

March 18, 2024

*Board of Directors*

To: Office of the Auditor General  
Re: Pending Audit of Erie County Gaming Revenue Authority (ECGRA)

**Dale E. Barney**  
Chair

Vice-chair

**Whitey Cleaver**  
Treasurer

**Perry N. Wood**  
Secretary

**Kelly S. Hess**

**Carol Loll**

**Robert S. Oberlander**

**Gary J. Winschel**

**Angela Amatangelo**

**Terry Scutella**  
Ex-officio

**Douglas Smith**  
Ex-officio

**Perry N. Wood**  
Executive Director

I am writing with respect to your recent correspondence indicating your intention to conduct an audit of ECGRA. ECGRA recognizes the hurdles of creating standards against which to conduct an audit and hopes that the information included below is accepted as it was intended, as necessary background information to assist in the creation of your auditing standards.

ECGRA is a unique entity in the Commonwealth of Pennsylvania. ECGRA is the only authority created pursuant to the Economic Development Financing Act which was created for the sole purpose of administering local share gaming revenue. It was incorporated by ordinance of Erie County Council in 2008 and its board of directors are appointed by that same body from the seven districts of the county.

ECGRA prides itself on its practices of accountability and transparency. For example, we have regular updates to the community and elected officials on how local share gaming revenue is being distributed through grants and loans. We utilize our website, media releases, special reports, economic impact studies, social media, financial audits, and annual reports to maintain a high standard of transparency. We have had annual audits conducted, as well as a federal compliance attestation audit, and at one point were undergoing quarterly audits by our outside auditor. As one of the most scrutinized entities in Erie County, we are happy to report that there have been no material findings in any of these audits.

As you begin putting together a scope and standards for an audit, we wish to be helpful in the process by providing you with context and documentation, especially as ECGRA's operations are governed by not only the PA Race Horse Development and Gaming Act and the PA Economic Development Financing law, but also a settlement entered into within the Erie County Court of Common Pleas in 2010. This letter and the attachments provide you with an explanation of the laws governing ECGRA, as well as financial documentation that shows we abide by GAAP principles.

The 2010 settlement, among other things, governs the distribution of "Restricted" local share gaming revenue for contiguous municipalities. Those municipalities that host or are contiguous to Presque Isle Downs Casino include Erie County, Millcreek Township, Summit Township, Greene Township, Waterford Township, McKean

Township. The Settlement dictates that those entities receive 25% of local share gaming funds to mitigate the impact of having a casino in proximity. The other 75% is distributed by ECGRA pursuant to the obligations of the PA Economic Development Financing law, after the time period required by the PA Race Horse Development and Gaming Act has expired. These funds are used for economic development projects carried out by nonprofits, municipal governments, and economic development agencies and lenders.

Further, the Gaming Law stipulates that ECGRA shall be subject to the following:

1. **Expenditures of funds shall be disclosed on our website.** As a result, we have a “financial disclosure page” found here: <https://www.ecgra.org/financial-disclosures>. This page contains our monthly Treasurer’s Report, annual audits, and a cumulative list of grant awards. The disclosure page was recently augmented, having previously contained the prior months financial expenditures. The page operated in this fashion from its inception in late 2017 through the last two months, at which point it was augmented due to a request from Senator Laughlin.
2. **Local share funds cannot be used to pay for tuition or other educational expenses.** We have not used local share funds at any educational institutions since the law was passed. Financials will confirm this.
3. **A disclosure that the funds originated from gaming activities.** As a result of this clause, we mention this in our public information press releases, on our website, and at press conferences.
4. The authority shall be subject to audit by the Auditor General. **Hence, we are ready to comply with an audit and believe that we are currently in full compliance with the above clauses, the entirety of the Gaming Law, and the PA Economic Development Financing Law.**

To assist you, we are attaching the following to this letter:

- A memo by our Solicitor Tim Wachter stating that we are in legal compliance with all laws mentioned above. Attorney Wachter has been our solicitor since 2011.
- Correspondence from our Solicitor to Mr. Dale Barney, Chair of ECGRA explaining the various funding regimes that ECGRA is required to follow, as well as a copy of the December 13, 2010 Settlement Agreement.
- Here’s a link to all our **financial documents** at ECGRA: <https://www.ecgra.org/financial-disclosures>. These documents will show that we have not spent any local share gaming revenue on educational expenses.
- Here’s a link to **additional documents** that may be of use: <https://www.ecgra.org/additional-disclosures>.

- We've included five years' worth of audits and reports, which the County Council requires us to perform annually. These audits are distributed annually to County Council, County Executive, County Clerk, and County Controller.

Lastly, we do request that your review include a review of the revenues received by ECGRA from Erie County to ensure compliance with law, as detailed in the correspondence between Solicitor Wachter and Mr. Barney.

In conclusion, we have been fortunate to have competent legal counsel, a dedicated board of directors made up of civic and business leaders, and a staff that is both professional and passionate about revitalizing Erie County. These groups work to ensure ECGRA is a fair, open, and transparent authority serving the people of Erie County. For additional information, feel free to contact me at [pwood@ecgra.org](mailto:pwood@ecgra.org) or call the office (814) 897-2690.

Sincerely,

A handwritten signature in blue ink, appearing to read "Perry N. Wood".

Perry N. Wood

Executive Director



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Timothy S. Wachter  
twachter@kmgslaw.com

March 18, 2024

Erie County Gaming Revenue Authority  
c/o Dale Barney, Chair  
5340 Fryling Road, Suite 201  
Erie, Pennsylvania 16510

RE: Auditor General Audit  
Legal Framework

Dear Mr. Barney:

As you are aware, the Pennsylvania Auditor General has elected to conduct an audit of the Erie County Gaming Revenue Authority (ECGRA) in accordance with the authorization provided to his office by section 1403(c)(2)(ii)(D.2)(IV) of the Gaming Act, 4 Pa.C.S. § 1403(c)(2)(ii)(D.2), and section 10 of the Economic Development Financing Law. 73 P.S. § 380.

The legal framework governing the revenues and expenditures of ECGRA is complex. Identifying each provision of the legal framework presents a complicated task to anyone, especially for anyone seeking to review the receipt of revenues and expenditure of gaming funds for the first time. In order to assist the Auditor General's Office in determining the laws and court rulings governing ECGRA's operations, I recommend that you direct this correspondence and enclosures to the Auditor General's Office for their review. This correspondence, and the related attachments, are offered with the simple intent of identifying the laws directing and impacting ECGRA's revenues, as well as those governing ECGRA's expenditures.

ECGRA receives five (5) distributions of various gaming funds on an annual basis from the Commonwealth Department of Revenue, including quarterly distributions of Local Share Assessment from Gross Terminal Revenue, Interactive Gaming Funds and the Slot Machine License Operation Fee, and one additional "true up" distribution of Interactive Gaming Funds. These funds are distributed through Erie County to ECGRA. The distribution of such funds is governed by the applicable provisions of the Gaming Act, as well as the 2010 Settlement Agreement entered into in the Erie County Court of Common Pleas.

Enclosed with this correspondence, please find a letter I wrote to Dr. Wood on July 19, 2023 which analyzed each of ECGRA's funding streams, and provides associated legal citations and an explanation of the funding process. In this correspondence, I also identified that the process used by Erie County to distribute the gross gaming funds to ECGRA was flawed, and resulted in ECGRA receiving \$168,597.80 less from Erie County than it was due in 2022. I did not analyze prior years and was not asked to do so.

