

**THIRD AGREEMENT BETWEEN THE ERIE COUNTY GAMING REVENUE
AUTHORITY
AND
ENTERPRISE DEVELOPMENT FUND OF ERIE COUNTY
FOR
SPECIAL ECONOMIC DEVELOPMENT ASSISTANCE FOR ERIE COUNTY**

THIS AGREEMENT, entered this 22nd day of August, 2013 by and between the:

Erie County Gaming Revenue Authority, a body corporate and politic organized and existing under the provisions of the Pennsylvania Economic Development Financing Law, 73 P.S. §§ 371 et seq., with offices at 5240 Knowledge Parkway, Suite A, Erie, Pennsylvania 16510, hereinafter referred to as "ECGRA,"

AND

Enterprise Development Fund of Erie County, Inc., a 501(c)(3) nonprofit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with offices at 5240 Knowledge Parkway, Erie, Pennsylvania 16510, hereinafter referred to as "FUND."

WHEREAS, on or about October 18, 2010, ECGRA entered into an Agreement with the FUND to engage the FUND to manage and invest certain uncommitted gaming revenue for the purpose of providing for special economic development assistance within Erie County (the "2010 Agreement"); and

WHEREAS, pursuant to the Second Agreement Between the Erie County Gaming Revenue Authority and Enterprise Development Fund of Erie County for Special Economic Development Assistance (the "2012 Agreement") ECGRA and the FUND declared the 2010 Agreement for Special Economic Development Assistance for Erie County to be closed out and all performance monitoring has been determined to have been received and is deemed acceptable;

WHEREAS, the FUND has expended all funds loaned by ECGRA pursuant to the 2012 Agreement and has expressed a desire to borrow an additional \$800,000 and to receive \$200,000 from ECGRA as a grant and ECGRA has agreed to provide such financing subject to a CDFI Note, Credit Agreement, this Agreement and terms and conditions of Grant Award ; and

WHEREAS, as part of its Community Development Financial Institution ("CDFI") certification with the United States Treasury and as a requirement of ECGRA the FUND will provide (or partner to provide) technical assistance to borrowers of its lending programs. In addition, the FUND has committed to apply at least 60% of all its lending in high-poverty "target markets" identified in its CDFI certification. The funds that the ECGRA provides will be combined with the FUND's existing assets and additional borrowed capital to multiply ECGRA's investment at least dollar for dollar. The result will be the creation of a comprehensive economic and community development fund capable of meeting the

County's needs to launch (1) comprehensive non-profit finance, (2) micro lending, and (3) investment in high-poverty areas—all wrapped in business, entrepreneurial and technical assistance services; and

WHEREAS, the Credit Agreement with the FUND provides that ECGRA and the FUND shall enter into this Third Agreement for Special Economic Development Assistance for Erie County for the purpose of describing the permitted use of funds loaned to the FUND, identified as business loans in the Credit Agreement; and

WHEREAS, the FUND and ECGRA desire to align the reporting requirements of the 2012 Agreement with this Agreement so that the FUND need only to provide ECGRA with one closeout report, one project covenant audit and one consolidated quarterly report for the two Agreements; and

WHEREAS, the FUND and ECGRA understand and agree that, due to market demand, the FUND was unable to meet funding covenants related to the number and amount of micro-loans within the 2010 Agreement or the 2012 Agreement, and that the parties have agreed to amend and restate such covenants within this Agreement.

NOW THEREFORE, on the date first identified above, and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows.

1. **Incorporation.** The recitations above are incorporated hereby as if more fully set forth herein.
2. **Amendment and Restatement.** This Third Agreement between the Erie County Gaming Revenue Authority and Enterprise Development Fund of Erie County for Special Economic Development Assistance for Erie County (the "Third Agreement") amends and restates, and is in substitution for, that certain Second Agreement between the Erie County Gaming Revenue Authority and Enterprise Development Fund of Erie County for Special Economic Development Assistance for Erie County dated September 13, 2012 (the "2012 Agreement"). However, without duplication, this Third Agreement shall in no way extinguish, cancel or satisfy the FUND's unconditional obligation to repay all indebtedness. Nothing herein is intended to extinguish, cancel or impair the lien priority or effect of any security agreement, pledge agreement or mortgage with respect to the FUND's obligations hereunder or any other document relating hereto.
3. **Relationship of the Parties.** ECGRA and the FUND are separate and distinct entities who intend to act independent of one another as parties to the within contract. Employees of the FUND shall not be considered the employees, agents or ostensible agents of ECGRA. The employees of ECGRA shall not be considered employees, agents or ostensible agents of the FUND.

