

**THIRD AGREEMENT BETWEEN THE ERIE COUNTY GAMING REVENUE
AUTHORITY
AND
BEN FRANKLIN TECHNOLOGY PARTNERS OF CENTRAL AND NORTHERN PA
FOR
SPECIAL ECONOMIC DEVELOPMENT ASSISTANCE FOR ERIE COUNTY**

THIS THIRD AGREEMENT, entered this _____ day of October, 2015 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

Ben Franklin Technology Partners of Central and Northern Pennsylvania, Inc., a 501(c)(3) nonprofit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with offices at 115 Technology Center University Park, PA 16802, hereinafter referred to as “BFTP/CNP”.

WHEREAS, ECGRA has used and intends to continue to use certain uncommitted gaming revenue (the “Funds” or the “ECGRA Funds”) for, among other things, the purpose of promoting economic development in Erie County; and

WHEREAS, the parties hereto are also parties to that certain agreement dated February 10, 2011, providing for special economic development assistance for Erie County (the “Original Agreement”) and a Second Agreement between the parties for special economic development assistance dated January 9, 2013 (the “Second Agreement”) under which BFTP/CNP manages and invests Funds for ECGRA through the operation and administration of the Erie Innovation Fund (the “Innovation Fund” or “Erie Innovation Fund”); and

WHEREAS, ECGRA desires to continue to engage BFTP/CNP to manage and invest Funds received from ECGRA through the continued operation of the Innovation Fund for the purposes listed herein and to address identified gaps in the current economic development system in Erie County, including insufficient funding (equity, seed-stage, risk capital or non-traditional lending) for technology companies, or existing companies needing new technology/innovation to remain competitive or open new markets and business, technical and entrepreneurial support services which are not linked to financing/funding programs; and

WHEREAS, the gaps identified above are to be addressed by focusing ECGRA’s investing in a manner to either fill these gaps in the current economic developments system or to take advantage of new opportunities, or both; and

WHEREAS, ECGRA Funds are to be applied in a manner that avoids duplication of other economic development efforts; and

WHEREAS, BFTP/CNP desires to continue to manage and invest ECGRA Funds for economic purposes subject to the terms and conditions outlined herein.

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 BFTP/CNP are separate and distinct entities which intend to act independently of one another as parties to the Agreement. Employees of BFTP/CNP 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 BFTP/CNP.
3. **Term.** This Agreement shall commence upon the date of the last party to sign the Agreement, and shall continue until three (3) years from that date. This Agreement may be extended for one (1) year by written agreement of both parties.
4. **Termination.** Either party may terminate this Agreement at any time by providing at least ninety (90) days written notice. In the event ECGRA terminates this Agreement, all unexpended Funds received by BFTP/CNP shall be returned to ECGRA immediately.
5. **Activities.**
 - a. ECGRA has concluded that BFTP/CNP has significant experience and unique skills in analyzing, executing and tracking investments in both early-stage and existing technology-based companies. ECGRA Funds will be efficiently deployed and leveraged with other funds to continue the work of the Erie Innovation Fund, a program that was created under the Original Agreement and recapitalized under the Second Agreement.
 - b. ECGRA Funds will be utilized by BFTP/CNP to continue the Erie Innovation Fund which was created as a partnership between ECGRA and BFTP/CNP, which is managed and executed by BFTP/CNP, and which leverages and matches the ECGRA Funds to:
 - (i) Deploy research and development capital to encourage and support the growth of new products and processes in existing manufacturers; and.

- (ii) Provide seed investment capital to innovative and emerging start-up companies, creating a process by which local investors, including angel investors, can participate in deal identification, screening and due-diligence.
- c. The Erie Innovation Fund will have two types of companies in which it will invest, as follows:
 - (i) **Existing-Company Funding Opportunities.** Erie County, Pennsylvania based manufacturing companies – classified as small businesses with fewer than 500 employees – would be eligible for a BFTP/CNP-managed ECGRA investment if the company has a concrete plan to develop a new product/new market that would likely result in increased competitiveness or new business segment for the company, and the creation and/or retention of jobs. These investments will be matched on at least a one-to-one basis by the participating companies. It is anticipated that approximately four (4) companies will receive investment in the first year.
 - (ii) **Emerging Company Funding Opportunities.** These are early-stage companies located in Erie County, Pennsylvania which are often pre-revenue and which have great difficulty in accessing start-up financing beyond the personal assets of the founders and their friends and family. This situation has become more acute as banks, investors and other traditional sources of capital have moved upstream into more secure deals. Companies facing this financing gap would be eligible for an Erie Innovation Fund investment if the entrepreneur can produce a plan for the development of the technology, a credible commercialization plan, matching funds of a minimum level of one-to-one, and are likely create new job opportunities and wealth in our region. It is anticipated that approximately three (3) matching investments will be made in the first year.
- d. Eligible Applicants. Applicants which are to be eligible to receive funding provided by ECGRA through the Innovation Fund shall be limited to companies with a principal place of business within Erie County, Pennsylvania.
- e. Review Process. Due diligence for these two categories of investments will start by making use of the existing BFTP/CNP processes for reviewing companies’ technical feasibility, market feasibility, revenue model, and management team expertise. Screening of initial proposals and subsequent training of other advisors will be done by select BFTP/CNP staff. In addition, the Original Agreement and the Second Agreement required that a local team of advisors to the Erie Innovation Fund, comprised of some of the region’s business experts and potential private investors, be created. This local team of advisors was created so that it could enable potential angel investors to become experienced in the vetting process so that they can

