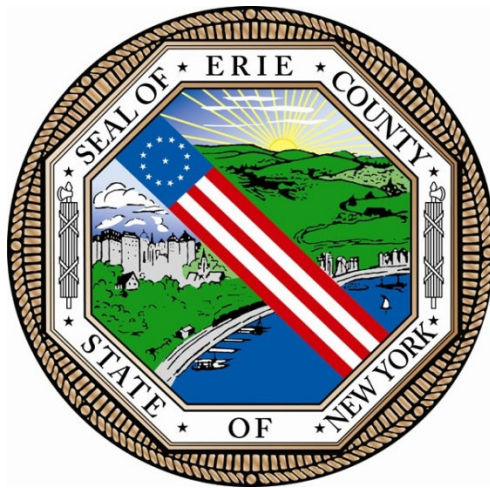


September 2024

**Erie County Cultural Funding Grant
Monitoring Program
Explore & More
The Ralph C. Wilson Jr. Children's Museum
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**



September 5, 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 December 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 NUMBE	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
	Enlightenment Literary Arts Center &				
517125	Dog Ears Bookstore	152183	\$ 28,600.00	\$ 36,600.00	\$ 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	\$ 8,500.00	\$ 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 WNY Inc	147159	\$ 26,050.00	\$ 26,050.00	\$ 30,000.00
518028	Ballet Artists Of WNY (Neglia)	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.	108597	\$ 27,000.00	\$ 27,000.00	\$ 27,000.00
518050	Buffalo Music Hall of Fame	113142	\$ 4,500.00	\$ -	\$ 5,500.00
518051	Buffalo Heritage Carousel	167829	\$ 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	\$ 8,585.00	\$ 11,000.00
518104	Gracyliff 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 Ctr 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	Music is 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	\$ 6,000.00
518160	Springville Center For The Arts	113308	\$ 30,505.00	\$ 20,505.00	\$ 36,000.00
518164	Squeaky 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	\$ 85,000.00	\$ 85,000.00	\$ 57,714.00
518180	Western New York Artists Group	108295	\$ 6,275.00	\$ 6,275.00	\$ 7,500.00
518181	WNY Book Arts Collaborative, Inc	135959	\$ 4,640.00	\$ 4,640.00	\$ 6,000.00
518184	Young Audiences Of WNY	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	\$ 15,000.00	\$ 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	\$ 16,000.00	\$ 20,000.00
518211	Hispanic Heritage Council of WNY	159905	\$ 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	Centro Culturale 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
518596	Net Positive DBA The Foundry	168005	\$ 5,000.00	\$ -	\$ 5,000.00