The discrepancy, and the reasons for it, are detailed in the correspondence. As you may remember, following review and discussion of my correspondence, the Board directed that Dr. Wood reach out to the County to negotiate a reconciliation process to cure this discrepancy. On January 17, 2024, Dr. Wood corresponded with the County and requested that a discussion ensue regarding an annual reconciliation process. There has been no response to this request.

I recommend that this correspondence be sent to the Auditor General as it provides a summative narrative discussion of each of ECGRA's funding streams, and identifies a discrepancy in the revenues provided to ECGRA. As a result, I believe it would be appropriate for the Auditor General's Office to audit not only the expenditure of funds by ECGRA, but also the revenues received by ECGRA.

Additionally enclosed is a memo explaining the application of the 2004 Gaming Act, the legal history involving ECGRA's operations, the 2010 Settlement Agreement, and the impact on ECGRA caused by the 2017 amendments to the Gaming Act. The text of this memo was generated from an opinion letter I wrote to ECGRA in 2018 which analyzed the impact of the 2017 amendments to the Gaming Act. Also, please find enclosed a copy of the 2010 Settlement Agreement, which, among other provisions, directly impacted and directed the expenditure of funds to Dedicated Regional Assets and Settlement Municipalities.

Lastly, while referenced in the attachments, none of the memos or correspondence highlight that ECGRA's expenditures of Uncommitted Funds are governed by the terms of the Economic Development Financing Law, 73 P.S. §371, et. seq. This is important information for the Auditor General's Office to have.

I ask that you ensure that this correspondence, and the related attachments are forwarded to the Auditor General's Office so as to help inform them in their efforts of understanding the legal framework which governs ECGRA's operations, and that you specifically request that the audit include an audit of not only expenditures made by ECGRA, but also the revenues received by ECGRA.

Please let me know if you have any questions, or if you require further clarification. I remain,

Very truly yours,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

By:   
Timothy S. Wachter



Erie | North East | Pittsburgh | Jamestown, NY

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Timothy S. Wachter  
twachter@kmgslaw.com

February 6, 2024

Erie County Gaming Revenue Authority Board  
c/o Mr. Dale Barney, Chair  
5340 Fryling Road, Suite 201  
Erie, Pennsylvania 16510

RE: ECGRA Operations

Dear ECGRA Board:

I am writing with respect to the February 1, 2024 correspondence issued by Senators Laughlin and Hutchinson, Representatives Harkins, Banta, Merski and Roae, and County Executive Davis. In the correspondence, concerns are raised relating to “the ways in which local share gaming revenue have been distributed in Erie County over the past several years and how these transactions have been reported.”

I am aware of no rationale concerns that have been expressed with the legality of any funding granted by ECGRA since I have begun representing ECGRA. In my opinion, such approvals have met both the spirit and letter of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S.A. § 1101, et. seq., the Economic Development Financing Law, 73 PS §371, and the December 13, 2010 Settlement Agreement in the matter of *Summit Township Industrial & Economic Development Authority, et. al. v. ECGRA and Erie County*, Erie Cnty. Ct. Cm. Pl. 14961-2009. As such, any disagreements relating to “the ways in which local share gaming revenue have been distributed in Erie County” are likely related to policy disagreements, rather than legal disagreements.

Regarding the concerns relating to “how these transactions have been reported,” I believe that it is instructive to explain the law in this regard. The Race Horse Development and Gaming Act was amended through Act 42 of 2017. This amendment was the change in the law which diverted \$1,000,000 each year of gross terminal revenue from ECGRA to the Erie County Land Bank, and included certain other provisions which only impact ECGRA, including the following:

(D.2) An economic or redevelopment authority which administers local share assessment funds for a county of the third class, which is also a home rule county in which a Category 1 licensed facility is located at a thoroughbred racetrack, shall be subject to the following:

(I) Each expenditure of the local share assessment funds by the authority shall be disclosed on the authority’s publicly accessible Internet website.

(II) Local share assessment funds received by the authority may not be used to pay for tuition or other educational expenses of an officer or employee of the authority.

(III) Each expenditure of local share assessment funds by the authority shall include a disclosure that the funds originated from licensed gaming activities.

(IV) The authority shall be subject to audit by the Auditor General.

4 Pa.C.S.A. § 1403(c)(ii)(D.2).

Specifically at issue appears to be the provision stating that “each expenditure of the local share assessment funds by the authority shall be disclosed on the authority’s publicly accessible Internet website.” ECGRA has, since the adoption of this provision, maintained a provision on its website under the “About ECGRA” tab which is titled “Financial Disclosure.” Under that tab, ECGRA has disclosed the monthly Profit and Loss Statement, which is a summary of all monthly financials, as approved each month by the Board.

Recently, however, Senator Laughlin reached out to my office to inquire as to where the listing of expenditures was for ECGRA on the website. The Senator disagreed with the monthly disclosure regime that ECGRA had undertaken since 2017, and was of the opinion that the reports should be listed cumulatively, and with more detail. Upon notifying the ECGRA staff of the Senator’s desire, the staff uploaded all such financial materials within 24 hours of being notified of the request.

I have reviewed the financial reports that are on the website and have found them to be comprehensive and in line with the Senator’s desire. I see no legal concerns with the disclosures nor with compliance with the provisions of Act 42 of 2017.

Additionally, the correspondence calls for ECGRA to “refrain from any measures that bind the Authority to long term obligations” pending the outcome of an audit which they have requested. Please know that none of the signatories of the correspondence have any authority to make such a demand. It appears that they are aware of that, as they have styled this matter as a request, rather than a direction. To be clear, only the board of ECGRA has the discretion to direct how and whether of ECGRA is to be conducted.



ECGRA Board  
February 6, 2024  
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I hope that this correspondence answers any questions or concerns you may have regarding the referenced correspondence, and the legal position of ECGRA. Please feel free to reach out to me should you wish to discuss this further. I remain,

Very truly yours,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

By:   
Timothy S. Wachter

# 2487410.v1

cc: Dr. Perry Wood, Executive Director





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July 19, 2023

Dr. Perry N. Wood  
Executive Director  
Erie County Gaming Revenue Authority  
5340 Fryling Road, Suite 201  
Erie, PA 16510

RE: ECGRA Funding

Dear Dr. Wood:

The Erie Times News recently published an article, on May 2, 2023, entitled *County Council approves casino gaming revenue to fund EMS grant program*<sup>1</sup>. In the article, it is reported that “Erie County receives roughly \$11 million in revenue each year from Presque Isle Downs & Casino. Of that \$11 million, \$5.5 million goes to county government, \$1 million goes to the Land Bank and the remaining \$4.5 million goes to the Erie County Gaming Revenue Authority.” Later in the article, however, the County Director of Finance, Paul Lichtenwalter was reported to have noted to County Council that “the annual \$11 million figure is now closer to \$14 million as a result of the increased patronage at the casino.” As a result of this statement, you asked that I investigate the amount of gaming funds received by the County and whether the gaming funds are being properly distributed. This correspondence replaces the opinion dated July 11, 2023, which is hereby rescinded.

Erie County receives five (5) distributions of gaming funds on an annual basis from the Pennsylvania Department of Revenue. These distributions include quarterly distributions of the Local Share Assessment from Gross Terminal Revenue, Interactive Gaming Funds and the Slot Machine License Operation Fee, and one additional distribution of Interactive Gaming Funds.

