades
20.	Add ADA compliant wheelchair seating in east and west end zones	609,000	Deferred Maintenance & ADA Upgrades
21.	Install handrails on both sides of vomitory ramps on main concourse	1,011,000	Deferred Maintenance & ADA Upgrades
22.	Cosmetically upgrade and refurbish all exiting toilet rooms	3,938,000	Renovation of Toilet Rooms - All levels
23.	Renovate concession stands to meet modern requirements	4,067,000	Renovation of Concession Stands & Concourses
24.	New equipment for renovated concession stands	3,923,000	Stadium Food Service Equipment
25.	Deploy full POS system for all existing and new concession stands	1,564,000	Point of Sale System
26.	Renovation of post-game interview room, field tunnel and storage areas	835,000	General Stadium Renovations
27.	Intentionally Omitted	-	

28.	Upgraded lighting throughout the main concourse	797,000	Renovation of Concession Stands & Concourses
29.	Relocate writing press to tower club and convert old press box to 50 yard line club	2,256,000	General Stadium Renovations
30.	Repurpose operations area to field level staging area	1,012,000	General Stadium Renovations
31.	Cosmetically upgrade stadium suites	5,760,000	General Stadium Renovations
32.	Add radiant heat to sideline club seats and newly added areas of main and upper concourse	966,000	General Stadium Renovations
33.	Renovation of Time Warner tower club area	1,606,000	Moved to Alternate
34.	Intentionally Omitted	-	
35.	Enhanced tailgate experience in parking lots	637,000	Moved to Alternate
		\$42,662,000	

Team Areas:

36.	Training facility modernization through expansion and upgrades	\$7,684,000	Training Center
37.	New operations and storage complex	3,707,000	Operation Building
		\$11,391,000	

SUB-TOTAL: \$106,110,000

A/E Fees: \$8,519,000

Other Softs Costs: \$2,371,000

PROJECT CONTINGENCY RESERVES: \$13,000,000

TOTAL: \$130,000,000

EXHIBIT J

MASTER PROJECT SCHEDULE*

Date of commencement of Project construction: Ninety (90) days following the effective date
of this 2013 Construction Coordinating
Agreement

Date of Final Completion of the Project: December 31, 2015

*** To be amended to include timeframes for actions contemplated by Section 3.3, as well as CPM
information for each Work Action Item as Project sequencing is determined in accordance with
Section 3.2**

EXHIBIT K
LIST OF ALTERNATES

Stadium graphics and way-finding project expanded to include parking lots and training center
Raised floor in the video control room
Replace stadium field lighting with new LED fixtures
Remodel sideline suites and clubs in addition to the dugout suites
Increase the 2nd floor office space in the training center
Expand media relations area in the training center
Asphalt paving for parking lot 2
LED screens at entry canopies
Overhead radiant heaters in the 300 level concourse
Radiant heaters in commissary building canopy
Radiant heaters under entry canopies
Replace cladding on the backside of the west end scoreboard structure
Fire alarm upgrades in the stadium
Audio/Visual upgrades in the sideline clubs
Heated exterior walkways at Bills Store and broadcast studio
Concourse lighting upgrades in the 300 level concourse
Replace window systems in the dugout suites
TV network technician building
Smart boards in post-game interview room and press box
New elevator and hallway in training center to accommodate food service deliveries
Annex cold storage building adjacent to new operations building
Replace existing Butler cold storage building
Replace dugout suite heat pumps
Enhanced tailgate experience in parking lots

Note: The above list is not necessarily in the order of priority, provided, however, unless otherwise agreed to by the Parties, before proceeding with any Alternate, the Bills shall utilize Budget Surplus to restore any Work Action Item identified on Exhibit I which in the course of constructing the Project may have been previously eliminated or substantially eliminated from the Project by agreement of the Parties in accordance with the terms and conditions of this 2013 Construction Coordinating Agreement.