Monitoring Program – Phase II

ACT #	APPROPRIATION	VENDOR NUMBE	TAX YEAR 2020	TAX YEAR 2021	TAX YEAR 2022
517533	Buffalo Olmsted Parks Conservancy	140237	\$ 25,910.00	\$ 25,910.00	\$ 35,000.00
518008	Albright-Knox Art Gallery	108707	\$ 575,000.00	\$ 575,000.00	\$ 675,000.00
518009	Albright-Knox Public Art Curator	147228	\$ 68,250.00	\$ 68,250.00	\$ -
518025	Assembly House 150, Inc	167747	\$ 1,000.00	\$ 1,000.00	\$ 6,500.00
518034	Buffalo & Erie County Botanical Garden	108743	\$ 102,000.00	\$ 125,000.00	\$ 150,000.00
518036	Buffalo & Erie Co Historical Society	108772	\$ 417,000.00	\$ 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	101032	\$ 926,000.00	\$ 926,000.00	\$ 940,000.00
518061	Buffalo Philharmonic Chorus	109796	\$ 34,500.00	\$ 34,500.00	\$ 35,000.00
518064	Buffalo Society Natural Sciences	109767	\$ 955,000.00	\$ 955,000.00	\$ 955,000.00
518065	Buffalo String Works, Inc	167853	\$ 3,500.00	\$ 3,500.00	\$ 5,355.00
518068	Burchfield Penney Art Center	101004	\$ 155,000.00	\$ 155,000.00	\$ 160,000.00
518072	Center for Exploratory and Perceptu	109934	\$ 55,000.00	\$ 55,000.00	\$ 63,000.00
518082	Danceability	156639	\$ 2,500.00	\$ 5,500.00	\$ 3,000.00
518096	Explore & More Children's Museum	102758	\$ 42,000.00	\$ 42,000.00	\$ 78,000.00
518108	Halliwallis Contemporary Arts Center	108598	\$ 57,000.00	\$ 57,000.00	\$ 60,000.00
518112	Hamburg Nat Hist Society/Perin-Dixie	103282	\$ 98,314.00	\$ 98,314.00	\$ 98,314.00
518116	Irish Classical Theatre Company	103727	\$ 83,500.00	\$ 83,500.00	\$ 93,500.00
518124	O'Youville College Kavinoky Theater	109341	\$ 11,750.00	\$ -	\$ 9,500.00
518128	Lancaster Opera House	111681	\$ 45,300.00	\$ 30,300.00	\$ 35,000.00
518140	Musicalfare Theatre	105308	\$ 61,525.00	\$ 61,525.00	\$ 66,000.00
518141	New Phoenix Theatre	109342	\$ 7,500.00	\$ 7,500.00	\$ -
518148	Road Less Traveled Productions	121043	\$ 63,500.00	\$ 63,500.00	\$ 67,000.00
518152	Roycroft Campus Cooperation	118213	\$ 50,000.00	\$ 40,000.00	\$ 50,000.00
518156	Shakespeare In The Park	109675	\$ 95,000.00	\$ 95,000.00	\$ 95,000.00
518168	Theatre Of Youth	109888	\$ 69,400.00	\$ 69,400.00	\$ 74,000.00
518173	Torn Space Theatre	143673	\$ 20,460.00	\$ 15,460.00	\$ 29,500.00
518188	Zoological Society Of Buffalo	108623	\$ 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 Unlimited Incorporated	155973	\$ 2,300.00	\$ 2,300.00	\$ 10,000.00
518203	Buffalo-Toronto Public Media WNEB/WBFO	172999	\$ 3,750.00	\$ -	\$ 5,000.00
518205	Cheektowaga Comm Symphony Orchestra	109177	\$ -	\$ 7,500.00	\$ -
518209	Newstead Historical Society	105518	\$ 5,500.00	\$ 3,500.00	\$ 5,000.00
518213	O'Connell & Company Productions	159162	\$ 23,100.00	\$ 23,100.00	\$ 31,500.00
	Amherst Male Glee Club dba Red Blazer				
518219	Men's Chorus	162045	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
518221	Buffalo Center for Arts and Technology	152207	\$ 3,000.00	\$ 3,000.00	\$ 7,500.00
518226	Cheektowaga Historical Association	163121	\$ 3,250.00	\$ 6,250.00	\$ 6,100.00
518229	Second Generation Theatre Company	164957	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518230	Steel Plant Museum of Western New York	147740	\$ 2,020.00	\$ 2,020.00	\$ 5,000.00
518503	Alden Christian Theater Society	114358	\$ 10,000.00	\$ -	\$ 3,000.00
518514	Clarence Concert Association	101711	\$ 3,500.00	\$ -	\$ 5,000.00
	Clarence Museum (Historical Soc. of the				
518515	Town of Clarence)	113067	\$ 5,500.00	\$ -	\$ 6,000.00

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 finds 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.

EXPLORE & MORE – THE RALPH C. WILSON JR. CHILDREN’S MUSEUM

BACKGROUND

Explore & More Children’s Museum (E&M) is a 501(c)(3) nonprofit organization established in 1994 with the goal of providing an environment for creative play and hands-on learning experience for children of all ages. The stated mission of the organization is to provide best-in-class play experiences where all children, families and the community can explore, learn and develop together.

E&M received \$42,000 in Cultural Grant Funding (CGF) for the years 2020 and 2021; E&M received \$78,000 for the year 2022, \$25,000 more than the executive recommendation. In addition, E&M received \$175,000 in Capital Grant funding from the County of Erie, appropriated during 2019, but procured in 2020. The organization was awarded additional Capital Grant funding for the years 2023 and 2024, which falls outside of the scope of the current review.

