

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

THIS AGREEMENT, entered this 25th day of August, 2016, 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 5340 Fryling Road, Suite 201, Erie, Pennsylvania 16510, hereinafter referred to as "ECGRA,"

AND

The Progress Fund, a 501(c)(3) nonprofit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with offices at 425 West Pittsburgh Street, Greensburg, Pennsylvania 15601, hereinafter referred to as "The Progress Fund."

WHEREAS, ECGRA created the Ignite Erie funding stream to make both grants and mission-related investments to support the small-business financing, inner-city development and industry-university collaborations leading to the acceleration of technology products and services and the expansion of manufacturers and small business; and

WHEREAS, The Progress Fund was determined to be prequalified for a mission-related investment by the staff of ECGRA and a committee of the Board of Directors on September 3, 2015; and

WHEREAS, following review of the proposal submitted by The Progress Fund, ECGRA has determined to loan One Million Dollars (\$1,000,000.00) to The Progress Fund for the purposes of providing small business financing and community development loans predominately for small businesses in the tourism and the local foods industry; and

WHEREAS, as part of its Community Development Financial Institution ("CDFI") certification with the United States Treasury, and as a requirement of ECGRA, The Progress Fund will make available (or partner to make available) technical assistance to borrowers of its lending programs. The Progress Fund certifies that the funding ECGRA provides will be combined with The Progress Fund's existing assets and additional capital to multiply ECGRA's investment at a minimum of a dollar for dollar. The result will be \$2,000,000 in new funds available to make small business loans and community development loans in Erie County, Pennsylvania which will be complemented by the offering of business, entrepreneurial and technical assistance services; and

WHEREAS, the Credit Agreement (as defined below) with The Progress Fund provides that ECGRA and The Progress Fund shall enter into this Agreement for Special Economic

Development Assistance for Erie County for the purpose of describing the permitted use of funds loaned to The Progress Fund, identified as business loans in the Credit 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. Relationship of the Parties. ECGRA and The Progress Fund are separate and distinct entities who intend to act independent of one another as parties to the Agreement. Employees of The Progress 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 Progress Fund.
3. 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.
4. 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.
5. Activities.
 - a. Funds received by The Progress Fund from ECGRA will provide targeted investment into the economic development gaps existing in Erie County 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:
 - Small Business Loans: loans of \$5,000 or more to small business owners for inventory, working capital, renovation, and/or small equipment or purchase of real estate; and
 - Community Development Loans: loans of \$20,000 or more to non-profit or for-profit property owners that have or will purchase and/or construct or renovate properties. .
 - b. The lending of these funds will be paired with technical assistance that will be made available to borrowers through The Progress Fund's in-house support and technical assistance provider network. These assistance programs are designed to prepare entrepreneurs, start-up companies, non-profits, and other small businesses to effectively plan for 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 Progress 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/or, (5) finance any project which is not located within Erie County, Pennsylvania.
 - d. All such lending shall be made, and The Progress Fund shall utilize funds provided by ECGRA, pursuant to the following guidelines:
 - (i) Geographic Limitation. The Progress Fund shall only provide financial assistance with the One Million Dollars (\$1,000,000.00) provided by ECGRA to those entrepreneurs or businesses which are primarily located in Erie County, Pennsylvania, and with the specific condition that such funds shall only be invested within the geographic boundaries of Erie County, Pennsylvania, and may not be invested in any business locations or operations outside of Erie County, Pennsylvania.
 - (ii) Internal Leverage. During the Term of this Agreement, The Progress Fund will provide at least \$1,000,000 of additional investment for lending in Erie County. The source of matching funds can be private, state, or federal sources in the form of additional grants, loans, or equity investment into The Progress Fund. Such matching funds must be committed, and proof of the same must be provided to the Executive Director of ECGRA, prior to The Progress Fund utilizing any of the funding provided by ECGRA pursuant to this Agreement, the Credit Agreement and the Note.
 - (iii) Job Created or Retained. At least twenty (20) jobs shall be created or retained through projects which The Progress Fund invests using these funds and related leveraged funds during the Term of this Agreement.
 - e. Erie to Pittsburgh Bike Trail. The Progress Fund shall expand its Trail Town Program into the town of Corry and the corridor of the Erie to Pittsburgh Bike Trail within Erie County.
6. Performance Monitoring. In order to assess The Progress Fund's performance in accordance with the goals and standards stated herein, The Progress Fund shall, in addition to any other documentation reasonably requested by ECGRA, provide the following documentation to ECGRA:

a. Audits.