4. Term. This Agreement shall commence upon the date of the last party to sign the Agreement, and shall continue until the maturity date as determined by the CDFI Note and Credit Agreement entered into between the parties.
5. Termination. Either party may terminate this Agreement pursuant to the terms and conditions of the CDFI Note and Credit Agreement entered into between the parties.
6. Activities.
 - a. There are currently a number of loan funds in the region which offer financing for real estate purchases, therefore it is the desire of the ECGRA board that the FUND actively work to limit the use of money loaned to it by ECGRA for real estate purposes. The funds received by the FUND from ECGRA will provide targeted investment into the economic development gaps above mentioned and will be used to fund the following financial products/services, which shall, for the purpose of the Credit Agreement, be determined to be business loans:
 - Commercial Lending: mid-size loans (\$100,000 to \$500,000) for working capital, bridge financing, non-hard asset based lending and equipment to for-profit companies.
 - Non-profit lending: mid-sized loans (\$100,000 to \$500,000) for working capital, bridge financing, non-hard asset based lending, equipment and real estate to non-profit companies.
 - Credit Enhancement: loaned cash collateral to enhance the credit (or provide a debt service reserve) for the borrower (both non-profit and for-profit companies) benefiting from a taxable or tax-exempt bond issue by a FUND-affiliated authority (essentially, a partial debt guarantee).
 - Micro Lending: small loans (up to \$25,000) to small businesses, cottage industry, startup businesses, non-profits and entrepreneurs (“Micro-loans”).
 - b. The lending of these funds will be paired with the business management and technical assistance that will be made available to them through the Gannon Small Business Development Center (SBDC) and/or the Ben Franklin Technology Partners of Central and Northern Pennsylvania (BFTP/CNP). These assistance programs are designed to prepare entrepreneurs, start-up companies, non-profits, and other small businesses for dealing with the realities of running a business and handling it’s financing. The goal is to link professional business management and technical assistance with financing which will better prepare these entities for success.

- c. The FUND shall not utilize funds supplied by ECGRA to: (1) acquire or finance the acquisition of a project which shall cause the removal of a plant, facility or other business from one area of the Commonwealth to another area of the Commonwealth, unless the secretary of the Department of Community and Economic Development has found that relocation of the plant, facility or other business is necessary in order for the plant, facility or other business to remain competitive or to prevent the plant, facility or other business from leaving this Commonwealth; (2) enter into any agreement to finance the acquisition of a project in excess of the cost of the project; (3) engage in business, trade or commerce for a profit as an owner or lessee of a project, or otherwise; (4) finance any project which will be used in whole or in part for illegal activities; and, (5) finance any project which is not located within Erie County, Pennsylvania.
- d. All such lending shall be made, and the FUND shall utilize the funds provided by ECGRA, pursuant to the following guidelines:
- (i) Internal Leverage. During the Term of this Agreement, the FUND will obtain at least \$1,000,000 of additional investment into the FUND's loan pool as matching funds. The source of matching funds can be private, state, or federal sources in the form of additional grants, loans, or equity investment into the FUND.
 - (ii) External Leverage. In the course of making loans using these grant funds, the FUND will show a minimum aggregated ratio of sixty percent (60%) FUND loan to forty percent (40%) equity or private lending for the borrowers.
 - (iii) Targeting. At least sixty percent (60%) of all loans and at least sixty percent (60%) of all loan capital shall be invested into Target Markets, as defined by the FUND's current CDFI certification.
 - (iv) Micro Lending. At least fourteen (14) Micro-loans shall be made with the funding provided pursuant to this Agreement and there shall be a cumulative total of at least twenty-eight (28) micro loans made by the FUND, through any source of funds, between September 13, 2012 and September 13, 2018.
 - (v) Job Created or Retained. At least forty (40) jobs shall be created or retained through projects which the FUND invests using these grant and related leveraged funds during the Term of this Agreement.
 - (vi) Portfolio Balance. Upon closing all loans related to this program, the portfolio will be balanced to include:
 - i. At least seventy percent (70%) of all loans and at least seventy percent (70%) of all loan capital shall have been invested in for-profit enterprises.

- ii. A maximum of thirty percent (30%) of all loan capital shall have been in non-profit entities.
- iii. In addition to the requirements of paragraph 6(d)(iv), at least a cumulative amount of \$250,000 shall have been invested in Micro-loans..

7. Performance Monitoring. In order to assess the Fund's performance in accordance with the goals and standards stated herein, the Fund shall, in addition to any other documentation reasonably requested by ECGRA, provide the following documentation to ECGRA:

a. Audits.

- (i) The FUND's annual audited financial statements shall be provided annually throughout the term of this Agreement and within thirty days of receipt by the FUND.
- (ii) The FUND shall hire and pay for an independent CPA, who shall be approved by ECGRA, to conduct a project audit of the funds provided through the 2012 Agreement and this Agreement. The audit shall, at a minimum, certify compliance with the 2012 Agreement and this Agreement, with all CDFI requirements and with all covenants of other lenders. The audit shall be presented to the ECGRA Board of Directors as part of the final performance report.

b. Quarterly Performance Reports

- (i) Quarterly reports shall indicate the following information, pertaining to loans made pursuant to the 2012 Agreement and this Agreement, as a minimum:
 - percentage of both the number loans to and total investment into Target Markets;
 - internal leverage ratio for the FUND;
 - external leverage ratio for the FUND;
 - total matching funds raised, including source and terms of matching funds;
 - job creation/retention attributed to loans made pursuant to this Agreement;
 - list of loan recipients by organization's name & contact person (to be kept confidential unless a waiver is received);

