

February 2024

**Erie County Cultural Funding Grant  
Monitoring Program  
Music is Art  
January 1, 2020 through December 31, 2022**



**HON. KEVIN R. HARDWICK  
ERIE COUNTY COMPTROLLER**

---

**HON. KEVIN R. HARDWICK  
ERIE COUNTY COMPTROLLER'S OFFICE  
DIVISION OF AUDIT & CONTROL  
95 FRANKLIN STREET  
BUFFALO, NEW YORK 14202**



February 22, 2024

Erie County Legislature  
92 Franklin Street, Fourth Floor  
Buffalo, New York 14202

Dear Honorable Members:

In 2023, the Erie County Comptroller's Office, Division of Audit & Control initiated a regular Monitoring Program of Erie County Cultural Funding Grants. The Erie County Cultural Funding program provides annual grants to non-profit arts and cultural organizations operating within the County. County funds are intended to be limited in their use to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies, and equipment. Grant funds may not be used for or applied towards capital projects or physical improvements of buildings or facilities, nor as a revenue offset against accounts receivable. No funds received shall be used for any services provided or activities performed outside Erie County. The County's Department of Environment and Planning executes contracts with organizations and is the primary agency charged with monitoring.

### **Objective**

The objective of the Cultural Funding Monitoring Program is to verify that the recipients have utilized County funds according to the terms and conditions associated with the Erie County Cultural Funding grant process and the recipient's contract with the County. In order to verify the proper use of the grant award, a number of agencies were selected in order to review their expenses and financial records.

### **Scope and Methodology**

Approximately 120 different organizations receive funding annually from Erie County. The Comptroller's Cultural Funding Grant Monitoring Program is intended to review organizations that received a minimum of \$5,000 in funding during any of the three prior years. Approximately 80 agencies were identified as receiving \$5,000 or more in grant funding. The list of recipient organizations was split into two groups of approximately 40 agencies. The first batch of letters announcing the commencement of a review was sent to the selected non-profit organizations during mid-February 2023, and a second batch was sent in early October 2023. The review of all agencies is expected to be completed by May 31, 2024.

### **2023 – 2024 Program**

During the interview phase, the Auditor identifies use of funding to narrow down the expenses to be verified. A table of agencies which meet the criteria for review along with the amount of grant awards can be found on the following page.

### Monitoring Program – Phase I

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
	Enlightenment Literary Arts Center &				
517125	Dog Ears Bookstore	152183	\$ 38,500.00	\$ 36,800.00	\$ 55,000.00
518004	African American Cultural Center	112604	\$ 275,450.00	\$ 311,950.00	\$ 200,000.00
518012	Alleyway Theatre	109340	\$ 8,500.00	\$ 3,500.00	\$ 11,000.00
518016	American Legion Band of	100379	\$ 7,500.00	\$ 7,500.00	\$ 45,000.00
518017	Amherst Symphony Orchestra	100475	\$ 32,500.00	\$ 26,750.00	\$ 28,740.00
518019	Arts Services Initiative of WHY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00
518023	Ballet Artists Of WHY (Reglia)	100794	\$ 24,000.00	\$ 24,000.00	\$ 30,000.00
	Buffalo Arts Studio (Arts Studio of				
518040	Western New York, Inc)	101244	\$ 38,000.00	\$ 45,500.00	\$ 53,000.00
518044	Buffalo Inner City Ballet Co, Inc	165597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	133142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	147829	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00
518074	Colored Musicians Club	130377	\$ 5,000.00	\$ -	\$ 12,500.00
518084	El Museo Gallery	109836	\$ 12,585.00	\$ 3,585.00	\$ 11,000.00
518104	GrayHill Conservancy	103197	\$ 59,200.00	\$ 59,200.00	\$ 60,000.00
518113	Hull House Foundation	143473	\$ 15,375.00	\$ 5,375.00	\$ 7,500.00
	Jewish Community Center Cultural				
518119	(Jewish Chr of Greater Buff)	111239	\$ 13,500.00	\$ 8,750.00	\$ 13,500.00
518120	Just Buffalo Literacy Center	108577	\$ 78,100.00	\$ 78,100.00	\$ 83,500.00
518132	Locust St Neighborhood Art Classes	109985	\$ 29,250.00	\$ 25,250.00	\$ 28,500.00
518136	Martin House Restoration	104863	\$ 175,500.00	\$ 175,500.00	\$ 190,000.00
518139	Musicis Art	139615	\$ 48,000.00	\$ 48,000.00	\$ 39,000.00
518146	Polish Arts Club Of Buffalo Inc	106132	\$ 7,000.00	\$ 7,000.00	\$ 3,800.00
518147	Preservation Buffalo Niagara	147509	\$ 4,615.00	\$ 4,615.00	\$ 8,000.00
518150	Springville Center For The Arts	113308	\$ 30,505.00	\$ 20,505.00	\$ 36,000.00
518164	Squealy Wheel	101268	\$ 20,920.00	\$ 20,920.00	\$ 27,000.00
518172	Theodore Roosevelt Inaugural Site	106552	\$ 32,320.00	\$ 32,320.00	\$ 37,000.00
518176	Ujima Company	101047	\$ 83,000.00	\$ 83,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 8,275.00	\$ 8,275.00	\$ 7,500.00
518181	WHY Book Arts Collaborative, Inc	135959	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WHY	109818	\$ 10,500.00	\$ 10,500.00	\$ 14,000.00
518196	Buffalo Niagara Heritage Village	151996	\$ 18,500.00	\$ 18,500.00	\$ 24,500.00
518200	Michigan Str African Amer Heritage	152578	\$ 13,000.00	\$ 15,000.00	\$ 32,500.00
518201	General Pulaski Association	103060	\$ 10,000.00	\$ 11,000.00	\$ 12,500.00
518204	Brighton Place, Inc	156194	\$ 10,000.00	\$ 18,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WHY	159305	\$ 12,000.00	\$ 20,000.00	\$ 24,500.00
	Black Rock Historical Society (Black				
518216	Rock-Riverside Alliance)	170369	\$ 22,500.00	\$ 7,500.00	\$ 10,000.00
518233	Centre Culturele Italiano di Buffalo	167500	\$ 25,000.00	\$ 20,000.00	\$ 15,000.00
518549	South Buffalo Irish Feis/Can You Dig	113041	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00
518556	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

### Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBER	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517533	Buffalo Olmsted Parks Conservancy	140237	\$ 35,910.00	\$ 35,910.00	\$ 35,000.00
518008	Albright-Knox Art Gallery	888207	\$ 575,880.00	\$ 575,000.00	\$ 675,000.00
518009	Albright-Knox Public Art Curator	147228	\$ 68,250.00	\$ 68,250.00	\$ -
518025	Assembly House 150, Inc	167247	\$ 1,800.00	\$ 1,000.00	\$ 1,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	188772	\$ 417,800.00	\$ 667,000.00	\$ 417,000.00
	Buffalo & Erie County Naval & Servicemans				
518052	Park	109339	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00
518060	Buffalo Philharmonic Orch Society	303032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	109796	\$ 24,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	105267	\$ 955,800.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo Spring Works, Inc	167353	\$ 3,500.00	\$ 3,500.00	\$ 3,350.00
518064	Burchfield Penning Art Center	101094	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	105934	\$ 35,000.00	\$ 35,000.00	\$ 63,000.00
518082	Danceability	156809	\$ 3,500.00	\$ 5,500.00	\$ 3,000.00
518096	Explore & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Hullwalls Contemporary Arts Center	168598	\$ 57,800.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Penn-Dive	101282	\$ 36,314.00	\$ 36,314.00	\$ 36,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 83,500.00
518124	O'Connell College Community Theater	109241	\$ 11,750.00	\$ -	\$ 3,500.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	MusicalFare Theatre	105308	\$ 61,525.00	\$ 61,525.00	\$ 68,000.00
518141	New Phoenix Theatre	109242	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121043	\$ 61,500.00	\$ 61,500.00	\$ 67,000.00
518152	Boyscott Campus Cooperation	138213	\$ 40,600.00	\$ 40,600.00	\$ 50,000.00
518156	Shakespeare in The Park	105675	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00
518168	Theatre Of Youth	186886	\$ 65,800.00	\$ 69,400.00	\$ 74,000.00
518171	Toin Space Theatre	143878	\$ 20,440.00	\$ 15,440.00	\$ 24,500.00
518188	Zoological Society Of Buffalo	188623	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,700,000.00
518195	Orchard Park Symphony Orchestra	147747	\$ 4,615.00	\$ 4,615.00	\$ 6,000.00
518202	Buffalo Opera Unintegrated Incorporated	155973	\$ 2,380.00	\$ 2,380.00	\$ 10,000.00
518203	Buffalo-Toronto Public Media WNEO/WBFO	172309	\$ 3,750.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
518209	Newstead Public Society	105218	\$ 3,500.00	\$ 3,500.00	\$ 3,000.00
518213	O'Connell & Company Productions	155162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club Jba Red Blazer				
518219	Men's Chorus	162045	\$ 3,000.00	\$ 3,000.00	\$ 8,000.00
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,068.00	\$ 7,500.00
518226	Cheektowaga Historical Association	169123	\$ 3,250.00	\$ 8,250.00	\$ 9,100.00
518229	Second Generation Theatre Company	164957	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,000.00	\$ 2,000.00	\$ 3,000.00
518503	Albion Christian Theater Society	134356	\$ 30,800.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	107311	\$ 3,500.00	\$ -	\$ 3,000.00
	Clarence Museum (Historical Soc. of the				
518515	Town of Clarence)	138867	\$ 5,580.00	\$ -	\$ 8,000.00

### BEST PRACTICES

Over the course of the Monitoring Program, the Division of Audit found a number of problematic practices and questionable expense categories on a recurring basis. In order to address issues pertaining to a large number of organizations, certain generally applicable best practices and recommendations are included here.

