

Empire State Development

FOR CONSIDERATION

February 21, 2013

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Orchard Park (Erie County) – Erie County Stadium Civic Project

REQUEST FOR: Make Determinations Pursuant to Sections 10(d) and 10(g) of the Act; Authorization to Adopt a General Project Plan; Authorization to Hold a Public Hearing; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

General Project Plan

I. Project Summary

Project Owner: County of Erie
95 Franklin Street
Buffalo, New York 14202

Contact: Honorable Mark Poloncarz
Erie County Executive
95 Franklin Street
Buffalo, NY 14202
Phone: (716) 858-8500

Project Subtenant: Buffalo Bills, Inc.
One Bills Drive
Orchard Park, New York 14127

Subtenant Contact: Russ Brandon, President & CEO
Buffalo Bills, Inc.
One Bills Drive
Orchard Park, New York 14127

Proposed Project: Design and construction of improvements to Ralph Wilson Stadium.
Provision of working capital and game day/operating expenses.

ESD* Investment: \$123,469,650 (2013 -2022)

* The New York State Urban Development Corporation d/b/a Empire State Development (“ESD” or the “Corporation”)

Anticipated Funding

Source: 2013-2014 State Budget

II. Financial Summary

A. Stadium Construction (2013-2015)

Financing Uses	Estimated Cost
-Design and Construction of Stadium Improvements	\$130,000,000
Financing Sources	
- Buffalo Bills	\$35,455,000
- Erie County	\$40,654,350
- State/ESD	<u>\$53,890,650</u>
Total:	\$130,000,000

B. Annual Funding (2013 -2022)

Financing Uses	Annual Cost	Total Cost (Years 1 -10)*
- Annual Working Capital	\$3,000,000	\$34,882,000
- Operating Expense Reimbursements	\$2,913,000	\$32,999,000
- Game Day Expense Reimbursement	\$1,818,000	\$20,596,000
- Annual Capital Improvement Allowance	<u>\$4,600,000</u>	<u>\$52,760,000</u>
Total:	\$12,331,000	\$141,237,000

Financing Sources

	<u>Year 1</u>	<u>Total</u>
- Buffalo Bills	\$800,000	\$8,941,000
- Erie County**	\$4,959,000	\$62,717,000
- State/ESD**	<u>\$6,572,000</u>	<u>\$69,579,000</u>
Total:	\$12,331,000	\$141,237,000

* Total cost includes estimate of annual increases which are tied to an adjustment based on the Consumer Price Index.

** Erie County's share of the public component is 43% in year 1 and increases one percent annually until years 8-10 when it remains at 50%.

III. Project Description

A. Project Goals

The last remaining National Football League franchise in New York State is the Buffalo Bills team. The Bills enjoy extraordinary loyal fan support in Western New York and Southern Ontario. Founded in 1960, by its owner Ralph Wilson, Jr., the Bills have a proud past including four trips to the SuperBowl in the 1990's.

In order for the Bills to remain an economically competitive franchise in the NFL, improvements to Ralph Wilson Jr. Stadium (the Stadium") and continued operating support is needed. The Bills have therefore proposed to construct improvements to the Stadium, built in 1972, which will include a broad based renovation that refurbishes virtually all areas of the Stadium, improves the ingress, egress and circulation around the Stadium and updates to the technological elements of the Stadium that are necessary for it to conform to the accepted standards of an NFL franchise. The Stadium improvements are expected to further extend the structural and economic life of the Stadium and support the continued use of it as the home field of the Bills.

B. Background

In December of 2012, an agreement in principal was reached among Governor Cuomo, Erie County Executive Mark Poloncarz and Ralph Wilson, Jr. pursuant to which the Bills would commit to remaining in the County owned Stadium for up to an additional 10 years. The current lease expires on July 31, 2013.

In return for the commitment, the Bills would receive (a) funding to improve the Stadium, (b) working capital grants; (c) assumption of certain stadium operating, maintenance and game day expenses by the State and County; and (d) annual contributions for Stadium capital improvements.