Upon receipt of the funds, Erie County allocates all of the funds between the Erie County Land Bank, the Erie County Gaming Revenue Authority (“ECGRA”) and the County itself. Upon receipt of the first quarter distribution, Erie County takes half of the gross distribution and allocates it to the Land Bank, and then allocates 55% of the remainder to the County and 45% to ECGRA. The County takes the necessary amount from the second quarter gross allocation to ensure the Land Bank receives \$1 million in funding, and then allocates 55% of the remainder to the County and 45% to ECGRA. In the third and fourth quarter, the County allocates the receipts such that the County receives 55% of the distributions and ECGRA receives 45% of the distributions. At some point between the second and

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<sup>1</sup> A.J. Rao, *County Council approves casino gaming revenue to fund EMS grant program*, Erie Times News, May 2, 2023

third quarter distributions, the County receives a separate distribution which is limited to the receipt of Interactive Gaming Funds (I Gaming Funds), which is also distributed using the 55%/45% allocation.

The 55%/45% allocation was started by the County at the time that the Horse Race Development and Gaming Act (the "Gaming Act") was amended to require the distribution of \$1 million from ECGRA's share of the Local Share Assessment from Gross Terminal Revenue to the Erie County Land Bank. 4 Pa.C.S. §1403(c)(2)(ii)(D)-(D.1). The argument provided by the County was that the allocation was necessary to reflect that the \$1 million was to come specifically from ECGRA's share of the Local Share Assessment from Gross Terminal Revenues, and was not to impact the County's receipts.

The question that has been posed as a result of this review is whether the 55%/45% split remains appropriate, and whether ECGRA is receiving the statutorily required share of gross Gaming Funds. Prior to preparing this opinion, I reviewed the allocations from 2022, which are reflected in Exhibit A. The table provides that \$14,371,955.98 of gross Gaming Funds was received by the County, and was ultimately distributed such that the County received \$7,354,575.80, ECGRA received \$6,017,380.18 and the Land Bank received \$1 million. After subtracting the \$1 million distributed to the Land Bank from ECGRA's gross share, the distributions to the County and ECGRA comply with the 55%/45% split methodology. As is discussed below, the 55%/45% allocation is close to resulting in a statutorily compliant distribution of gross Gaming Funds, but an annual true up should occur to ensure an appropriate distribution.

To understand this opinion, it is necessary to review each of the three implicated funding streams, including the Local Share Assessment from Gross Terminal Revenue, I Gaming and the Slot Machine License Operation Fee. Each will be examined separately below.

### **LOCAL SHARE ASSESSMENT FROM GROSS TERMINAL REVENUE**

The Gaming Act provides that licensed facilities are subject to a Slot Machine Tax, which is a "daily tax of 34% from its daily gross terminal revenue from the slot machines in operation at its facility and a local share assessment as provided in subsection (c)." 4 Pa.C.S. §1403(b). The definition of Gross Terminal Revenue provides that it is "the total of cash or cash equivalent waters received by a slot machine" minus various expenditures, and "cash received as entry fees for slot machine contests or slot machine tournaments." 4 Pa.C.S. §1103. Accordingly, the Local Share Assessment from Gross Terminal Revenues is derived solely from the wagers made at slot machines.

The Local Share Assessment from Gross Terminal Revenues is distributed by the Department of Revenue to the County on a quarterly basis in accordance with the below schedule, as "the licensed facility is a category 1 licensed facility [ ] located at a thoroughbred racetrack and the county in which the licensed facility is located is:

- (D) A county of the third class which is also a home rule county: 1% of the gross terminal revenue to the county hosting the licensed facility from each such licensed facility. An additional 1% of the gross terminal revenue minus the amount contained in clause (D.1) to the county hosting the

licensed facility from each such licensed facility for the purpose of municipal grants within the county in which the licensee is located.

**(D.1) \$1,000,000 of the gross terminal revenue** annually to a land bank jurisdiction established by a county of the third class which is also a home rule county. Until a land bank jurisdiction is established by a county of the third class which is also a home rule county after the effective date of this subclause, \$1,000,000 to the county redevelopment authority. (*emphasis supplied*).

4 Pa.C.S. §1403(c)(2)(ii)(D)-(D.1).

Accordingly, the funds that are to be distributed to the Land Bank are to be taken from the Local Share of the Gross Terminal Revenue that would otherwise be allocated to ECGRA.

Of the 34% Slot Machine Tax assessed upon the daily wagers made on slot machines in Erie County, 2% is to be distributed to Erie County as the Local Share Assessment from Gross Terminal Revenues. Half of the Local Share Assessment from Gross Terminal Revenues received is to be distributed to Erie County as Unrestricted Funds. Of the second half of the Local Share Assessment from Gross Terminal Revenues, \$1 million is to be distributed to the Land Bank, and the remainder is to go to ECGRA for the purpose of making municipal grants, also known as “Restricted Funds” and for the distribution of Unrestricted Uncommitted Funds<sup>2</sup>.

### **INTERACTIVE GAMING FUNDS**

The Gaming Act was amended through Act 42 of 2017 (“Act 42”) to permit Interactive Gaming in Pennsylvania. 4 Pa.C.S.A §§ 13b01 *et seq.* “Interactive gaming” can be summarized as internet

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<sup>2</sup> Regarding the municipal grants, the Gaming Act provides:

(v) Unless otherwise specified, for the purposes of this paragraph money designated for municipal grants within a county, other than a county of the first class, in which a licensed facility is located shall be used to fund grants to the municipality in which the licensed facility is located, to the county in which the licensed facility is located and to the municipalities which are contiguous to the municipality in which the licensed facility is located and which are located within the county in which the licensed facility is located. Grants shall be administered by the county through its economic development or redevelopment authority in which the licensed facility is located. Grants shall be used to fund the costs of human services, infrastructure improvements, facilities, emergency services, health and public safety expenses associated with licensed facility operations. If at the end of a fiscal year uncommitted funds exist, the county shall pay to the economic development or redevelopment authority of the county in which the licensed facility is located the uncommitted funds.

4 Pa.C.S. §1403(c)(2)(v).

Pursuant to the December 13, 2010 Settlement Agreement, which is more fully described in prior correspondence, ECGRA is Erie County’s economic development authority tasked with the distribution of municipal grants, known as the Restricted Funds, and the distribution of the uncommitted funds at the end of each fiscal year (the “Unrestricted Uncommitted Funds”) in accordance with the Economic Development Financing Act.

based gambling<sup>3</sup>. Act 42 also implemented an Interactive Gaming Tax, levying a tax on the “daily gross interactive gaming revenue” of “each interactive gaming certificate holder that conducts interactive gaming.” 4 Pa.C.S.A §13B52. Ten percent of the Interactive Gaming Tax is to be deposited with the State Treasury to distribute to counties that experience a reduction in Local Share Assessment from Gross Terminal Revenues as compared to the 2017-2018 fiscal year. The intent of the Interactive Gaming Tax is to provide for a “true up” from the reduction in Local Share Assessment from Gross Terminal Revenues which presumably was caused by to the adoption of Interactive Gaming. 4 Pa.C.S.A §13B52(D)(2)(ii)(A). This true up is seen as the payment received between the second and third quarters in 2022.

Additionally, Act 42 creates a Local Share Assessment from Interactive Gaming Revenues. 4 Pa.C.S.A §13B53. The Local Share Assessment from Interactive Gaming Revenues is calculated as 2% of the interactive gaming certificate holder’s daily gross interactive gaming revenue, half of which is to be distributed to the Commonwealth Financing Authority, and the other half to county’s hosting licensed facilities which is to be distributed in accordance with section 1403(c)(2) of the Gaming Act, which is the provision relating to the distribution of Local Share Assessment from Gross Terminal Revenues.

