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April 4, 2023

**Via E-Mail: Jeremy.Toth@erie.gov**

Jeremy C. Toth, Esq.  
Erie County Attorney  
Erie County Department of Law  
95 Franklin St., Room 1606  
Buffalo, New York 14202

Dear Jeremy:

Re: Erie County, New York;  
New Stadium Project Bond Resolution, 2023

Based on our discussions and email exchanges, please find enclosed a proposed draft of a bond resolution of the County Legislature authorizing and approving the financing of the County's share of the cost of the new stadium project.

Please note that this bond resolution must be adopted by the affirmative votes of at least two-thirds (2/3) of the entire voting strength of the Legislature, not just those in attendance. **In other words, it must receive at least eight (8) affirmative votes in order to be effective.** As we have discussed, the idea is for the Legislature to pass one "master" approval resolution (that you/we are finalizing today) approving all of the stadium documents as a package and, by doing that, adopt this bond resolution as well, by reference, and with a sufficient number of votes.

As we have discussed, the extensive SEQRA process for the stadium project has been handled by the County's Department of Environment & Planning and other counsel, and has resulted in findings that (i) the project constitutes a Type I action under SEQRA and (ii) based on an extensive review and analysis, the project will not result in a significant adverse impact on the environment.

Once the Legislature acts, the bond resolution **should be submitted to each of the County's official newspapers for the publication in the usual manner.** It should be published one time in each of the newspapers.

As soon as they are available, kindly forward to John Alessi's attention two certified copies of the extract of minutes document containing the bond resolution, along with the original affidavits of publication from each of the newspapers. For your convenience, we have included a checklist/response form that can be sent back to us, along with the requested documents.

Jeremy C. Toth, Esq.  
Erie County Attorney  
April 4, 2023  
Page 2

Thank you, as always, for this opportunity to be of continuing service as bond counsel. Please contact John Alessi (716.848.1567) or me with any questions or comments.

Very truly yours,

Jeffrey W. Stone

JWS/jaa  
Enclosure

cc: Benjamin Swanekamp, Chief of Staff  
John A. Alessi, Esq.  
Benjamin B. Clark, Esq.

To: John A. Alessi, Esq.  
Partner  
Hodgson Russ LLP  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202



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Re: Erie County, New York;  
New Stadium Project Bond Resolution, 2023

Date: \_\_\_\_\_, 2023

I enclose the following legal documents:

\_\_\_\_\_ two (2) certified copies of the extract of minutes document containing the adopted bond resolution and the related clerk's certificate; and

\_\_\_\_\_ an original affidavit of publication from each of the County's official newspapers.

Forwarded by: \_\_\_\_\_ phone: \_\_\_\_\_

Questions:

	<u>Phone</u>	<u>Fax</u>	<u>E-mail</u>
John A. Alessi, Esq.	716.848.1567	716.819.4660	jalessi@hodgsonruss.com

RESOLUTION NO. \_\_\_\_\_, 2023

BOND RESOLUTION DATED MAY 11, 2023

**A BOND RESOLUTION, DATED MAY 11, 2023, OF THE LEGISLATURE OF THE COUNTY OF ERIE, NEW YORK (THE "COUNTY"), AUTHORIZING THE COUNTY (A) TO UNDERTAKE THE FINANCING OF A PORTION OF THE COUNTY'S \$250,000,000 AGREED-UPON FIXED SHARE OF THE COST OF THE DESIGN, CONSTRUCTION AND DEVELOPMENT OF A NEW STADIUM COMPLEX (AND RELATED INFRASTRUCTURE, FACILITIES AND AMENITIES) ON COUNTY-OWNED PROPERTY IN ORCHARD PARK, NEW YORK (COLLECTIVELY, THE "PROJECT"), WITH THE PROJECT TO BE UNDERTAKEN IN COORDINATION WITH THE STATE OF NEW YORK (ACTING THROUGH ERIE COUNTY STADIUM CORPORATION) AND THE BUFFALO BILLS ORGANIZATION (ACTING THROUGH BILLS STADIUM AND EVENTS COMPANY, LLC); (B) TO ISSUE UP TO \$150,000,000 OF SERIAL BONDS OR OTHER OBLIGATIONS OF THE COUNTY FOR SUCH PURPOSE; AND (C) TO EXPEND AVAILABLE COUNTY FUNDS FOR THE BALANCE OF THE COUNTY'S SHARE OF THE COST OF THE PROJECT, AND DELEGATING THE POWER TO ISSUE SUCH OBLIGATIONS TO THE COUNTY COMPTROLLER.**