As part of the previous lease entered into in 1998, the County owned Stadium was leased to the Erie County Stadium Corporation ("ECSC"), a subsidiary of ESD, and subleased to the Bills. As part of the 1998 lease, the State funded all capital improvements to the Stadium in the amount of \$63.25 million and paid a \$3 million annual working capital allowance to the Bills. The County was required to pay for game day and operating expenses of the Stadium and to provide an annual capital improvement allowance for Stadium maintenance and improvements through the term of the lease.

C. Summary of Financial Transaction

The overall ESD project structure contemplates that the ECSC, the subsidiary formed for this purpose, will enter into a lease with the stadium owner, Erie County, and will sub-lease the Stadium and surrounding lands to the Buffalo Bills franchise for a period of ten years subject to the Bills option to terminate the lease after year 7 as set forth below. Pursuant to the lease and sub-lease and accompanying documents, the Stadium will undergo a \$130 million renovation funded by the parties as follows: (a) ECSC/State - \$53,890,650; (b) Erie County - \$40,654,350; and (c) Buffalo Bills - \$35,455,000. It is expected that the project will be funded and constructed over a period of two seasons.

Annual payments will be made to the Bills and are broken down into four categories: (a) working capital; (b) operating expense reimbursement; (c) game day expense reimbursement; and (d) an annual Stadium capital improvement allowance. In year one of the lease (2013), the payments will be: (a) \$3 million working capital; (b) \$2.913 million operating expense reimbursement; (c) \$1.818 million game day expense reimbursement; and (d) \$4.6 million Stadium capital improvement allowance. The annual payments for all categories are adjusted annually based on Consumer Price Index. The payments to the Bills which are reduced by the amount paid in rent by the Bills as described below, is split between the County and the State with the State paying 57% and the County 43% in year one. Thereafter, the County's share of the annual payment for all categories is increased one percent per year until the State/County share is 50-50 beginning in year 8 and continuing for the remaining term of the lease.

Per the lease documents, the Bills will be required to pay rent in the amount of \$800,000 in year 1 which will be contributed to the capital improvement allowance thus reducing the amount paid by the State and County. In subsequent years, the Bills rent payment will increase annually such that the Bills will pay 17.39% of the capital improvement allowance in all years of the lease. In addition, the lease agreement authorizes ECSC to make use of the Bills logos and trademarks valued at \$800,000 per year and provides the State a luxury box to be used by the State for purposes of encouraging and fostering economic development, tourism and public awareness for the State and Western New York during events scheduled at the Stadium.

The term of the lease is ten years but permits the Bills a one-time option to terminate the lease on the seventh anniversary with the payment of \$28,363,500. Otherwise, the ten year term is non-terminable and not subject to any buyout right. In the event that the Bills were to break the lease, the lease documents provide the right to specific performance requiring the Bills to play at the Stadium. In the event that the County and State are unable to exercise their right of specific performance, the Bills would be required to pay liquidated damages in the amount of \$400 million.

In addition, the parties will create the New Stadium Working Group ("NSWG") which will be an advisory panel to explore the potential for the construction of a new stadium on the existing Stadium land or at another location. The NSWG members will consist of representatives of (a)

ECSC; (b) the County; (c) the Bills; and (d) the NFL as appropriate. Beginning in the 6th year of the lease, ECSC and the County, in their joint discretion, may apply up to 50% of the contribution to the annual capital allowance to a fund established for new stadium design or development.

D. Design and Construction

The Erie County Department of Public Works and the Buffalo Bills football franchise have proposed to substantially renovate the County-owned Stadium and related facilities. The proposed improvements include: (a) significant technology upgrades; (b) upgrades to ingress, circulation, restrooms and food service; (c) relocation and expansion of the team store, new stadium entry plaza and enhanced way finding throughout the Stadium; (d) infrastructure repairs and maintenance items; and (e) upgrades to the operations and training facility areas.