- (i) The Progress Fund's annual audited financial statements shall be provided annually throughout the term of this Agreement and within thirty (30) days of receipt by The Progress Fund.
- (ii) At the sole discretion of ECGRA, and at ECGRA's sole cost, ECGRA may determine to conduct, or hire a third party to conduct, a project audit of the funds made available to The Progress Fund through this Agreement. The audit shall, at a minimum, certify compliance with this Agreement, with all CDFI requirements and with all covenants of other lenders. The Progress Fund shall cooperate fully with ECGRA, or ECGRA's designated auditor, in the performance of such an audit.

b. Bi-Annual Performance Reports

- (i) Bi-annual reports shall, at a minimum, indicate the following information pertaining to loans made pursuant to this Agreement:
 - percentage of both the number loans to and total investment into Target Markets;
 - internal leverage ratio for The Progress Fund;
 - external leverage ratio for The Progress 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 and contact person, or, if loan recipient objects to public disclosure of their financial relationship with The Progress Fund, an anonymous but unique identifier and a non-identifying description of the recipient;
 - a report of the activities and results associated with the expansion of The Progress Fund's Trail Town Program in Erie County;
 - job creation/retention attributed to loan recipients;
- (ii) Performance reports shall be provided to ECGRA until such time that The Progress Fund has loaned all of the funding provided by ECGRA pursuant to this Agreement, the Credit Agreement and the Note, and, until such point, shall be due on or before February 1st, and August 1st of each year.

- c. Final performance report. Within sixty (60) days of the Agreement Term or Termination (whichever is earliest), a final report shall be submitted containing all information included in the bi-annual report along with a summary of the final portfolio balance indicating how The Progress Fund met program objectives. The final performance report shall be accompanied by a presentation to the ECGRA Board.
7. Default. Failure to meet any material provision of this Agreement which is not cured in accordance with Section 8 below shall constitute a default by The Progress Fund. In the event of an uncured default, ECGRA may utilize the default procedures contained within the Credit Agreement and CDFI Note.
8. Suspension and Termination. If The Progress Fund fails to correct substandard performance and thus cure the Default within the period of time stated by ECGRA, this Agreement may be suspended or terminated at ECGRA's sole discretion pursuant to the terms and conditions of the CDFI Note and Credit Agreement.
9. Cooperation. The Progress 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 with The Progress Fund to facilitate the purposes and intent of this Agreement.
10. Indemnification. The Progress 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.
11. Right-to-Know Law. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 - 67.3104 (the "RTKL"), applies to this Agreement.. Upon notification to The Progress Fund that ECGRA has received a request for records under the RTKL, The Progress Fund shall fully assist ECGRA in responding to the request. Such assistance shall include, at a minimum, providing ECGRA, within three (3) business days, access to, and copies of, any document or information arising out of this Agreement in The Progress Fund's possession that ECGRA deems a Public Record ("Requested Information") and providing such other assistance as ECGRA may reasonably request. If The Progress 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 Progress Fund shall pay, indemnify and hold ECGRA harmless for any damages, penalties, detriment or harm that ECGRA may incur as a result of The Progress 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 Progress Fund refuses to supply the Requested Information, and the Pennsylvania Office of Open Records, or the Pennsylvania Courts, determine that a record in the possession of The Progress 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 Progress Fund was required to provide the record by the Pennsylvania Office of Open Records, or, upon appeal, the Pennsylvania Courts. The Progress Fund's duties under this section survive the termination of this Agreement and as long as The Progress Fund has Requested Information in its possession.

12. Entire Contract. This Agreement, 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.
13. 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.
14. Prohibition against Assignment. This agreement shall not be assigned by either party without written consent of the other being first obtained.
15. 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.
16. 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.
17. 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.
18. 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
5340 Fryling Road, Suite 201
Erie, PA 16510
814-897-2690

With a copy to:

Timothy S. Wachter, Esq.
Knox McLaughlin Gornall & Sennett, P.C.
120 West 10th Street
Erie, PA 16501

Fund

David A. Kahley, President & CEO
The Progress Fund, Inc.
425 West Pittsburgh Street
Greensburg, PA 15601
724-216-9160

With a copy to:

Bradley E. Smith, Esq.
McCann Garland Ridall & Burke
816 Ligonier Street, Suite 600
Latrobe, PA 15650

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

Attest:

THE PROGRESS FUND



Secretary *Treasurer & CFO*

By 

David A. Kahley
President & CEO

Attest:



Secretary

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ERIE COUNTY GAMING REVENUE
AUTHORITY

By 
Perry Wood, Executive Director