AUDITOR’S OBSERVATIONS

E&M is a children’s play museum which operates as a year-round community destination on the city’s waterfront in the Canalside neighborhood. E&M presents as serving children, families, educators, caregivers and the community. The goal of the organization is to provide children with the opportunity to play and learn through the use of exhibits, cultural activities and educational programming. During 2019, after a capital campaign raising approximately \$12,000,000, E&M moved into a newly constructed four-story museum in Canalside with the intention of expanding its reach and increasing its accessibility levels to visitors and community residents. The building is owned by the Erie Canal Harbor Development Corporation, a public benefit corporation chartered by the State of New York, which leases the premises to the organization at nominal cost as part of the State’s waterfront revitalization initiative.

For the years under review, grants and contributions were the primary sources of revenue for E&M, accounting for much of the organization’s annual revenue. Admission and membership accounted for the second largest source of revenue for E&M. In addition, E&M relies on fundraising events in order to generate supplemental revenue. Touch-A-Truck is currently one of the major fundraising events for the organization, which allows children to climb aboard, touch the steering wheel, honk the horn and get up close to a variety of trucks and vehicles. E&M also generates additional operating income by renting its facilities for events such as birthday parties, meetings, conferences and private visits.

E&M also generates income from mission-related functions, including the operation of a gift shop and the Low Bridge Café. The Low Bridge Café is located in the lower level of the museum and the gift shop is located on the first floor of the museum. E&M previously outsourced the operation of both the café and the gift shop to local vendors and collected a monthly rent. Beginning in the year 2023, E&M assumed operation of both the gift shop and the Low Bridge Café.

The Covid-19 pandemic affected the operations E&M as it was required to shut down for a short period of time; the museum was closed from mid-March through May, reopening in June 2020 under limited occupancy rules. During this time the organization was able to continue its administrative functions remotely. E&M utilized the time to complete the necessary requirements to become a certified childcare provider. The organization experienced a decline in admissions, memberships, and was forced to cancel some of its previously scheduled programming. Nevertheless, E&M received and was able to offset most of the losses with pandemic-related economic assistance such as NYS grant and foundation funding, federal Payroll Protection Plan (PPP) assistance, Shuttered Venue Operators Grant, and various capital contributions. These infusions helped E&M offset the decrease in programming participation and helped the organization recover from the pandemic. The Auditor was informed by E&M that by 2023, numbers representing admissions and memberships had exceeded 2019 levels.

AUDITOR'S CONCLUSION

During the grant monitoring review process, E&M was able to provide the Auditor with adequate substantiation for its use of CGF awards for the years under review. The Auditor was informed that the primary operating expenses for E&M include salaries and wages, advertising, insurance, taxes, and contracted services. CGF received by E&M for the years under review was allocated towards the cost of salaries and wage-related expenses. Documentation provided by the organization in order to substantiate expenses and use of grant funding includes copies of bank statements, credit card statements, tax return documents, invoices, payroll records, and other electronic financial information. The expense incurred by the organization for wages paid exceeded the amount of grant funding awarded by the County for each of the years under review and were found to exceed the total amount of revenue generated from programming.

However, the Auditor noted a number of irregular transactions causing the Auditor to question the adequacy and efficacy of controls in place at E&M. As far as the Auditor was able to ascertain based on a review of the organization's financial records, the average salary increases in the years under review for members of E&M's executive team approached 10%, well above the national average of 3% to 5%. The increases included bonus payments, paid time off buyouts, and large one-time contributions into the organization's retirement plan. E&M stated on its IRS Form 990 that salary increases are determined based on comparative positions in non-profits locally and statewide. An indication of Board involvement or approval could not be identified in the Board's minutes. At the conclusion of the review, the Auditor was unable to ascertain whether an adequate level of internal controls exists for the organization as the extent of the Board involvement could not be determined.

E&M was able to provide the Auditor with substantiation of additional operating expenses selected for review. As part of the review of the organization's records, the Auditor also identified a series of food and beverage expenses incurred by the organization for occurrences such as staff lunches, team meetings, staff birthdays, board meetings and staff development events. Although expenses were substantiated, the same were determined to be excessive in nature. Per §162 of the Internal Revenue Code (IRC), "there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business." While these types of expenditures may have a positive impact on employee morale, they are not deemed ordinary and necessary for the purposes of the tax code and the production of income.