The Stadium improvements are expected to be completed in phases over a two year period with the majority of the work to be completed between the months of February and August to avoid interference with the Bills home games. Construction is expected to begin in 2013 and be completed prior to the 2015 season.

ESD Design & Construction Staff will attend construction meetings, monitor construction and review and approve contractors' requisitions. D&C will authorize payments when all requirements are satisfied.

IV. **Statutory Findings**

1. That there exists in the area in which the Project is to be located a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project;

The Buffalo Bills have played in the Stadium for approximately 40 years. The Bills maintain a sizable following in Western New York and are a source of civic pride for the residents thereof. If the Bills franchise were to relocate to another area, it would be considered indicative of a loss of major market status for Buffalo and Western New York.

2. That such Project shall consist of a building or buildings which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes;

The Stadium was constructed for professional football in 1972 and has been continuously used for that purpose. The improvements contemplated would continue and enhance that use. It is an important asset of Erie County and is also periodically used for civic events.

3. That such Project will be leased to or owned by the State or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of this project;

The County of Erie will hold title to the project site and lease the same to the ECSC. The costs of construction of the improvements and operating and maintaining the facility will be financed by the parties as described above.

4. That the plans and specifications assure adequate light, air, sanitation and fire protection;

The project will be constructed in accordance with all applicable codes.

5. The requirements of Section 10(g) of the Act are satisfied.

No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

Pursuant to the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation, the Erie County Department of Public Works conducted an environmental review of the proposed stadium improvements. This review determined the project to be a Type I action as defined by SEQRA and therefore a coordinated review, for which ESD was an involved agency, was performed. The review found the project would not result in significant impact to the environment and a Negative Declaration was issued on February 12, 2013. ESD staff has reviewed the material supporting the determination and recommend that the Directors make a Determination of No Significant Effect on the Environment.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-discrimination and Contractor and Supplier Diversity policy will apply. The funding recipient shall use their Good Faith Efforts to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal to be determined by ESD's Office of Contractor and Supplier Diversity of no less than 20% related to the total value of ESD's funding. This shall also include specific participation goals for Minority Business Enterprise ("MBE"), and Women Business Enterprises ("WBE"). The grantee will also agree to solicit and utilize MWBEs for any contractual opportunities generated in connection with the project and to include minorities and women in any job opportunities created by the project.

Requested Actions

The Directors are requested to: (a) make Civic Project findings pursuant to Section 10(d) and 10(g) of the Act; (b) adopt the General Project Plan; (c) authorize the holding of a public hearing; (d) make a determination of no significant effect on the environment; and (e) take all related actions.

Attachment Resolutions

Orchard Park (Erie County) – Erie County Stadium Civic Project – Make Determinations Pursuant to Sections 10(d) and 10(g) of the Act; Authorization to Adopt and General Project Plan; Authorization to Hold a Public Hearing; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Erie County Stadium Civic Project (the "Project"), the Corporation hereby finds pursuant to Section 10 of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"):

(1) that there exists in the area in which the Project is to be located a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project;

(2) that such Project shall consist of a building or buildings which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes;

(3) that such Project will be leased to or owned by the State or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of this project;

(4) that the plans and specifications assure adequate light, air, sanitation and fire protection; and be it further

RESOLVED, that on the basis of the materials presented to this meeting relating to the Project indicating that there are no families or individuals to be displaced from the Project area, the Corporation hereby finds that the requirements of Section 10(g) of the Act are satisfied; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the "Plan") for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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February 21, 2013

Orchard Park (Erie County) – Erie County Stadium Civic Project – Make Determinations Pursuant to Sections 10(d) and 10(g) of the Act; Authorization to Adopt and General Project Plan; Authorization to Hold a Public Hearing; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

RESOLVED, that on the basis of the materials submitted to the Directors with respect to the Erie County Stadium Civic Project (the "Project"), the Corporation hereby determines that the proposed action will not have a significant adverse effect on the environment.

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