- job creation/retention attributed to loan recipients that have signed a confidentiality waiver; and,
 - total company investment leverage attributed to loan recipients that have signed a confidentiality waiver.
- (ii) Quarterly performance reports shall be provided to ECGRA until such time that the FUND has achieved the Activities of Paragraph 6 (a)-(f), and shall be due on or before February 1st, May 1st, August 1st, and November 1st of each year for the preceding quarter.
- c. Final performance report. Within 60 days of the Agreement Term or Termination (whichever is earliest), a final report shall be submitted containing all information included in the Quarterly report along with a summary of the final portfolio balance indicating how the funds met program objectives. The final performance report shall be accompanied by a presentation to the ECGRA Board.
8. Default. Failure to meet any provision of this Agreement shall constitute a Default by the FUND. In the event of Default, ECGRA will shall utilize the Default procedures contained within the Credit Agreement and CDFI Note.
9. Suspension and Termination. If the FUND fails to correct substandard performance and thus cure the Default within the period of time stated by ECGRA, the Agreement may be Suspended or Terminated at ECGRA's sole discretion pursuant to the terms and conditions of the CDFI Note and Credit Agreement.
10. Cooperation. FUND shall cooperate in every reasonable way with ECGRA to facilitate the purposes and intent of this Agreement. ECGRA shall cooperate in every reasonable way to FUND to facilitate the purposes and intent of this Agreement.
11. Indemnification. FUND hereby agrees to release, indemnify and hold ECGRA harmless from any claims, damages, losses, law suits, causes of action or demands arising out of the good faith provision of services by ECGRA hereunder, except to the extent that such claims, losses, lawsuits, causes of action or demands are based on the negligence, recklessness, or intentional misconduct of ECGRA and/or its agents, employees, and/or personnel.
12. Right-to-Know Law. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 - 67.3104, applies to this Agreement. (the "RTKL"). Upon notification to the FUND that ECGRA has received a request for records under the RTKL, the FUND shall fully assist ECGRA in responding to the request. Such assistance shall include, at a minimum, providing ECGRA, within three (3) days, access to, and copies of, any document or information arising out of the Agreement in the FUND's possession that ECGRA deems a Public Record ("Requested Information") and providing such other assistance as ECGRA may request. If the FUND fails to provide the Requested Information to ECGRA within the required time period, the failure shall be

considered an event of default, and the FUND shall pay, indemnify and hold ECGRA harmless for any damages, penalties, detriment or harm that ECGRA may incur as a result of the FUND's failure, including reasonable attorney's fees incurred by ECGRA in the administration of the Right-to-Know Request and any appeal therefrom. If the FUND refuses to supply the Requested Information, and the Pennsylvania Office of Open Records, or the Pennsylvania Courts, determines that a record in the possession of a FUND is a public record, in addition to the foregoing, liquidated damages of \$200 per day will be assessed for each calendar day beyond the date the FUND was required to provide the record by the Pennsylvania Office of Open Records, or, upon appeal, the Pennsylvania Courts. The FUND's duties under this section survive the termination of this Agreement and as long as the FUND has Requested Information in its possession.

13. Entire Contract. This Agreement, the Grant Award Letter, the CDFI Note and Credit Agreement constitute the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.
14. Binding Effect. This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto, and upon their respective heirs, executors, administrators, successors, and assigns.
15. Prohibition against Assignment. This agreement shall not be assigned by either party without written consent of the other being first obtained.
16. Severability. If any provision of this Agreement shall be held invalid under any applicable laws, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provision hereof is severable.
17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
18. Governing Law. This Agreement shall be constructed under the laws of the Commonwealth of Pennsylvania. The venue for any litigation relating hereto shall be the Erie County, Pennsylvania Court of Common Pleas.

19. Notices. Communications and details concerning this contract shall be directed to the following contract representatives:

ECGRA

Perry Wood, Executive Director
Eire County Gaming Revenue Authority
5420 Knowledge Parkway, Suite A
Erie, PA 16510
814-897-2690

Fund

John Elliot, President/CEO
Enterprise Development Fund of Erie
County
5420 Knowledge Parkway
Erie, PA 16510
814-899-6022

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have set their hands and seals on the date first above written.

ERIE COUNTY GAMING REVENUE
AUTHORITY

By



Perry Wood,
Executive Director

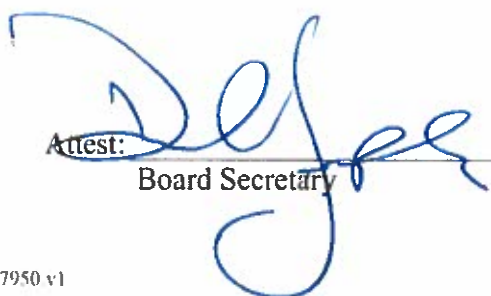
ENTERPRISE DEVELOPMENT FUND
OF ERIE COUNTY

By




John Elliot, President/CEO

Attest:



Board Secretary

Attest:



Katrina Smith, Assistant Secretary