### Alcohol

Several organizations used or appeared to use CGF funds to obtain alcohol. While the Division of Audit does not recommend that CGF awards be made contingent on the absence of alcohol from events hosted by the organization, alcohol should not be purchased with CGF funds. The Division of Audit found dozens of alcohol purchases that appeared to be personal in nature and several more which likely violated NYS Alcoholic Beverage Control Laws. Furthermore, the NYS Comptroller has long held that alcohol is not a "lawful county charge", meaning that government officials and employees may not use taxpayer funds to purchase alcohol. The Division of Audit sees no reason that organizations receiving taxpayer funds should be treated differently.

### Debit Cards

Credit cards, particularly with smaller organizations, can provide a critical layer of expense control. The Division of Audit found a large quantity of small-dollar expenses appearing personal in nature. If a debit card is used, the money is gone by the time statements are typically reviewed, while a credit card bill often needs to be paid and approved by the organization's board of directors.

### Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require

applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

## **MUSIC IS ART**

### **BACKGROUND**

Music is Art (MIA) is a 501(c)3 non-profit organization established in 2003 by Goo Goo Dolls bassist and Buffalo resident, Robby Takac. The goal of Music is Art is to enrich the local community with access to music, to create opportunities that fuel the unifying power of music in the local region, and to promote music as a form of art.

Music is Art received \$48,000 in Cultural Grant Funding (CGF) for tax years 2020 and 2021. MIA received \$39,000 in funding for 2022.

### **AUDITOR'S OBSERVATIONS**

MIA operates out of a space owned by its founder, in Buffalo's Allentown District. MIA's programming includes a variety of events and collaborations through the Western New York region aimed at highlighting the value of music.

MIA initiated an instrument donation program, where new and used musical instruments are collected, assessed, cleaned, repaired, refurbished, and subsequently donated to students, schools, music programs or community centers on an as-needed basis and free of charge. MIA also hosts an annual competition called The Battle (formerly known as The Battle of the High School Bands) where participants compete for an opportunity to perform on the main stage at a prime-time spot at the annual festival, recording time at GCR Audio and a professional photo shoot. MIA also hosts a Youth Jazz Music Festival, collaborates with local businesses and non-profit organizations on their music events, and has set up the Lance Diamond Memorial scholarship, in memory of Mr. Lance Diamond, a deceased local music artist.

The largest event hosted by the organization is the annual Music is Art Festival. The festival showcases over 200 bands, 120 DJ's, dancers and other live performances. The Music is Art Festival takes place in September each year and is one of the largest expenses for the organization.

The main sources of funding for MIA include public grants, donations, sponsorships and fundraisers. CGF amounts received by the organization are allocated to offset the cost of payroll, liability issuance and special events insurance.

### **AUDITOR'S CONCLUSION**

During the grant monitoring process, MIA was able to provide adequate substantiation for use of cultural grant funding. The organization allocates grant funding towards payroll expenses and liability and special events insurance premiums. MIA provided documentation including bank statements, invoices, receipts and payroll returns as substantiation for use of Cultural Grant Funding. Based on the documentation provided by the organization, the Auditor was able to conclude that expenses incurred for each year exceeded the amount of cultural grant funding received. No unused funds were identified.

MIA currently has an operating Board of Directors of approximately fifteen members. Board members are limited to two terms, which can be consecutive. The Board meets approximately six times per year and is consulted for all expenses more than \$5,000.

Music is Art's staff is composed of two employees, which include an Executive Director and a Program Director. Due to the limited number of employees, all finances for the organization are managed by a single employee. Segregation of duties were determined to be minimal and internal controls were concluded to be weak.

During the Auditor's assessment of expenses, it was noted that a number of meals and entertainment expenses incurred did not follow the Internal Revenue Code requirements, as the business purpose and business relationship was not documented and thus could not be determined. The Auditor recommends that in the future the organization review requirements as established in §§ 162 and 274 of the Internal Revenue Code. IRC § 162(a) requires a trade or business expense to be both ordinary and necessary in relation to the taxpayer's trade or business in order to be considered deductible. Expenses must be customary, usual and of common or frequent occurrence in the taxpayer's trade or business. The IRC also requires that expenses are appropriate and helpful for the development of the business. IRC § 274(d) provides that no deduction or credit shall be allowed with respect to meals and entertainment expenses unless the taxpayer demonstrates that those expenses are supported by adequate documentation or sufficient evidence corroborating the taxpayer's own statements. Necessary information includes the expense amount, date of purchase, legitimate business purpose, and formal business relationship as it relates to each separate expenditure for meals and entertainment.

Based on the Auditor's review, it was determined that Music Is Art is currently compliant with federal and state return filing obligations.