Accordingly, the Interactive Gaming Funds distributed to Erie County include both the Interactive Gaming Tax Revenues as well as the Local Share Assessment from Interactive Gaming Revenues. These funds are derived specifically from the wagers made through interactive gaming and are to be distributed through the same model used for the Local Share Assessment from Gross Terminal Revenues.

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<sup>3</sup> Interactive Game and Interactive Gaming are defined by the Act as follows:

“Interactive game.” Any gambling game offered through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards or any other instrumentality to transmit electronic information to assist in the placement of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information. The term shall not include:

- (1) A lottery game or Internet instant game as defined in the act of August 26, 1971 (P.L. 351, No. 91), known as the State Lottery Law.
- (2) iLottery under Chapter 5 (relating to lottery).
- (3) A nongambling game that does not otherwise require a license under the laws of this Commonwealth.
- (4) A fantasy contest under Chapter 3 (relating to fantasy contests).

“Interactive gaming.” The placing of wagers with an interactive gaming certificate holder or interactive gaming operator using a computer network of both Federal and non-Federal interoperable packet switched data networks through which an interactive gaming certificate holder may offer authorized interactive games to registered players. The term shall include the placing of wagers through the use of a multi-use computing device.

4 PA.C.S. §1103.

### **SLOT MACHINE LICENSE OPERATION FEES**

Act 42 of 2017 also created an annual Slot Machine License Operation Fee on each Category 1 licensed gaming entity in the County, which includes the Casino in Erie County. 4 Pa.C.S. §1326.1(a). The Casino is located in Summit Township, which is a Township of the Second Class. The Slot Machine License Operation Fee is to be distributed in accordance with section 1403(c)(3) and (4)<sup>4</sup>. 4 Pa.C.S. §1326.1(e).

The slot machine license is the “license issued by the Pennsylvania Gaming Control Board authorizing a person to place and operate slot machines...” in accordance with the Gaming Act. 4 Pa.C.S. §1103. The Slot Machine License Operation Fee is distinct from the Local Share Assessment from Gross Terminal Revenues as the former is a fee assessed as a result of holding a slot machine license, and the latter is assessed as a result of the wagers made at slot machines on a daily basis.

A \$10,000,000 Slot Machine License Operation Fee is required to be distributed to Summit Township, subject to a budgetary limitation. 4 Pa.C.S. §1403(c)(3)(v)(A). The budgetary limitation is that Summit may not receive more than 50% of their total budget for fiscal year 2003-2004, as adjusted by inflation. *Id.* “Any remaining money shall be distributed in accordance with paragraph (2) based upon the classification of county where the licensed facility is located.” *Id.* The reference to “paragraph (2) based upon the classification of county where the licensed facility is located” is a reference to section 1403(c)(2) of the Gaming Act. Thus, the same model used for the distribution of Local Share Assessment from Gross Terminal Revenues is to be used for the Slot Machine License Operation Fee.

### **APPLICATION TO 2022 FUNDING EXPERIENCE**

A review of Exhibit A will show that the gross 2022 Gaming Funds equated to \$14,371,955.98, which is made up of \$4,002,853.99 of I Gaming, \$1,888,058.99 of Local Share Assessment of Gross Terminal Revenues, and \$8,481,043 of Slot Machine License Operation Fees. The Gaming Act provides that \$1,000,000 of the Local Share Assessment of Gross Terminal Revenues that would otherwise be applied to ECGRA is to be distributed to the Land Bank Authority. However, only \$1,888,058.99 of Local Share Assessment of Gross Terminal Revenues was received, meaning that half of that, or only \$944,029.50 would be allocated to ECGRA. That amount is insufficient to meet the \$1 million distribution to the Land Bank. The difference is then made up by the true up payment from the Interactive Gaming Revenues, which was intended to make up for the loss in Local Share Assessment of Gross Terminal Revenues experienced due to the impact of Interactive Gaming. As there was over \$4 million in Interactive Gaming Revenues distributed to Erie County, there was sufficient funding to ensure payment to the Land Bank.

The 55%/45% split used by the County to distribute the gross Gaming Funds was established as a mathematical means to ensure that the County’s portion of the Local Share Assessment of Gross

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<sup>4</sup> Section 1403(c)(4) is not applicable to this discussion as it only pertains to counties and cities of the first class, e.g. Philadelphia.

Dr. Perry N. Wood  
July 19, 2023  
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Terminal Revenues and Interactive Gaming Revenues was not impacted by the \$1 million distribution to the Land Bank. However, the 55%/45% split is applied to the entirety of the Interactive Gaming Revenues and the entirety of the nearly \$8.5 million of Slot Machine License Operation Fees received. As only a small amount of the Interactive Gaming Revenues are needed to fund the Land Bank Allocation, and only a 50% split should be applied to the Slot Machine License Operation Fee, the allocation has resulted in an over funding of the County in 2022.

Exhibit A shows that in 2022, \$7,354,575.80 was distributed to Erie County, and \$6,017,380.18 was distributed to ECGRA. The intent of the 55%/45% split was to ensure that Erie County was not impacted by the \$1 million distribution to the Land Bank, which should ensure that the County receives only \$1 million more than ECGRA. However, in 2022, Erie County received \$337,195.60 more than ECGRA. In order to ensure that ECGRA and the County receive the proper amount of funding each year, a true up should occur at the end of the year. If a true up was conducted at the end of 2022, then Erie County would have cut a check to ECGRA in the amount of \$168,597.80.

Very truly yours,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

By:   
Timothy S. Wachter

# 2445394.v1

Enclosure

Exhibit A  
2022 Gaming Funds Distribution

	Total	Erie County Distr. (total *.55)	ECGRA Dist (Total *.45 - Landbank)
2022 Q1	\$1,456,700.29	\$400,592.58	\$327,757.56
I Gaming	\$34,403.54		
Local Share	\$441,253.75		
Slot Machine Lic. Fee	\$981,043.00		
2022 Q2	\$3,011,719.05	\$1,507,038.06	\$1,233,031.14
I Gaming	\$17,520.14		
Local Share	\$494,198.91		
Slot Machine Lic. Fee	\$2,500,000.00		
Igaming True Up	\$3,928,544.92	\$2,160,699.71	\$1,767,845.21
2022 Q3	\$3,029,084.91	\$1,665,996.70	\$1,363,088.21
I Gaming	\$15,374.87		
Local Share	\$513,710.04		
Slot Machine Lic. Fee	\$2,500,000.00		
2022 Q4	\$2,945,906.81	\$1,620,248.75	\$1,325,658.06
I Gaming	\$7,010.52		
Local Share	\$438,896.29		
Slot Machine Lic. Fee	\$2,500,000.00		
<b>Grand Total</b>	<b>\$14,371,955.98</b>	<b>\$7,354,575.80</b>	<b>\$6,017,380.18</b>
I Gaming Total	\$4,002,853.99		
Local Share Total	\$1,888,058.99		
Slot Machine Lic. Op. Fee Total	\$8,481,043.00		





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**Knox McLaughlin Gornall & Sennett, P.C.**

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# MEMO

**TO:** Dale Barney, Chair  
Erie County Gaming Revenue Authority

**FROM:** Tim Wachter, Esq.  
Solicitor

**DATE:** March 15, 2024

**RE:** 2004 Gaming Act, 2010 Settlement Agreement and 2017 Gaming Act Amendments  
and the Erie County Gaming Revenue Authority