(Introduced) April 4, 2023

(Adopted) May 11, 2023

WHEREAS, Buffalo Bills, LLC, a Delaware limited liability company (the "Bills") owns the National Football League member club currently known as the Buffalo Bills (the "Team"); and

WHEREAS, the Erie County Stadium Corporation ("ECSC") and the State of New York (the "State"), finding that the expenditure of public money for the acquisition, construction, lease, improvement, equipping, operation and maintenance, financing, and long-term use of a multi-purpose stadium and related infrastructure (collectively, the "Stadium") as a venue for hosting the Team's home games in Orchard Park, New York, and a broad range of other civic, community, athletic, educational, cultural, and commercial activities serves a public purpose, has authorized the design, construction and development of the Stadium in the County (the "Project"); and

WHEREAS, pursuant to that certain Stadium Development and Construction Coordinating Agreement (the "SDCCA") dated as of March 29, 2023 among ECSC, the County and Bills Stadium and Events Company, LLC (an affiliate of the Bills and herein referred to as "StadCo"), and an array of related documents, the Stadium is to be constructed by the County and then conveyed to ECSC, with ECSC and StadCo to be the parties to a lease governing the long-term use of the Stadium;

NOW, THEREFORE, BE IT RESOLVED, by the Legislature (by the favorable vote of not less than two-thirds of all the members of the Legislature) as follows:

SECTION 1. The County's agreement to participate in the design, development, construction, financing and implementation of the Project, in accordance with the terms of an array of Project-related agreements as to which the County is either a party or a beneficiary, and that are listed on Exhibit A hereto (collectively, the "County Agreements"), is hereby explicitly reauthorized and reaffirmed in all respects, and the terms of such County Agreements are hereby re-approved, ratified and incorporated fully herein by this reference. Any specially-capitalized terms not otherwise defined herein have the same meanings as in the SDCCA. The County Agreements call for the County to contribute \$250,000,000 toward the total cost of the development of the Project (the "County Share"), and such agreed-upon expenditure is hereby explicitly reauthorized and reaffirmed, in accordance with the terms of the County Agreements.

SECTION 2. The overall plan of financing of the Project as a whole is set forth in detail in the SDCCA and in the other County Agreements, and is hereby confirmed, incorporated herein by this reference, and explicitly affirmed and re-authorized. The plan for the contribution and financing of the \$250,000,000 County Share of the overall cost of the Project shall involve (A) the County's issuance of up to \$150,000,000 of bonds, notes or other County obligations (the "Obligations") for such purpose, with the issuance of such Obligations (in any amount up to and including \$150,000,000) being hereby specifically authorized, and with such Obligations to be supported by the levy and collection of taxes on all the taxable real property in the County to pay the principal of such Obligations and the interest thereon as the same shall become due and payable and (B) the expenditure of available funds of the County (in an amount at least equal to \$100,000,000) to cover the remainder of the \$250,000,000 County Share of the overall cost of the Project, with such expenditure being hereby specifically affirmed and re-authorized.

SECTION 3. The period of probable usefulness for the Project, for which the Obligations herein authorized are to be issued to finance a portion of the County Share, within the limitations of subparagraph 11(a)(1) of §11.00 of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (the "Law"), is 30 years.

SECTION 4. The temporary use of available funds of the County, not immediately required for the purpose(s) for which the same were borrowed, raised or otherwise created, is hereby authorized and (to the extent that such use has already occurred) is hereby ratified, pursuant to Section 165.10 of the Local Finance Law, for application toward the County Share of the overall cost of the Project. The County intends to finance, and the County Comptroller, as the chief fiscal officer of the County (the "Comptroller") is hereby authorized to advance, such amounts as are necessary to pay all or any portion of the County Share of the total cost of the Project in accordance with provisions of Section 1 hereof and the County Agreements, prior to the issuance of the Obligations, out of any available funds of the County on an interim basis, and in accordance with the funding schedule that is set forth in the SDCAA. The County reasonably expects to reimburse up to \$150,000,000 of any such expenditures (to the extent made after the date hereof or within 60 days prior to the earlier of (A) the date hereof or (B) any earlier expression by the County of its intent to reimburse expenditures toward the County Share of the cost of the Project) with the proceeds of the Obligations, to the extent consistent with the financing plan for the Project as set forth in the SDCAA. This resolution shall constitute the declaration (or reaffirmation) of the

County's "official intent" to reimburse up to \$150,000,000 of the expenditures authorized in this resolution with the proceeds of the Obligations, as required by United States Treasury Regulations Section 1.150-2.