utilize ultimately in the management of an Erie angel network and fund. This process is to allow those who wish to become “hands-on” investors to become business mentors prior to making actual investments. This process is to be continued pursuant to this Third Agreement.

- f. Angel Fund. Ultimately, the goal of the Erie Innovation Fund will be to provide matching seed capital for the creation of a dedicated angel investor fund for the region. It is expected that a fund and network will be created as investors become educated and more comfortable with the investment process, which should occur through their participation in the review process highlighted above. Additional training on investment practices and due diligence will be conducted in the region by BFTP/CNP and its partnering organizations. Experts from outside the area will be brought in to share best practices, and private capital will be raised. It is BFTP/CNP’s goal to provide initial capital from ECGRA Funds for the creation of this equity fund late in the first year or in the second year of this Agreement.

6. **Levels of Accomplishment.** All such lending shall be made, and the BFTP/CNP shall utilize the funds provided by ECGRA, pursuant to the following guidelines:

- a. Internal Leverage. During the Term of this Agreement, BFTP/CNP will obtain at least \$500,000 of additional investment into these programs 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 programs
- b. Companies Assisted. At least five (5) companies will be invested in by BFTP/CNP during the first year of this Agreement.
- c. Job Created or Retained. At least fifteen (15) jobs shall be created or retained through projects which BFTP/CNP invests using ECGRA Funds and related leveraged funds during the Term of this Agreement, all such jobs shall be created or retained within three years of the closing of a loan by a borrower.

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

- a. Audits.
 - (i) The BFTP/CNP’s annual audited financial statements shall be provided annually throughout the term of this Agreement and within thirty days of receipt by the BFTP/CNP.
- b. Quarterly Performance Reports
 - (i) Quarterly reports shall indicate the following information as a minimum:

- i. percentage of both the number loans to and total investment into Companies Assisted;
 - ii. internal leverage ratio for ECGRA Funds;
 - iii. total internal leverage raised, including source and terms of internal leverage funds;
 - iv. job creation/retention attributed to loans made pursuant to this Agreement;
 - v. list of borrowers by organization's name & contact person (to be kept confidential unless a waiver is received);
 - vi. job creation/retention attributed to loan recipients that have signed a confidentiality waiver; and,
 - vii. total company investment leverage attributed to loan recipients that have signed a confidentiality waiver.
 - (ii) Quarterly performance reports shall be provided to ECGRA for each calendar quarter, and shall be due 45 days following each quarter ending March 31, June 30, September 30 and December 31.
 - (iii) Quarterly performance reports shall be provided to ECGRA until such time that this Agreement has terminated or the satisfaction of Levels of Accomplishment, which ever shall occur last.
 - c. Final performance report. Within 180 days of the final draw payment or the end of the Term or upon termination (whichever is earliest), a final report shall contain all information included in the Quarterly report along with a presentation to ECGRA's Board of Directors.
- 8. Technical Assistance.** BFTP/CNP shall require that, as a term of any loan made from ECGRA Funds provided to the Innovation Fund, borrower entities utilize technical assistance provided to borrower entities, such assistance including, but not limited to, the Ben Franklin Transformations Team, which provides business management support services including, but not limited to market research, sales and marketing strategy and implementation, complete financial management, human resources and operations, and/or the business management services provided from the Gannon SBDC throughout the term of the loan agreement.
- 9. Default.** Failure to meet any obligation under this Agreement shall constitute a default by the failing party. In the event of default, the non-defaulting party shall give the defaulting party a notice, in writing, documenting the default and providing not less than ninety (90) days to cure the default.

