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ERIE COUNTY LEGISLATURE

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County of Erie

DENNIS T. GORSKI
COUNTY EXECUTIVE

January 15, 1999

PHONE: 716-858-8500

Charles A. Gargano, Chairman
Empire State Development
633 Third Avenue
New York, NY 12217

Dear Chairman Gargano:

In 1995, New York State, through the Urban Development Corporation, made a loan to Erie County of \$6,500,000, for renovation and improvements to Rich Stadium. In June of 1998, legislation was enacted by New York State authorizing forgiveness of this loan. Pursuant to Chapter 387 of the Laws of 1998 (S.7591/A.11094), the corporation and/or the division of budget are authorized to forgive the loan made in 1995 to Erie County of \$6,500,000 for renovations and improvements to Rich Stadium. In addition, Chapter 387 provides that the Repayment Agreement between Erie County and the Director of the Division of Budget is canceled.

Erie County considers, by virtue of the cancellation of the Repayment Agreement, that its obligation to repay the loan has ended. In order to complete this transaction, Erie County respectfully requests that the ESDC take the required steps to officially forgive the loan.

If you have any questions or require additional information, please contact Commissioner Richard M. Tobe, Department of Environment and Planning, at 761-858-6716.

Very truly yours,

DENNIS T. GORSKI
County Executive

DTG/RMT:kjs
Enclosure

- c: Robert King, NYS Director of Budget
- Erie County Legislature
- Richard M. Tobe
- Kenneth Kruly
- Kenneth A. Schoetz

3E-1

REPAYMENT AGREEMENT

between

THE DIRECTOR OF THE BUDGET OF THE STATE OF NEW YORK,

and

THE COUNTY OF ERIE

Rich Stadium
Buffalo, New York

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REPAYMENT AGREEMENT

AGREEMENT ("Agreement"), dated as of the 18th day of April, 1995, by and between ERIE COUNTY (the "County"), having its offices at 95 Franklin Street, Buffalo, NY 14202 and THE DIRECTOR OF THE BUDGET OF THE STATE OF NEW YORK ("Director"), having an office at State Capitol, Albany, New York 12224.

WHEREAS, pursuant to Section 1 of Chapter 54 of the Laws of 1994 the State Legislature appropriated the sum of Eight Million Dollars (\$8,000,000), as amended by Chapter _ of the Laws of 1994 (the "Appropriation") to the New York State Urban Development Corporation (the "Corporation") to be made available by the Corporation to the County for improvements to Rich Stadium (the "Project") in Buffalo, New York; and

WHEREAS, the County has submitted a Facility and Financing Plan for the Project to the Corporation and the Director and the Director has approved such plan and filed a copy of the same with the chairpersons of the Senate Finance Committee and Assembly Ways and Means Committee; and

WHEREAS, the Project is owned and operated by the County and leased to the Buffalo Bills football franchise; and

WHEREAS, six million five hundred thousand dollars (\$6,500,000) of the Appropriation is to be a loan to the County for Project costs to be repaid as provided in this Agreement and one million five hundred thousand dollars (\$1,500,000) of the Appropriation is to be a grant to the County from the Corporation for Project costs; and

WHEREAS, the County and Corporation have entered into a Grant and Loan Disbursement Agreement, of even date herewith (the "Grant and Loan Disbursement Agreement"), to provide for the disbursement of the Appropriation from the Corporation to the County.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Definitions.

Except as defined in this Agreement, all terms shall have the meanings set forth in the Grant and Loan Disbursement Agreement.

Section 2. Repayment of Appropriation.

A. The County shall repay the Loan to the State by making 32 consecutive quarterly payments of \$203,125.00 commencing on April 1, 1997 and continuing on the first day of each July, October, January, and April thereafter

until the Loan is repaid in full. The Loan shall bear no interest.

B. In the event that any payment required hereunder shall become overdue for a period in excess of five (5) days, a late charge of four cents (\$.04) for each dollar overdue shall become immediately due and payable.

C. The County shall have the right to prepay the Loan, in whole or in part, without premium or penalty.

D. All payments due hereunder shall be made to the State Comptroller.

E. Upon any sale or disposition of any portion of the Premises by the County, the unpaid balance of the Loan shall become immediately due and payable.

Section 3. Repair.

The County shall cause, at its sole cost and expense, throughout the term of this Agreement, to maintain and keep in good repair the Premises, including, without limiting the generality of the foregoing, the roof, foundation and appurtenances thereto, all sidewalks, grounds, parking lot facilities, plazas, areas, vaults, hoists, railings, gutters, alleys and curbs in front of or adjacent to the Premises, water sewer and gas connections, pipes and mains, and all other fixtures, machinery and equipment, and shall put, keep and maintain the same in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, as are necessary to keep the same in good and safe order and condition, howsoever the necessity or desirability therefor may occur, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. The County shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage, or injury to the Premises.

Section 4. Insurance Proceeds and Condemnation Awards.

Any insurance proceeds or condemnation proceeds which may be received by the County and not applied to a restoration of the Premises shall be paid to State Comptroller and applied to the outstanding balance of the Loan.

Section 5. Right of Inspection.

The County shall permit the authorized agents or representatives of the Director, the Corporation or the State to enter the Premises at all reasonable times for the purpose of inspecting the same.

Section 6. Notices.