SECTION 5. The Obligations shall contain the recital of validity prescribed by §52.00 of the Law and the Obligations shall be general obligations of the County, payable as to both principal and interest by general tax upon all the taxable real property within the County without limitation as to rate or amount (subject to certain statutory limitations imposed by Chapter 97 of the 2011 Laws of New York). The faith and credit of the County are hereby irrevocably pledged for the payment of the principal of and interest on the Obligations as the same respectively become due and payable. An annual appropriation shall be made in each year in the County budget sufficient to pay the principal of and interest on the Obligations becoming due and payable in such year and, to the extent not paid from other sources or charges, there shall annually be levied on all the taxable real property of the County a tax sufficient to pay the principal of and interest on the Obligations.

SECTION 6. Subject to the provisions of this resolution and of the Law, and pursuant to the provisions of §21.00 relative to the issuance of bonds having substantially level or declining annual debt service, §30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of §§50.00, 56.00 to 60.00, 62.00, 62.10, 63.00, 164.00 and 168.00 of the Law, the powers and duties of the Legislature relative to authorizing the issuance of the Obligations in the form of notes, or the renewals thereof, relative to providing for substantially level or declining annual debt service, relative to prescribing the total amount of Obligations to be issued hereunder (subject, however, to an overall limit of \$150,000,000), relative to prescribing the terms, form and contents and as to the procedures for the sale and issuance of the Obligations, and relative to executing any agreements for credit enhancement, are hereby delegated to the Comptroller. Without in any way limiting the scope of the foregoing delegation of powers, the Legislature, to the extent permitted by Section 58.00(f) of the Local Finance Law, is hereby specifically authorized to accept bids for the Obligations that are submitted in electronic format. In the absence or unavailability of the Comptroller, the Deputy County Comptroller is hereby specifically authorized to exercise the powers delegated to the Comptroller in this resolution.

SECTION 7. When this resolution takes effect, the Clerk of the Legislature shall cause the same (or a summary thereof) to be published, together with a notice in substantially the form prescribed by Section 81.00 of the Law, in the Buffalo Challenger and the Lancaster Bee, which are newspapers having general circulation in the County and published in the County. The validity of the Obligations may thereafter be contested only if the Obligations are authorized for an object or purpose for which the County is not authorized to expend money, or the provisions of law which should have been complied with at the date of the publication of this resolution (or a summary thereof) are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within 20 days after the date of such publication, or if the Obligations are authorized in violation of the provisions of the Constitution of the State of New York.

SECTION 8. Prior to the issuance of any Obligations, the County has or will have complied (to the extent not accomplished already) with any applicable provisions prescribed in Article 8 of the Environmental Conservation Law, all regulations promulgated thereunder by the New York State Department of Environmental Conservation, and all applicable federal laws and regulations in connection with the environmental quality review process relating to the Project

(collectively, the "Environmental Compliance Proceedings"). In the event that any of such Environmental Compliance Proceedings are not completed, or require amendment or modification subsequent to the date of adoption of this resolution, the Legislature will re-adopt, amend or modify this resolution prior to the issuance of the relevant Obligations, to the extent required and acting upon the advice of counsel. It is hereby determined by the Legislature, on the basis of the Environmental Compliance Proceedings that have taken place to date with respect to the Project, that the Project will not result in a significant adverse impact on the environment.

SECTION 9. The Comptroller is hereby authorized to covenant, in the name and on behalf of the County and for the benefit of the holders and beneficial owners of the Obligations, that the County will not make any use of the proceeds of the Obligations, or any funds reasonably expected to be used to pay the principal of or interest on the Obligations or any other funds of the County, and will not make any use of the facilities to be financed with the proceeds of the Obligations that would cause the interest on the Obligations to become subject to federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code") or subject the County to any penalties under Section 148 of the Code, and that the County will not take any action or omit to take any action with respect to the Obligations, the proceeds thereof or any facilities to be financed thereby if such action or omission would cause the interest on the Obligations to become subject to federal income taxation under the Code or subject the County to any penalties under Section 148 of the Code.