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## **THE 2004 GAMING ACT**

The 2004 Gaming Act requires each Casino to pay a local share assessment. 4 Pa.C.S. §1403(b). When a Category 1 licensed thoroughbred racetrack is located in a third class county, such as Erie County, the local share assessment is 2% of the gross terminal revenue received by the Casino. 4 Pa.C.S. §1403(c)(2)(ii)(D). Of that 2%, half is to be paid to the county hosting the Casino and has no use restrictions (the “Unrestricted Funds”). *Id.* The other half is to be paid to the county for the purpose of making municipal grants (the “Restricted Funds”). *Id.*

Additionally, local share funds are received by Erie County by virtue of the Casino’s location in Summit Township. The 2004 Gaming Act provides that, when the casino is located within a second class township, an additional 2% of the gross terminal revenue, or \$10,000,000, whichever is greater, is to be paid to the township. 4 Pa.C.S. §1403(c)(3)(v)(A). In the case of Summit Township, the \$10,000,000 figure is operative. However, the law also provides that the amount allocated to the township shall not exceed 50% of the township’s 2003-2004 budget, adjusted for inflation, and that any excess funds are to be distributed in accordance with §1403(c)(2) of the 2004 Gaming Act, meaning that it would go to the county. 4 Pa.C.S. §1403(c)(3)(v)(A).

Accordingly, due to the budgetary limitation, Summit Township is limited to accepting about \$1,000,000, and the remaining \$9,000,000 is to be distributed to the County using the same distribution requirements previously mentioned, where half of the funds go to the County as Unrestricted Funds, and half goes to the County for the purpose of making municipal grants (Restricted Funds).

The 2004 Gaming Act regulates the use of Restricted Funds, providing that they are to be used “for the purpose of municipal grants within the county in which the licensee is located.”<sup>4</sup> Pa.C.S. §1403(c)(2)(ii)(D). Regarding municipal grants, the 2004 Gaming Act provides:

(v). Unless otherwise specified, for the purposes of this paragraph money designated for municipal grants within a county, other than a county of the first class, in which a licensed facility is located shall be used to fund grants to the municipality in which the licensed facility is located, to the county in which the licensed facility is located and to the municipalities which are contiguous to the municipality in which the licensed facility is located and which are located within the county in which the licensed facility is located. **Grants shall be administered by the county through its economic development or redevelopment authority in which the licensed facility is located.** Grants shall be used to fund the costs of human services, infrastructure improvements, facilities, emergency services, health and public safety expenses associated with licensed facility operations. **If at the end of a fiscal year uncommitted funds exist, the county shall pay to the economic development or redevelopment authority of the county in which the licensed facility is located the uncommitted funds.**

4 Pa.C.S. §1403(c)(2)(v). (*emphasis supplied*).

Accordingly, and pursuant to the 2004 Gaming Act, Restricted Funds are to be “designated for municipal grants,” to the benefit of host county, the host municipality and contiguous municipalities (the “Eligible Municipalities”<sup>1</sup>) and are to be “administered by the county through its economic development or redevelopment authority” to “fund the costs of human services, infrastructure improvements, facilities, emergency services, health and public safety expenses associated” with Casino operations, and if uncommitted funds exist at the end of a fiscal year, “the county shall pay [the uncommitted funds] to the economic development or redevelopment authority of the county.”<sup>2</sup> Such funds then become known as “Uncommitted Funds” and are to be used pursuant to the allowances of the laws governing the operation of the economic development or redevelopment authority.

### **ECGRA FUNDING**

As a result of this statutory framework, Erie County established ECGRA to perform the task of administering the municipal grants and the uncommitted funds. As embodied within Article II, Section 5(iv) of the Erie County Administrative Code, ECGRA was formed to perform the specific function of

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<sup>1</sup> The Eligible Municipalities in Erie County include Erie County, Summit Township, Greene Township, McKean Township, Millcreek Township and Waterford Township.

<sup>2</sup> ECGRA uses the Uncommitted Funds to fund grant programs other than the municipal grants to the Eligible Municipalities

[a]dminister[ing] municipal grants of State gaming revenue received of the County pursuant to the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A. Section 1101 et seq.) and, at the end of its fiscal year, to receive and manage “uncommitted” state gaming revenue received of the County pursuant to the Economic Development Financing Law (73 P.S. Section 371 et seq.).

Shortly after ECGRA was formed numerous suits were filed regarding the utilization of the Restricted Funds. While there were numerous matters being litigated regarding the administration of the Restricted Funds, specifically at issue for the purpose of this correspondence was the allegation that the County was misapplying Section 1403(c)(2)(v) of the Gaming Act as it related to the distribution of Restricted Funds.

Such a claim was two-fold. First, the County took the position that the “County [had] broad discretion to use the gaming revenue and that there is no priority for the host township or the contiguous townships to receive the funds first,” which would allow it to use such funds throughout the entire County and not just the contiguous municipalities, STEDIA v. County of Erie, (Erie County Ct. Com. Pl. 15297-2007, August 4, 2008); and, second, the County claimed that it could use the funds for “human services, infrastructure improvements, facilities, emergency services [and] health” purposes generally, and that municipal grants for public safety expenses was the only category of expenditures which required a nexus with the operations of the Casino. Id.

The Erie County Court of Common Pleas disagreed with the County and found that the County was to follow the requirements of the 2004 Gaming Act in distributing Restricted Funds. This decision was appealed to the Commonwealth Court.

The Commonwealth Court, in STEIDA v. County of Erie, 980 A.2d 191 (Pa. Cmwlth. 2009), sustained the County Court’s decision. In doing so, the Commonwealth Court reviewed Sections 1403(c)(2)(ii)(D) and 1403(c)(2)(v) of the 2004 Gaming Act and found that the Restricted Funds must be used for the purpose of municipal grants to the Eligible Municipalities, and that the municipal grants “shall be used to fund the costs of human services, infrastructure improvements, facilities, emergency services, health and public safety expenses associated” with the Casino.

## **THE SETTLEMENT AGREEMENT**

Following the Commonwealth Courts’ decision, additional litigation ensued in Erie County. All such litigation was settled through a December 13, 2010 Settlement Agreement (the “Settlement Agreement”).

The Settlement Agreement was by and between ECGRA, the County, EmeryCare, STEIDA, and the Eligible Municipalities. Among other items, the Settlement Agreement specifically noted that the County created ECGRA pursuant to Section 1403(c)(2)(v) of the 2004 Gaming Act, and “delegated to ECGRA the authority to administer” the Restricted Funds and the Uncommitted Funds.

Additionally, the Settlement Agreement mandated ECGRA to make two distributions consequential to this discussion. First, ECGRA was to make certain limited payments to the Dedicated Regional Assets. Settlement Agreement, ¶8. This is the obligation that ultimately lead to ECGRA creating the Lead Asset Endowment at the Erie Community Foundation. This settlement obligation has been fulfilled.

Second, ECGRA was required to make payments to the Eligible Municipalities which equate to 25% of the total annual Restricted Funds. These payments are to continue for so long as the Settlement Agreement is in effect. These payments to the Eligible Municipalities are specifically noted within the Settlement Agreement as being considered municipal grants. Settlement Agreement, ¶6.

