



**AUDIT COMMITTEE FOR ERIE COUNTY**

**ANNUAL REPORT**

**FOR THE YEAR ENDED**

**DECEMBER 31, 2019**

# AUDIT COMMITTEE FOR ERIE COUNTY

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# AUDIT COMMITTEE FOR ERIE COUNTY

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**Steven Sanders, CPA – Chairman**  
**Joshua P. Heim, Vice – Chairman**  
**Aaron M. Saykin, Esq.**  
**Hon. April N.M. Baskin**  
**Hon. John J. Mills**  
**Scott W. Kroll, Secretary**

October 28, 2020

Honorable Members of the County  
Legislature and the County Executive  
County of Erie, New York

Ladies and Gentlemen:

The Audit Committee for Erie County (Committee) is pleased to present its annual report for Erie County's (County) fiscal year ended December 31, 2019.

The Committee was established in 1985 pursuant to Section 2517 of the Erie County Charter (Charter). The establishment of this committee was approved by the citizens of the County in the November 1984 general election. The major functions of the Committee are described in the Charter as follows:

- Prepare Requests for Proposals for audits of the County.
- Evaluate responses and make a recommendation to the Erie County Legislature (Legislature) for the selection of an accounting firm for the County's independent annual audit.
- Review the annual audits with the independent accountants.
- Prepare and submit an annual report to the County Executive and the Legislature. The annual report is to contain findings, comments, and recommendations with respect to each audit of financial statements.
- Monitor implementation of the recommendations contained in the Management Letter.

County management is responsible for the financial reporting process; the preparation of basic financial statements in accordance with accounting principles generally accepted in the United States of America; the system of internal controls, including the internal controls over financial reporting; and procedures designed to ensure compliance with accounting standards and applicable laws and regulations. Our Committee has oversight responsibilities only and our role is not meant to be as experts in accounting and auditing. We rely without independent verification on the information provided to us and on the representations made by management regarding the effectiveness of internal control over financial reporting, that the financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America. The Committee also relies on the opinions of the

# AUDIT COMMITTEE FOR ERIE COUNTY

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independent auditors on the basic financial statements and the effectiveness of internal controls over financial reporting.

## Concerns of the Committee

### 1. Loan Repayment Agreement

The county's auditor, Drescher & Malecki, LLP ("D & M") noted that subsequent to a March 13, 2020 payment of \$8,031,932 from Erie County Medical Center Corporation (ECMCC) to Erie County, a receivable still remained within the County's Aggregation Fund of \$7,187,068 and a corresponding amount due to the County's General Fund of \$6,058,255. The General Fund balance is a long-term receivable which governmental generally accepted accounting principles consider nonspendable fund balance; however, it is included within the County's General Fund unassigned fund balance at December 31, 2019. The County and ECMCC have not entered into a written agreement on the repayment terms for the remaining loan outstanding.

This committee agrees with D & M's recommendation that the County formalize a repayment agreement with ECMCC outlining the terms, including interest and repayment schedule, for interfund loans.

### 2. Receivables Aging Evaluation

The County reports receivables from various local, state and federal agencies, as well as other individuals and entities. Currently, no formal evaluation of each department's outstanding receivables is performed.

The committee agrees with D & M's recommendation that the County formalize procedures to create accurate aging schedules and periodically review those aging schedules. The committee agrees that outstanding receivables should be evaluated for collectability and followed-up on to maximize the cash flows of the County.

### 3. Capital Asset Procedures

D & M noted that although the County's procedures regarding capital assets are consistent year-to-year, certain practices vary from the existing capital assets policy.

The committee recommends that the County reviews its capital asset policy to ensure that it aligns with current practices that are in place. In addition, the committee agrees with D & M's

# AUDIT COMMITTEE FOR ERIE COUNTY

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recommendation that the Library shrinkage rate be re-evaluated and quantified on an annual basis to ensure that this percentage is appropriate.

## Committee Responsibilities

The Committee did not act or perform the functions of the type of an Audit Committee required under the Sarbanes Oxley Act of 2002, the rules and the regulations of the Securities and Exchange Commission, or any similar laws, rules, or regulations. The Committee performed only those limited functions as are described in this report.

The Committee reviewed and discussed with management limited aspects of year-end results contained in the financial statements and reports.

As stated on page 3 of this report, the Committee has limited responsibilities and relies on the representations of management and the independent auditors. Accordingly, the Committee does not provide an independent basis to determine that the County's financial statements have been prepared with accounting principles generally accepted in the United States of America or that the audit of the County's financial statements by the independent auditors has been carried out in accordance with auditing standards generally accepted in the United States of America.

Management has represented that the County's financial statements were prepared in accordance with accounting principles generally accepted in the United States of America. The Committee is in accordance with the requirements established by the Statement on Auditing Standards No. 114, *The Auditor's Communication With Those Charged With Governance*.

Although the Sarbanes Oxley Act applies primarily to publicly traded companies, and not to government entities, we have recommended and continue to recommend that all component units of County government review the provisions of this and similar laws, rules, and procedures regulating governance matters generally, and take action to implement any appropriate provisions of such governance laws, rules, and/or procedures. As a minimum, both the CEO and CFO of each government unit involved with the preparation of the financial statements should certify the accuracy, correctness, and completeness of the financial statements relating to his/her respective units.