All notices that may be given in connection with this Agreement shall be in writing and shall be delivered personally, or mailed, postage prepaid, by certified mail to the parties at the following address:

If to the County --

To the Commissioner,
Dept. of Environment & Planning
County of Erie
95 Franklin Street
Buffalo, New York 14202

If to the Director --

Director of the Budget
State Capitol
Albany, New York 12224

With a copy to --

New York State Urban Development Corporation
1515 Broadway
New York, New York 10036
Attention: Senior Vice President
Legal Department

or to such other addresses as may be designated in writing from time to time. Unless otherwise provided herein, notices shall be effective from the date of delivery, if delivered personally, or from the date of deposit with the U.S. Mail, if mailed.

Section 7. Audit by State Comptroller.

The State Comptroller may at any time during the term of this Agreement and for six (6) years thereafter cause a complete audit of all books and records of the County pertaining to the Premises or this Agreement and the County shall make or cause to be made available such books and records for such examination at such place as the State Comptroller may reasonably request.

Section 8. Events of Default.

A. The following shall constitute Events of Default hereunder:

(i) if the County shall fail to observe, perform or cause to be performed any of the terms, conditions, covenants or agreements contained in this Agreement (including the failure to make Loan payments as set forth herein) and such failure shall continue for a period of ten (10) days after written notice thereof by the Director or the Corporation to the County, specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such ten (10) day period, in which case no Event of Default shall be deemed to exist as long as the County shall have commenced curing the same within such ten (10) day period and shall diligently and continuously prosecute the same to completion); or

(ii) if the County is in default or has otherwise breached any covenant, condition or restriction which is to be performed or complied with under the Grant and Loan Disbursement Agreement, beyond the expiration of any applicable grace period.

B. Upon the happening of any such Event of Default, the unpaid principal balance of the Loan shall become immediately due and payable and the County shall forthwith repay to the State Comptroller the balance of the Loan together with all other charges that may be due and payable.

Section 9. Invalidity of Certain Provisions.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10. Captions

The captions of this Agreement are for convenience of reference only and in no way define, limit or describe the scope of intent of this Agreement or in any way affect this Agreement.

Section 11. Table of Contents.

The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Agreement or in any way affect this Agreement.

Section 12. Amendment; Termination.

This Agreement cannot be changed or terminated orally, but only by a written instrument of change, modification, waiver or termination executed by the party against whom enforcement of any change, modification, waiver or discharge is sought.

Section 13. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 14. Successors and Assigns.

The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of the Director and the Corporation and their respective successors and assigns.

Section 15. Term.

This Agreement shall remain in effect until the earlier to occur of repayment in full of the Loan or the mutual agreement of the parties.

Section 16. Exculpatory Provisions.

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and not of any member, director, officer, employee and agent of the County in his or her individual capacity.

Section 17. No Third-Party Beneficiary.

This Agreement shall not be deemed to grant any rights to any person, firm or corporation except the parties hereto and the Corporation, and the terms hereof shall be enforceable only by the parties hereto and the Corporation.

Section 18. Entire Agreement.

Each party hereto acknowledges its full understanding of this Agreement, that there are no verbal promises, undertakings or agreements in connection herewith and that this Agreement can be modified only by a written agreement signed by the parties hereto. All previous negotiations and agreements between the parties hereto with respect to the transaction set forth herein are merged into this instrument which fully and completely expresses the entire agreement between the parties, setting forth all the parties' rights and obligations.

Section 19. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

APPROVED AS TO FUNDING
NEW YORK STATE
ATTORNEY GENERAL
JUN 30 1995
Stephen J. Hensel
STEPHEN J. HENSEL
ASSOCIATE ATTORNEY

THE DIRECTOR OF THE BUDGET OF
THE STATE OF NEW YORK

By: *P. Woodworth*
Director of the Budget

Approved as to Content:
Richard John
Commissioner, Department of
Environment & Planning
Date: *4/20/95*

Erie County

By: *[Signature]*
County Executive

APPROVED AS TO FUNDING

Marcus Aples
ERIE COUNTY COMPTROLLER

Approved as to Form
[Signature]
Assistant County Attorney
Erie County, N.Y.
Doc. # *95-534-EP* Date *4/19/95*

-6- *[Signature]*
APPROVED
FOR THE STATE COMPTROLLER
Date: *AUG 09 1995*

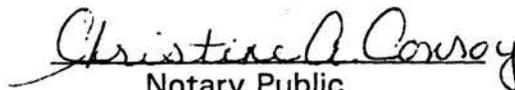
STATE OF NEW YORK)
 : SS.:
COUNTY OF ERIE)

On this 2nd day of April, 1995, before me personally came Dennis T. Gorski, to me known and known to me to be the County Executive of Erie County and the same person who executed the foregoing instrument, and he acknowledged that he executed the foregoing instrument on behalf of Erie County as said County Executive and pursuant to the authority vested in him by resolution of the Erie County Legislature.


Notary Public
GARY J. SMITH, JR.
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES MAY 4, 1996

STATE OF NEW YORK)
 : SS.:
COUNTY OF Albany)

On this 27 day of June 1995, before me personally came P. Woodworth to me known and known to me to be the DIRECTOR OF THE BUDGET OF THE STATE OF NEW YORK, the person described as such in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same as such DIRECTOR OF THE BUDGET OF THE STATE OF NEW YORK for the purpose therein mentioned.


Notary Public

CHRISTINE CONROY
Notary Public, State of New York
No. 4706631
Qualified in Saratoga County
Commission Expires March 30, 1997