To facilitate these payments on a timely basis, the Settlement Agreement also provides that the County is to fulfill its obligation under the 2004 Gaming Act to forward funds to ECGRA<sup>3</sup> by paying to ECGRA the Restricted Funds within twenty (20) days of receipt. Settlement Agreement, ¶11. Similarly, ECGRA is obligated to forward the municipal grants to the Eligible Municipalities within twenty (20) days of receipt of the Restricted Funds from the County. Settlement Agreement, ¶12.

Lastly, the Settlement Agreement is specifically noted as being effective

...unless and until either (a) Presque Isle Downs discontinues operating at its present location or (b) the General Assembly of the Commonwealth of Pennsylvania amends those provisions of the Gaming Act relating to Restricted Gaming Funds which amendment materially modifies either (i) the amount of Restricted Gaming Funds received by Erie County, or (ii) the terms or conditions under which the Restricted Gaming Funds are to be distributed in Erie County.

Settlement Agreement, ¶13.

## **THE AMENDED GAMING ACT**

The Pennsylvania Supreme Court, in Mount Airy #1, LLC v. Pennsylvania Department of Revenue, 2016 Pa. LEXIS 2174 (September 28, 2016), found that the local share assessment contained within the 2004 Gaming Act violated the Uniformity Clause of the Pennsylvania Constitution. The Supreme Court thus struck down subsections 1403(c)(2) and (c)(3) (relating to local share assessment distribution methodology) from the Gaming Act as unconstitutional, and stayed the decision to allow the Legislature to correct the Constitutional deficiencies.

After significant delay, the Legislature amended the Gaming Act through the adoption of Act 42 of 2017 on October 30, 2017. At issue for this correspondence includes the amendments made to Section 1403(c)(2)(ii)(D) – the section which provides for the distribution of the local share within Erie County.

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<sup>3</sup> 4 Pa.C.S. §1403(c)(2)(v).

As discussed above, the 2004 Gaming Act provided that half of the local share was to be provided to Erie County as Unrestricted Funds, and the other half was to be sent by the County to ECGRA for use as municipal grants, or Restricted Funds.

The Amended Gaming Act changed the funding formula and added certain oversight requirements to ECGRA. In changing the funding formula, the Amended Act redirected \$1,000,000 of the Restricted Funds, which would have otherwise gone to ECGRA for municipal grants, to a land bank jurisdiction to be established by the County, and until the land bank jurisdiction is established, to the county redevelopment authority. 4 Pa.C.S. §1403(c)(2)(ii)(D) – (D.2).

Specifically, the Amended Gaming Act now states:

**(D)** A county of the third class which is also a home rule county: 1% of the gross terminal revenue to the county hosting the licensed facility from each such licensed facility. An additional 1% of the gross terminal revenue minus the amount contained in clause (D.1) to the county hosting the licensed facility from each such licensed facility for the purpose of municipal grants within the county in which the licensee is located.

4 Pa.C.S. §1403(c)(2)(ii)(D)

**(D.1)** \$1,000,000 of the gross terminal revenue annually to a land bank jurisdiction established by a county of the third class which is also a home rule county. Until a land bank jurisdiction is established by a county of the third class which is also a home rule county after the effective date of this subclause, \$1,000,000 to the county redevelopment authority.

4 Pa.C.S. §1403(c)(2)(ii)(D.1)

**(D.2)** An economic or redevelopment authority which administers local share assessment funds for a county of the third class which is also a home rule county in which a Category 1 licensed facility is located at a thoroughbred racetrack, shall be subject to the following:

**(I)** Each expenditure of the local share assessment funds by the authority shall be disclosed on the authority's publicly accessible Internet website.

**(II)** Local share assessment funds received by the authority may not be used to pay for tuition or other educational expenses of an officer or employee of the authority.

**(III)** Each expenditure of local share assessment funds by the authority shall include a disclosure that the funds originated from licensed gaming activities.

**(IV)** The authority shall be subject to audit by the Auditor General.

4 Pa.C.S. §1403(c)(2)(ii)(D.2).

The Land Bank was formed in 2018 and has been funded through this regime since that time.

# 2495843.v1

## AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into effective December 13, 2010, by and between:

**Summit Township Industrial & Economic Development Authority**, a body politic and corporate created and existing pursuant to the Pennsylvania Economic Development and Financing Law, 73 Pa.Stat. § 371 *et seq.*, with a business address of 8900 Old French Road, Summit Township, Erie County, Pennsylvania;

**Summit Township**, a second class township as defined in the Pennsylvania Second Class Township Code, 53 Pa.Stat. § 65101 *et seq.*, with a business address of 8900 Old French Road, Summit Township, Erie County, Pennsylvania;

**Summit Township Sewer Authority**, a body politic and corporate created and existing pursuant to the Pennsylvania Municipalities Authority Act, 53 Pa.Stat. § 5601 *et seq.*, with a business address of 8890 Old French Road, Summit Township, Erie County, Pennsylvania;

**Perry Hi-Way Hose Company**, a not for profit corporation incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 8281 Oliver Road, Summit Township, Erie County, Pennsylvania;

**Greene Township**, a second class township as defined in the Pennsylvania Second Class Township Code, 53 Pa.Stat. § 65101 *et seq.*, with a business address of 9333 Tate Road, Greene Township, Erie County, Pennsylvania;

**Millcreek Township**, a second class township as defined in the Pennsylvania Second Class Township Code, 53 Pa.Stat. § 65101 *et seq.*, with a business address of 3608 West 26th Street, Millcreek Township, Erie County, Pennsylvania;

**McKean Township**, a second class township as defined in the Pennsylvania Second Class Township Code, 53 Pa.Stat. § 65101 *et seq.*, with a business address of 9231 Edinboro Road, McKean Township, Erie County, Pennsylvania;

**McKean Hose Company**, a not for profit corporation incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 5011 School Street, McKean Township, Erie County, Pennsylvania;

**Waterford Township**, a second class township as defined in the Pennsylvania Second Class Township Code, 53 Pa.Stat. § 65101 *et seq.*, with a business address of 12451 Circuit Road, Waterford Township, Erie County, Pennsylvania;



**EmergyCare, Inc.**, a not for profit corporation incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 1701 Sassafras Street, in the City of Erie, Erie County, Pennsylvania;

**The County of Erie, Pennsylvania**, a Pennsylvania third class county, with a business address of Erie County Courthouse, 140 West Sixth Street, Erie, Erie County, Pennsylvania; and

**Erie County Gaming Revenue Authority**, a body politic and corporate created and existing pursuant to the Pennsylvania Economic Development and Financing Law, 73 Pa.Stat. § 371 *et seq.*, with a business address of 5240 Knowledge Parkway, Suite A, Erie, Erie County, Pennsylvania.

WHEREAS, in 2007, Presque Isle Downs & Casino ("Presque Isle Downs"), located in Summit Township, Erie County, Pennsylvania, opened for business.

WHEREAS, Presque Isle Downs is licensed and operates under and pursuant to the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.Cons.Stat. § 1101 *et seq.* (the "Gaming Act").

WHEREAS, beginning in calendar year 2007, and for each year thereafter, and as a result of the operation of Presque Isle Downs, The County of Erie, Pennsylvania ("Erie County"), has received monies "for the purpose of municipal grants" pursuant to 4 Pa.Cons.Stat. §§ 1403(c)(2)(ii)(D) and 1403(c)(2)(v) (the "Restricted Gaming Funds").

WHEREAS, pursuant to the last sentence of 4 Pa.Cons.Stat. § 1403(c)(2)(v), any monies that are not used to fund municipal grants from the Restricted Gaming Funds become "uncommitted funds" (the "Uncommitted Gaming Funds").