10. **Suspension and Termination.** If the defaulting party fails to correct substandard performance and thus cure the default within the period of time stated, the Agreement may be suspended or terminated at the non-defaulting party's sole discretion.
- a. In the event of suspension or termination, BFTP/CNP shall return all unexpended Funds received under this Agreement to ECGRA within thirty (30) days of receipt of notice of suspension or termination.
 - b. Additionally, in the event of termination due to an uncured default by BFTP/CNP, BFTP/CNP shall return Funds expended on the activities relating to the default (default monies) to ECGRA within thirty (30) days of receipt of notice of termination.
11. **Payment.** The total amount of funds to be provided to BFTP/CNP, for the purposes outlined herein, including processing fees, is Five Hundred Thousand Dollars (\$500,000.00), to be allocated to support the continuation of the Erie Innovation Fund to advance emerging and existing companies. (the "Contract Amount"). ECGRA shall disperse such Funds in accordance with periodic requests based upon BFTP/CNP anticipated need in the upcoming ninety (90) days. The first request may be submitted upon proof that BFTP/CNP has secured commitment for the matching funds as contemplated hereunder. Future requests will only be considered when all performance monitoring requirements are met.
12. **Program Budget.** BFTP/CNP shall provide ECGRA with a program budget identifying the planned distribution of Funds within ninety (90) days of the execution of this Agreement.
- a. **Allowable Costs.** The Program Budget shall provide that the allowable costs identified in (i) and (ii) below shall not exceed two percent (2%) of the Contract Amount, except as otherwise provided in (iii) below:
 - (i) Costs of administration of the Innovation Fund by BFTP/CNP, and
 - (ii) Professional fees associated with the administration of the Innovation Fund by BFTP/CNP, including legal and/or accounting fees.
 - (iii) BFTP/CNP may incur allowable costs of up to fifteen percent (15%) of the Contract Amount with the prior express written consent of ECGRA's Executive Director.
13. **BFTP/CNP Return on Investment.** In the event of a return on investment of Funds occurs from investments derived from the activities of BFTP/CNP pursuant to this Agreement, these funds are to be redeployed by BFTP/CNP within the Innovation Fund.
14. **Warrants.** ECGRA expressly encourages BFTP/CNP to require that borrowing entities issue a warrant to BFTP/CNP as additional consideration for the

Innovation Fund to make a loan to the borrowing entity. If required as part of the loan transaction, the warrant will entitle BFTP/CNP to acquire equity interests of the borrower entity in exchange for nominal consideration. Any equity interests purchasable upon warrant exercise shall be valued as BFTP/CNP deems appropriate.

- a. Any such warrant acquired by BFTP/CNP shall be executed upon the occurrence of an exit event by the borrower entity. An exit event shall mean an initial public offering by the borrower entity, or a sale of all or substantially all of the borrower entity's assets or equity interests, or a merger transaction in which the borrower entity undergoes a change of control.
 - b. Upon warrant execution, BFTP/CNP shall repay ECGRA pursuant to the following conditions:
 - (i) BFTP/CNP shall repay ECGRA an amount up to the amount of ECGRA Funds invested by the Innovation Fund in the borrower entity, such amount being limited to fifty percent (50%) of the return on investment received by the Innovation Fund plus interest as determined by the then current Prime Rate as established by the Wall Street Journal weekly Prime Rate, such interest calculated from the date of the loan closing between the Innovation Fund and the borrower entity.
 - (ii) In the event BFTP/CNP receives a return on investment upon warrant execution which results in a total return on investment of twice the Contract Amount, or more, BFTP/CNP shall repay ECGRA an amount equal to the Contract Amount, plus interest as calculated in (i) above.
 - (iii) At no point shall the cumulative total repayment to ECGRA exceed the Contract Amount plus applicable interest.
15. **Effective Date.** This Agreement shall be deemed to be effective immediately upon the date of execution of both parties.
16. **Cooperation.** BFTP/CNP 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 BFTP/CNP to facilitate the purposes and intent of this Agreement.
17. **Indemnification.** Each party hereby agrees to release, indemnify and hold the other harmless from any claims, damages, losses, lawsuits, causes of action or demands arising out of the good faith actions taken and provision of services by the indemnifying party hereunder, except to the extent that such claims, losses, lawsuits, causes of action or demands are based on the gross negligence, recklessness, or intentional misconduct of the indemnifying party and/or its agents, employees, and/or personnel.

18. **Entire Contract.** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, 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.
19. **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.
20. **Dissolution of the Innovation Fund.** In the event of a dissolution of the Innovation Fund, BFTP/CNP shall be required to return all unspent ECGRA Funds to ECGRA within ninety (90) days of such dissolution, and the obligations pertaining to Warrants, in paragraph 14 above, shall remain to be binding upon successors and assigns.
21. **Prohibition against Assignment.** This agreement shall not be assigned by either party without written consent of the other being first obtained.
22. **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.
23. **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.
24. **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.
25. **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

FBFTP/CNP
Steve Brawley, President and CEO
Ben Franklin Technology Partners of
Central and Northern PA
115 Technology Center
University Park, PA 16802
814-863-4558

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

BEN FRANKLIN TECHNOLOGY
PARTNERS OF CENTRAL AND
NORTHERN PA, INC

By _____
David Sample,
Chairman of the Board

By _____
Stephen Brawley, President/CEO

Attest: _____
David Yapple, Board Secretary

Attest: _____
, Board Secretary

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