SECTION 10. For the benefit of the holders and beneficial owners from time to time of the Obligations, the County agrees, in accordance with and as an obligated person with respect to the Obligations under Rule 15c2-12 promulgated by the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 (the "Rule"), to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the County's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination thereof, the Comptroller is authorized and directed to sign and deliver, in the name and on behalf of the County, the commitment authorized by subsection 6(c) of the Rule (the "Commitment") to be placed on file with the Clerk to the Legislature, which shall constitute the continuing disclosure agreement made by the County for the benefit of holders and beneficial owners of the Obligations in accordance with the Rule, with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to the County and that are approved by the Comptroller on behalf of the County, all of which shall be conclusively evidenced by the signing of the Commitment or amendments thereto. The agreement formed, collectively, by this paragraph and the Commitment, shall constitute the County's continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the County would be required to incur to perform thereunder. The County Comptroller is further authorized and directed to establish procedures in order to ensure compliance by the County with its various continuing disclosure agreements, including the timely provision of information and notices. Prior to making any filing in accordance with the agreement or providing notice of the occurrence of any material event, the Comptroller shall consult with, as appropriate, the County Attorney and the County's bond counsel, the County's municipal advisor, or another qualified independent special counsel to the County. The Comptroller, acting in the name and on behalf of

the County, shall be entitled to rely upon any legal advice provided by the County Attorney or such bond counsel or other special counsel in determining whether a filing should be made.

SECTION 11. The Comptroller is hereby specifically authorized to act, on the advice of bond counsel at the time of the issuance of the Obligations, to designate such Obligations, if applicable, as "qualified tax-exempt obligations" in accordance with Section 265(b)(3) of the Code.

SECTION 12. The Comptroller is further authorized to call in and redeem any outstanding Obligations that were issued pursuant to this resolution (at such times and in such amounts and maturities as may be deemed appropriate after consultation with the County officials and the County's municipal advisor), to approval any related notice of redemption, and to take such actions and execute such documents as may be necessary to effectuate any such call(s) for redemption pursuant to Section 53.00 of the Law, with the understanding that no such call(s) for redemption will be made unless such notice of redemption shall have first been filed with the Clerk of the Legislature.

SECTION 13 This resolution shall take effect immediately upon approval by the County Executive.



**EXHIBIT A**

**(COUNTY DOCUMENTS RELATING TO THE PROJECT, AS TO WHICH THE COUNTY IS EITHER A SIGNATORY OR A BENEFICIARY)**

1. Amendment to Memorandum of 2013 Master Lease
2. Second Amendment to 2013 Master Lease
3. Second Amendment to 2013 Stadium Lease
4. Amendment to 2013 Stadium Agreement
5. Amendment to 2013 Non-Relocation Agreement
6. Stadium Lease (aka "New Stadium Lease").
7. Community Benefits Agreement
8. Bills Non-Relocation Agreement
9. Stadium Security Agreement
10. Club Guaranty Agreement
11. PSL Marketing and Sales Agreement
12. Team Use Agreement
13. Stadium Development and Construction Coordinating Agreement

The adoption of the foregoing resolution (through the enactment of an omnibus approval resolution relating to the overall development, construction, financing and operation of the Project, into which this bond resolution was incorporated by specific reference and thereby approved) was moved by Legislator \_\_\_\_\_ and seconded by Legislator \_\_\_\_\_, before being duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

ABSENT:

Dated: Buffalo, New York,  
May 11, 2023

The foregoing bond resolution is hereby approved.

\_\_\_\_\_  
Mark C. Poloncarz  
County Executive

\_\_\_\_\_, 2023.

I, Robert M. Graber, HEREBY CERTIFY that the County Executive of Erie County approved a bond resolution of which the foregoing is a certified copy and returned the same for filing in the office of the Erie County Legislature.

\_\_\_\_\_, 2023.

\_\_\_\_\_  
Robert M. Graber  
Clerk of the Erie County Legislature

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Erie County Comptroller

APPROVED AS TO FORM:

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

CERTIFICATE

I, Robert M. Graber, Clerk of the Erie County Legislature, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the Erie County Legislature duly called and held on May 11, 2023, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the County Legislature and is a true, complete and correct copy thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the County on \_\_\_\_\_, 2023.

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Robert M. Graber  
Clerk of the Erie County Legislature

(NOTICE TO BE ATTACHED TO AND TO BE PUBLISHED  
WITH COPY OF RESOLUTION AFTER ADOPTION)

NOTICE

The bond resolution, a copy of which is published herewith, has been adopted by the Erie County Legislature on May 11, 2023, and the validity of the obligations authorized by such bond resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the County of Erie, New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the constitution of New York.

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Robert M. Graber  
Clerk of the County Legislature