WHEREAS, for calendar year 2008, Erie County received Restricted Gaming Funds in the total amount of approximately \$6,043,835 (the "2008 Restricted Gaming Funds").

WHEREAS, for calendar year 2009, Erie County received Restricted Gaming Funds in the total amount of approximately \$6,076,405 (the "2009 Restricted Gaming Funds").

WHEREAS, in accordance with the second sentence of 4 Pa.Cons.Stat. § 1403(c)(2)(v), Erie County has created the Erie County Gaming Revenue Authority ("ECGRA"), and Erie County has delegated to ECGRA the authority to administer the Restricted Gaming Funds and the Uncommitted Gaming Funds.

WHEREAS, in 2009, Summit Township Industrial & Economic Development Authority ("STIEDA"), Summit Township, Summit Township Sewer Authority, Perry Hi-Way Hose Company and McKean Township jointly filed appeals from actions by ECGRA and Erie County in which ECGRA and Erie County acted to deny applications for municipal grants from the 2008 Restricted Gaming Funds filed by STIEDA, Summit Township, Summit Township Sewer Authority, Perry Hi-Way Hose Company and McKean Township, which appeals were filed at

Erie County Court of Common Pleas Nos. 14750-2009 and 14961-2009, and which appeals were consolidated at Erie County Court of Common Pleas No. 14961-2009 (the "2008 Appeals").

WHEREAS, in 2010, STIEDA, Perry Hi-Way Hose Company, EmeryCare, Inc., McKean Township, McKean Hose Company, Greene Township and Waterford Township jointly filed an appeal from actions by ECGRA in which ECGRA acted to deny applications for municipal grants from the 2009 Restricted Gaming Funds filed by STIEDA, Perry Hi-Way Hose Company, EmeryCare, Inc., McKean Township, McKean Hose Company, Greene Township and Waterford Township, which appeal was filed at Erie County Court of Common Pleas Nos. 12088-2010 (the "2009 Appeal").

WHEREAS, by order entered June 28, 2010, the Erie County Court of Common Pleas consolidated the 2008 Appeals and the 2009 Appeal, at Erie County Court of Common Pleas Docket No. 14961-2009 (the "Consolidated Appeals").

WHEREAS, on or about June 16, 2010, ECGRA adopted an Uncommitted Fund Framework, under which ECGRA anticipates distributing all Uncommitted Gaming Revenue.

WHEREAS, pursuant to 4 Pa.Cons.Stat. §§ 1403(c)(2)(ii)(D) and 1403(c)(2)(v), and because Presque Isle Downs is a Category 1 licensed facility with a thoroughbred race track located in a county of the third class, the governmental entities eligible to apply for and receive municipal grants from the Restricted Gaming Funds are Summit Township, Erie County, Greene Township, McKean Township, Millcreek Township and Waterford Township (the "Eligible Governmental Entities").

WHEREAS, the parties to the Consolidated Appeals have reached a settlement of the claims raised in the Consolidated Appeals, and the parties to the Consolidated Appeals and the Eligible Governmental Entities have reached an agreement as to the disposition of the Restricted Gaming Funds and the Uncommitted Gaming Funds received for calendar years 2008, 2009, 2010 and thereafter, which settlement and agreement will terminate the pending litigation in the Consolidated Appeals, avoid the risk of future litigation over disposition of the Restricted Gaming Funds, allow for the prompt distribution of the 2008 Restricted Gaming Funds and the 2009 Restricted Gaming Funds now held by ECGRA, eliminate the need for ECGRA to conduct proceedings to consider applications for Restricted Gaming Funds in 2010 and thereafter, eliminate the cost, expense and uncertainty for applicants who apply for Restricted Gaming Funds, allow for the prompt distribution of the Uncommitted Gaming Funds received in 2010 and future years, provide certain amounts to the Eligible Governmental Entities each year, and provide certain amounts each year which ECGRA can distribute under the existing provisions of its Uncommitted Fund Framework.

WHEREAS, Erie County, Greene Township, McKean Township, Millcreek Township, Summit Township and Waterford Township may enter into intergovernmental cooperation agreements pursuant to and in accordance with the provisions of 53 Pa.Cons.Stat. § 2301 *et seq.*

WHEREAS, the provisions of the Gaming Act, including 4 Pa.Cons.Stat. §§ 1403(c)(2)(ix), authorize Erie County to enter into intergovernmental cooperation agreements with other jurisdictions for sharing monies received pursuant to the Gaming Act.

NOW, THEREFORE, the parties hereto, in accordance with the provisions of the Gaming Act, including 4 Pa.Cons.Stat. § 1403(c)(2)(ix), and in accordance with the Intergovernmental Cooperation provisions of 53 Pa.Cons.Stat. § 2301 *et seq.*, and in consideration of the mutual promises and covenants, and with the intent to be legally bound, agree as follows:

1. Within twenty (20) days of the date all parties to this Agreement have executed this Agreement and approved this Agreement as required by law, STIEDA, Summit Township, Summit Township Sewer Authority, Perry Hi-Way Hose Company, McKean Township, McKean Hose Company, Greene Township, Waterford Township and EmeryCare, Inc. shall jointly file a praecipe to settle and discontinue the Consolidated Appeals.

2. Within twenty (20) days of the date all parties to this Agreement have executed this Agreement and approved this Agreement as required by law, and subject to paragraph 3 hereof, ECGRA shall pay 25% of the gross amount of the 2008 Restricted Gaming Funds, inclusive of interest earned thereon, and 25% of the gross amount of the 2009 Restricted Gaming Funds, inclusive of interest earned thereon, to the Eligible Governmental Entities, as each may direct, to be allocated between them as follows: 45% to Summit Township; 11% to Erie County; 11% to Greene Township; 11% to McKean Township; 11% to Millcreek Township; and 11% to Waterford Township.

3. A one-time only payment of \$30,000.00 shall be made by ECGRA to EmeryCare, Inc., to be deducted equally (\$10,000.00 each) from the 11% shares of the 2009 Restricted Gaming Funds of Greene Township, McKean Township, and Waterford Township as set forth in Paragraph 2 above. The said one-time payment of \$30,000.00 is made in full satisfaction of EmeryCare, Inc.'s 2009 Application and any claims by EmeryCare, Inc. for future funding while this Agreement continues in effect as set forth in Paragraph 13 below.

4. Each of the Eligible Governmental Entities agrees that it will not submit for itself, or for any other person or entity, any application for a municipal grant from the Restricted Gaming Funds for 2010, and for each year thereafter in which this Agreement is in effect. The preceding sentence is not intended to foreclose or prevent any entity or person from applying for funding from any Uncommitted Gaming Funds.

5. ECGRA will promptly modify its policies and procedures, including its application for municipal grants from Restricted Gaming Funds for 2010 and for each year thereafter in which this Agreement is in effect, to provide that if the applicant for a municipal grant from Restricted Gaming Funds is a public authority of or created by one of the Eligible Governmental Entities, or a not-for-profit corporation or entity, such public authority or not-for-profit corporation or entity cannot apply for a municipal grant from the Restricted Gaming Funds without the express, written consent and approval of an Eligible Governmental Entity.