A review of the organization's records identified checks, electronic debits and credit cards as the primary methods utilized for payment of business expenses. The Auditor identified two different credit cards used by the organization. The organization has a business credit card, with several authorized users and a large credit line.

A personal credit card belonging to a member of the organization's executive team and utilized by the organization was also identified by the Auditor. The personal credit card included the executive's spouse and child as authorized signors and was paid off via direct payment from E&M's bank account each month. A review of the credit card statements revealed expenses for accounting services, advertisement, supplies and equipment purchases, which were identified and substantiated as business related.

The Auditor also identified charges for food, travel, political fundraisers, dining, a variety of donations and entertainment expenses for which a business need or business purpose could not be ascertained by the Auditor. Section 1116 of the New York State Tax Law provides that a 501(c)(3) charitable or not-for-profit corporation formed under §201 shall not participate in, or intervene in, any political campaign on behalf of or in opposition to any candidate for public office.

In addition, charges made by the additional authorized users belonging to the executive's family were also identified. As a result, the Auditor was not able to verify if the charges incurred by the family members were business related for the benefit of E&M or personal in nature. In addition, the Auditor identified the accumulation of a large amount of reward points earned on the personal credit card – rather than E&M's business credit card – as a result of the substantial amount of business expenses paid with the personal credit card each month. The organization stated that the points earned are used by E&M to offset the cost of travel-related expenses for the organization, such as the expenses incurred for the attendance at annual "trade conferences". The Auditor reviewed all travel-related expenses incurred by the organization including airfares, accommodations and dining for all years under review. The Auditor was not able to conclusively ascertain the organization's claim that the points were used to cover the costs of business travel or any other business expense.

Further, the Auditor found that at least five members of E&M's executive team attended a conference in Orlando, Florida in 2021. Expenses related to lodging, airfare, meals, and other miscellaneous charges were incurred on the executive's personal credit card and ultimately paid out of the organization's bank account. The Auditor further noted a \$10,000 cash withdrawal from E&M's account that was earmarked for the Orlando conference. The Auditor could not ascertain how that cash withdrawal was used, as it appeared that most of the expenses incurred were paid using credit cards. Per IRC § 262, "except as otherwise provided, no deduction shall be allowed for personal or family expenses." The Auditor recommends that if the utilization of a particular credit product results in a financial benefit to E&M, the organization should exclusively use the business account and assign authorized signers that are formerly approved by the organization's board or by a board committee that has oversight over procurement. The Auditor further recommends that E&M's leadership and board of directors implement a credit card policy separate from their procurement policy or review the existing procurement policy and amend as necessary to ensure greater oversight over the use of credit cards and any reward points.

E&M currently has a Board of Directors consisting of 23 members and are limited to two 2-year terms, which can be served consecutively. Board members must step down for a minimum of one year before being able to return. The organization affirmed that the Board of Directors is part of the internal controls system for E&M. As indicated by the organization, the Board of Directors reviews expenses incurred, large purchases and tax form 990 prior to filing. During the review process, the Auditor identified financial practices that did not appear to go through a Board review process prior to execution, such as automatic payments of credit card charges and annual salary increases of executive team members.

At the conclusion of the grant review, the Auditor was able to determine that E&M is currently in compliance with the filing of all federal forms 990 and all New York State form CHAR500. The Auditor was unable to ascertain

compliance with the issuance of information return documents for the years under review. Based on a review of the organization's records, E&M made payments well in excess of \$600 to individuals who qualified as independent contractors for all years under review, but IRS Forms 1099-NEC and/or 1099-MISC were only issued for the year 2021. Per §6041 of the Internal Revenue Code (IRC), "it is required that all persons engaged in a trade or business and making payments in the course of such trade or business to another person of rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and/or income of \$600 or more in any taxable year shall render a true and accurate return to the Secretary setting forth the amount of such gains, profits, and/or income, and the name and address of the recipient of such payments." Per IRC §6071, "forms W-2, W-3, 1099, and/or any returns or statements required by the Secretary to report nonemployee compensation shall be filed on or before January 31 of the year following the calendar year to which such returns relate."