

**RESOLUTION NUMBER 13, 2009**

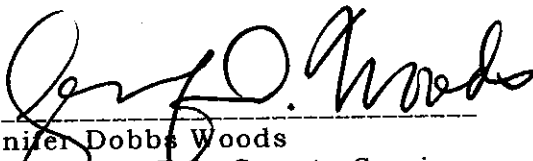
**Resolution to Approve Professional Services Agreement  
between the Erie County Gaming Revenue Authority and  
the Economic Development Corporation of Erie County**

**WHEREAS**, the Erie County Gaming Revenue Authority (ECGRA) desires and intends to enter into a professional services agreement with the Economic Development Corporation of Erie County to assist with administering programs related to grant administration and economic development;

**NOW THEREFORE, BE IT RESOLVED** that the Board of Directors of the Erie County Gaming Revenue Authority, pursuant to the Economic Development Financing Law, Act of August 23, 1967 P.L. 251, as amended, 73 P.S. §371 et seq., the Pennsylvania Race Horse Development and Gaming Act, Act of July 5, 2004 P.L. 572, as amended, 4 Pa.C.S.A. §1403(c)(2)(v), and the Erie County Gaming Revenue Authority By-Laws Sections 4.08 and 6.02, hereby authorizes its Chairperson to enter into the Professional Services Agreement attached hereto as Exhibit "A" on behalf of the Authority.

On the motion of David Yapple, seconded by David Sample, this Resolution was adopted on this 10<sup>th</sup> day of December, 2009 by a vote of 6 - 0.

ERIE COUNTY GAMING REVENUE AUTHORITY:

  
\_\_\_\_\_  
Jennifer Dobbs Woods  
Chairperson, Erie County Gaming  
Revenue Authority

ATTEST:

  
\_\_\_\_\_  
Secretary, Erie County Gaming  
Revenue Authority

Date: December 10, 2009.

## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, is by and between

The ECONOMIC DEVELOPMENT CORPORATION OF ERIE COUNTY

and

The ERIE COUNTY GAMING REVENUE AUTHORITY

WITNESSETH:

WHEREAS, the Economic Development Corporation of Erie County (hereinafter "EDCEC"), a non-profit, 501(c)6 corporation, is the lead agency for the County of Erie on programs for economic development as it relates to financing, real estate development, brownfield redevelopment, and grant administration; and

WHEREAS, the EDCEC employs and manages knowledgeable staff to administer the operations and duties associated with economic development programs; and

WHEREAS, the Erie County Gaming Revenue Authority (hereinafter "ECGRA") is a public authority created by the County of Erie under the Pennsylvania Economic Development Finance Law of August 23, 1967 with the specific responsibility of investing certain gaming revenues for economic development purposes, pursuant to the Pennsylvania Race Horse Development and Gaming Act of July 5, 2004; and

WHEREAS, ECGRA intends to engage the professional services of EDCEC for administration of its board-directed purpose and EDCEC intends to provide professional services to ECGRA.

NOW, THEREFORE, 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, agree as follows.

1. Incorporation. The recitations above are incorporated hereby as if fully set forth.
2. Engagement of Services. ECGRA hereby contracts with EDCEC for the provision of professional services to assist in administration of its programs related to grant administration and economic development.
3. Relationship of the Parties. It is the intent of the parties that EDCEC shall be and shall act as an independent contractor, and shall be and shall act as a separate and independent entity from ECGRA. The employees of EDCEC shall not be considered to be the employees, agents, or representatives of ECGRA. Likewise, the employees of ECGRA shall not be considered to be employees, etc., of EDCEC. EDCEC and ECGRA shall not be viewed as affiliates, partners, or joint venturers unless specifically and mutually agreed upon by both parties.

**EXHIBIT "A"**

4. Term. This Agreement shall commence upon the date of the last party to sign the agreement, and shall continue until December 31, 2013. This agreement shall automatically extend twice, to December 31, 2016 and December 31, 2019 unless one of the parties gives the other party ninety (90) days advance written notice.

5. Termination. Either party may terminate this Agreement at any time by providing at least one-hundred eighty (180) days written notice.