6. ECGRA will promptly modify its Uncommitted Fund Framework to modify the existing categories for distribution of Uncommitted Gaming Funds to create a new, sixth

category for distribution of grants from the Uncommitted Gaming Funds to the Eligible Governmental Entities. For 2010, and for each year thereafter in which this Agreement is in effect, ECGRA shall distribute, from this new category of Uncommitted Gaming Funds, grants totaling 25% of the gross amount of the Restricted Gaming Funds received with respect to each calendar year, inclusive of interest earned thereon, to the Eligible Governmental Entities, as each may direct, to be allocated between them as follows: 45% to Summit Township; 11% to Erie County; 11% to Greene Township; 11% to McKean Township; 11% to Millcreek Township; and 11% to Waterford Township.

7. After payment of the amounts in paragraphs 2 and 3 hereof, ECGRA shall expend not less than 40% of the remaining 2008 Restricted Gaming Funds, and not less than 40% of the remaining 2009 Restricted Gaming Funds, on the category of Dedicated Regional Assets as set forth in ECGRA's Uncommitted Fund Framework.

8. From the Restricted Gaming Funds received for calendar years 2010, 2011, 2012, 2013 and 2014, ECGRA shall expend not less than 30% of the amount of the Restricted Gaming Funds received with respect to each such calendar year on the category of Dedicated Regional Assets as set forth in ECGRA's Uncommitted Fund Framework.

9. Within twenty (20) days of the date Erie County receives from the Commonwealth of Pennsylvania the final payment of Restricted Gaming Funds for 2010, Erie County shall transfer all of the Restricted Gaming Funds for 2010 to ECGRA, together with all interest earned on those funds.

10. Within twenty (20) days of the date ECGRA receives from Erie County the Restricted Gaming Funds for 2010 and the interest earned thereon, ECGRA shall distribute the Grants to Eligible Governmental Entities in accordance with paragraph six (6) of this Agreement.

11. Within twenty (20) days of the date Erie County receives from the Commonwealth of Pennsylvania the quarterly distribution of Restricted Gaming Funds for the first quarter of 2011, and for each quarter thereafter while this Agreement is in effect, Erie County shall transfer all of those funds to ECGRA, together with interest thereon, if any.

12. Within twenty (20) days of the date ECGRA receives from Erie County the quarterly distribution of Restricted Gaming Funds for the first quarter of 2011, and for each calendar quarter thereafter while this Agreement is in effect, ECGRA shall distribute grants to the Eligible Governmental Entities, in the amount of 25% of the gross amount of the Restricted Gaming Funds received by ECGRA from Erie County, together with interest thereon, if any, in accordance with paragraph six (6) of this Agreement.

13. This Agreement shall continue in effect for 2010, and for each succeeding calendar year, unless and until either (a) Presque Isle Downs discontinues operating at its present location, or (b) the General Assembly of the Commonwealth of Pennsylvania amends those provisions of the Gaming Act relating to Restricted Gaming Funds which amendment materially modifies either (i) the amount of Restricted Gaming Funds received by Erie County, or (ii) the terms or conditions under which the Restricted Gaming Funds are to be distributed in Erie County.



14. Each and all of the Eligible Governmental Entities shall promptly adopt an ordinance, in accordance with 53 Pa.Cons.Stat. § 2305, embodying the terms of this Agreement.

15. This Agreement contains the entire understanding between the parties hereto. There have been no oral or other agreements of any kind whatsoever as a condition precedent or inducement to the signing of this Agreement of otherwise concerning this Agreement or the subject matter hereof.

16. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

17. No changes, modifications or alterations of any of the terms and provisions contained in this Agreement shall be effective unless changed, modified or altered in writing and signed by all the parties hereto.

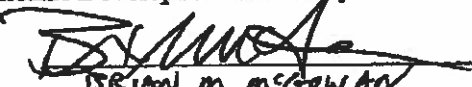
18. The invalidity or unenforceability of any particular provision of this Agreement shall not affect its other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision has been omitted.


19. Each party to this Agreement acknowledges that it had a full opportunity to participate in the drafting of this Agreement and to consult with its counsel regarding the language set forth herein. The parties agree that no party shall be considered the drafter of the Agreement for purposes of interpretation or construction and that any interpretation or construction of this Agreement shall be neutral and not in favor of or against any party

20. The parties may execute this Agreement in counterparts, which collectively shall constitute the fully executed original of this Agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement.

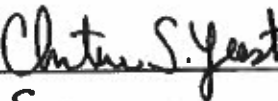
Summit Township Industrial &  
Economic Development Authority

By:   
Title: BRIAN M. MCGOWAN  
CHAIR PERSON

Attest:   
Title: SECRETARY

Summit Township

By:   
Title: CHAIR PERSON

Attest:   
Title: SECRETARY

Summit Township Sewer Authority

By: Will N. Cole

Title: CHAIRMAN

Attest: Cheryl J. Ponce

Title: SECRETARY

Perry Hi-Way Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Greene Township

By: \_\_\_\_\_

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Millcreek Township

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McKean Hose Company

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Waterford Township

By: \_\_\_\_\_

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EmergyCare, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Summit Township Sewer Authority**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Perry Hi-Way Hose Company**

By: Janis [Signature]

Title: President

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Greene Township**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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**Millcreek Township**

By: \_\_\_\_\_

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**McKean Township**

By: \_\_\_\_\_

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**McKean Hose Company**

By: \_\_\_\_\_

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**Waterford Township**

By: \_\_\_\_\_

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Attest: \_\_\_\_\_

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**EmergyCare, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_



Summit Township Sewer Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Perry Hi-Way Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Greene Township

By: Clarence T. Hene

Title: Chairman

Attest: Richard Loggins

Title: Secretary

Millcreek Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Township

By: \_\_\_\_\_

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Attest: \_\_\_\_\_

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McKean Hose Company

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Waterford Township

By: \_\_\_\_\_

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EmergyCare, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Summit Township Sewer Authority**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Perry Hi-Way Hose Company**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Greene Township**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Millcreek Township**

By: James S. Kypowec

Title: CHAIR, BOARD OF SUPERVISORS

Attest: Richard B. Spuhli

Title: SECRETARY

**McKean Township**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**McKean Hose Company**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**Waterford Township**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**EmergyCare, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Summit Township Sewer Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Perry Hi-Way Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Greene Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Millcreek Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Township

By: *John Williams*  
Title: *Mayor*

Attest: *Indira Lee Little*  
Title: *Assistant Secretary*

McKean Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Waterford Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

EmergyCare, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Summit Township Sewer Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Perry Hi-Way Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Greene Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Millcreek Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Hose Company

By: [Signature]

Title: Treasurer

Attest: [Signature]

Title: President

Waterford Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

EmergyCare, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Summit Township Sewer Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Perry Hi-Way Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Greene Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Millcreek Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Waterford Township

By: Ad White

Title: Chairman

Attest: Linda G. Mernejer

Title: Secretary / Treasurer

EmergyCare, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Summit Township Sewer Authority

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Perry Hi-Way Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Greene Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Millcreek Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

McKean Hose Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Waterford Township

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

EmergyCare, Inc.

By: Bill Hayes

Title: EXECUTIVE DIRECTOR

Attest: Barbara A. Wexmott

Title: Administrative Assistant

The County of Erie, Pennsylvania

Erie County Gaming Revenue Authority

By: *Benny Cussner*

By: \_\_\_\_\_

Title: County Executive

Title: \_\_\_\_\_

Attest: *[Signature]*

Attest: \_\_\_\_\_

Title: Executive Assistant

Title: \_\_\_\_\_

Settlement Agreement (Final 2).doc



The County of Erie, Pennsylvania

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Return to: \_\_\_\_\_

Erie County Gaming Revenue Authority

By: Jeff D. McQueen

Title: 12.15.10 Chair

Attest: J. A. K. Hill

Title: Executive Director