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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 6, 2013

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Re: Final Changes to Buffalo Bills Lease Documents

Dear Honorable Members,

Attached please find marked pages showing changes to the following documents relating to the proposed lease of Ralph Wilson Stadium to the Buffalo Bills:

1. Exhibit G to the Stadium Lease Agreement: Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures. Note that this document also appears as Exhibit B to the Construction Coordinating Agreement.
2. The definitions of "Final Completion of the Project" and "Substantial Completion" from the Construction Coordinating Agreement.

With the exception of these changes, the lease documents remain in the same form and with the same content as those drafts submitted to the Legislature on March 21, 2013 for your approval. Should you have any questions about these changes, I can be reached at (716) 858-2932.

Sincerely,

Richard Tobe
Deputy County Executive

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

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-

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

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 G and shall be bound by the terms herein with respect thereto.
- D. The \$130 million Budget subject to MWBE goals shall be reduced by \$19,994,927 for budget items where no reasonable MWBE utilization is available. The MWBE utilization goal of 23% shall apply only to the remaining \$110,005,074 for a MWBE participation dollar value goal of \$25,301,167.
- ~~D~~.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.
- ~~E~~.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.
- F.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

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

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 G-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

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

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 & 316I.
 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 G-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 G-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

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

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 G-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 G-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

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

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 G-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.

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 G-7.

(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, together with final waivers of lien and general releases from all Construction Providers.

(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.

(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~~interim 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