6. Duties of EDCEC.

a. Administrative Staff Support. EDCEC will provide administrative staff support to ECGRA inclusive of financial administration, clerical services, IT support, and other services that may be requested by ECGRA and agreed upon by EDCEC from time to time.

b. Programmatic Staff Support. EDCEC will provide programmatic staff support to ECGRA inclusive of research, consulting on program development, consulting on grant administration, administration of ECGRA's investments in economic development projects, and other services that may be requested by ECGRA and agreed upon by EDCEC from time to time.

c. Representation. ECGRA shall be solely responsible for dissemination of its own information, public relations, and the like. EDCEC shall not represent any position or policy of ECGRA and shall not act as spokesperson for ECGRA.

d. Cooperation. EDCEC shall cooperate in every reasonable way with ECGRA to facilitate the purposes and intent of this agreement.

e. Invoicing and Reporting. EDCEC shall provide invoices on at least a quarterly basis indicating hours worked by each employee at the External Billing Rate (Appendix A) to cover the salary, benefits, and operational expenses for each employee. In consideration of the Term of this Agreement, a five percent (5.0%) discount shall be applied to each invoice for employee time. The EDCEC External Billing Rate will be adopted annually at the EDCEC December board meeting for each subsequent calendar year. EDCEC will maintain employee timesheets documenting time invoiced. A more detailed report on staff activities will be presented at ECGRA board meetings upon request. EDCEC will pass through direct expenses at its cost plus two percent (2.0%).

f. Coordination of Services. EDCEC's Chief Operating Officer shall serve as representative of the EDCEC for purposes of coordination of services and reporting provided by EDCEC under this Agreement.

g. Records. Any or all files, records, correspondence, or other documentation relating to EDCEC's work products created for, or on behalf of ECGRA shall be turned over to ECGRA within fourteen days of either: (1) termination of this Agreement, or (2) receipt of written request from ECGRA.

7. Duties of ECGRA.

a. Establishment of Program and Policy. ECGRA is solely responsible for creation of programs, establishment of policies, and all administration of its program according to its policies. ECGRA is also solely responsible for granting, investing, allocation, or disbursement of its funds in order to implement its policy and programs.

b. Requesting and Coordinating Services. ECGRA shall appoint a representative to act as ECGRA's official liaison to EDCEC's Chief Operating Officer for the purposes of requesting and coordinating EDCEC services provided under this Agreement.

c. Retainer. ECGRA shall pay EDCEC an annual retainer of twenty thousand dollars (\$20,000) which shall be invoiced evenly on a quarterly basis during the Term of this Agreement beginning January 1st. The retainer shall be applied against EDCEC's fees and direct expenses incurred for services provided under this Agreement during that calendar year.

d. Fees. ECGRA shall pay EDCEC for staff support as invoiced at least quarterly at the EDCEC External Billing Rate less 5% discount. ECGRA agrees to pay all direct costs associated with carrying out programmatic activities as set forth in this agreement and by the Board.

e. Payment. Invoices are due thirty (30) days after receipt.

f. Cooperation. ECGRA shall cooperate in every reasonable way with EDCEC to facilitate the purposes and intent of this agreement.

8. No Lien. No claim by EDCEC for the payment of fees hereunder shall in any way be construed to constitute a lien on any assets owned by ECGRA.

9. Indemnification. ECGRA hereby agrees to release, indemnify and hold EDCEC harmless from any claims, damages, losses, law suits, causes of action or demands arising out of the good faith provision of services by EDCEC 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 EDCEC and/or its agents, employees, and/or personnel.

10. Notices. Any notice required to be sent under this Agreement shall be sent in writing to the Chairperson of ECGRA or the President/CEO of the EDCEC.

11. Entire Contract. This Agreement constitutes 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.

12. 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.

13. Prohibition Against Assignment. This Agreement shall not be assigned by either party without the written consent of the other being first obtained.

14. 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 provisions hereof are severable.

15. 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.

16. Governing Law. This Agreement shall be construed 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.

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

ECONOMIC DEVELOPMENT CORP.  
OF ERIE COUNTY

ERIE COUNTY GAMING REVENUE AUTHORITY

By \_\_\_\_\_  
John Elliott, President/CEO

By \_\_\_\_\_  
Jennifer Dobb-Woods, Board Chair

Attest: \_\_\_\_\_  
Katrina Smith, Assistant Secretary

Attest: \_\_\_\_\_  
Name:  
Title:

1163424.2

**APPENDIX A – 2010 EDCEC External Billing Rates**

<b>Name</b>	<b>Title</b>	
Bliley, Linda	CFO	\$ 105.00
Brennan, David	Director of Planning / Design	85.00
Clark, Karen	Director of Public Finance	85.00
Elliott, John	President / CEO	135.00
Folks, Selena	Admin Asst.	40.00
Grice, Bob	Director of Development	85.00
McCreary, Rachel	Special Asst.	55.00
Rice, Jim	Accountant	55.00
Smith, Amy Jo	Grant Manager	75.00
Smith, Katrina	Vice President, COO	105.00
Terrill, Joe	Facilities Manager	55.00
Wheeler, Joan	Admin Asst.	40.00