The Committee selects the County's external auditors per Section 2517 of the Erie County Charter. In July, 2016, the Erie County Legislature approved a three year contract through 2018, with extensions for 2019 and 2020. Upon the recommendation of this committee, D & M agreed to change the lead auditor as needed, to provide a "fresh set of eyes" on the annual audit. The extensions were subsequently adopted by the Legislature on December 19, 2019.

# AUDIT COMMITTEE FOR ERIE COUNTY

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## New Reporting Requirements

The County of Erie is in the process of implementing the applicable portions of the following GASB Statements:

- GASB Statement No. 83, *Certain Asset Retirement Obligations*;
- GASB Statement No. 84, *Fiduciary Activities*;
- GASB Statement No. 87, *Leases*;
- GASB Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*;
- GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*;
- GASB Statement No. 90, *Majority Equity Interests – an amendment of GASB Statements No. 14 and No. 61*;
- GASB Statement No. 91, *Conduit Debt Obligations*;
- GASB Statement No. 92, *Omnibus 2020*;
- GASB Statement No. 93, *Replacement of Interbank Offered Rates*;
- GASB Statement No. 94, *Public-Public and Public-Private Partnerships and Availability Payment Arrangements*;
- GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*; and
- GASB Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans – an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32.*

## Internal Control

An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. As part of their audit D & M considered the internal control of the County solely for the purpose of determining their audit procedures and not to provide any assurance concerning such internal control. Accordingly, D & M did not express an opinion on the effectiveness of the County's internal control over financial reporting.

## Auditor's Opinion

Drescher & Malecki has rendered an opinion that the financial statements of the County of Erie for the year ending December 31, 2019 present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the County.

## AUDIT COMMITTEE FOR ERIE COUNTY

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The Audit Committee for Erie County is not responsible for any matters relating to the budget preparation and approval. Accordingly, we make no comment regarding the budget.

Should you have any questions regarding the contents of this report, please contact me at 839-0212 or Scott Kroll at 858-8843.

Respectfully submitted,

AUDIT COMMITTEE FOR ERIE COUNTY

Steven Sanders, CPA  
Chairman

Exhibit One – Representation Letter



# AUDIT COMMITTEE FOR ERIE COUNTY

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## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

June 12, 2020

Drescher & Malocki LLP  
3083 William Street, Suite 5  
Buffalo, New York 14227

This representation letter is provided in connection with your audit of the basic financial statements of the governmental activities, the business-type activities, the discretely presented component units, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the County of Erie, New York (the "County"), as of December 31, 2019 and for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions on whether the basic financial statements present fairly, in all material respects, the financial position, results of operation, cash flows, where applicable, and the respective budgetary comparison of the General Fund of the various opinion units of the County in accordance with accounting principles generally accepted for governments in the United States of America ("U.S. GAAP").

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of June 12, 2020:

### **Financial Statements**

- We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated December 2, 2019, for the preparation and fair presentation of the financial statements of the various opinion units referred to above in accordance with U.S. GAAP.
- The financial statements referred to above have been fairly presented in accordance with U.S. GAAP and include all properly classified funds, required supplementary information and notes to the basic financial statements.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.

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## AUDIT COMMITTEE FOR ERIE COUNTY

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- We acknowledge our responsibility for compliance with the laws, regulations, and provisions of contracts and grant agreements.
- We have reviewed, approved, and taken responsibility for the financial statements and related notes.
- We have a process to track the status of audit findings and recommendations.
- We have identified and communicated to you all previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
- Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
- Related-party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
- There are no identified material uncorrected misstatements.
- The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
- All component units, as well as joint ventures with an equity interest, are included and other joint ventures and related organizations are properly disclosed.
- All funds and activities are properly classified.
- All funds that meet the quantitative criteria in GASB Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, GASB Statement No. 37, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments: Omnibus* as amended, and GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*, for presentation as major are identified and presented as such and all other funds that are presented as major are considered important to financial statement users.
- All components of net position, nonspendable fund balance, and restricted, committed, assigned, and unassigned fund balance are properly classified and, if applicable, approved.
- Our policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position/fund balance are available is appropriately disclosed and net position/fund balance is properly recognized under the policy.
- All revenues within the statement of activities have been properly classified as program revenues or general revenues.
- All expenses have been properly classified in or allocated to functions and programs in the statement of activities, and allocations, if any, have been made on a reasonable basis.

# AUDIT COMMITTEE FOR ERIE COUNTY

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- All interfund and intra-entity transactions and balances have been properly classified and reported.
- Deposit and investment risks have been properly and fully disclosed.
- Capital assets, including infrastructure assets, are properly capitalized, reported, and if applicable, depreciated.
- All required supplementary information is measured and presented within the prescribed guidelines.
- With regard to investments and other instruments reported at fair value:
  - The underlying assumptions are reasonable and they appropriately reflect management's intent and ability to carry out its stated courses of action.
  - The measurement methods and related assumptions used in determining fair value are appropriate in the circumstances and have been consistently applied.
  - The disclosures related to fair values are complete, adequate, and in accordance with U.S. GAAP.
  - There are no subsequent events that require adjustments to the fair value measurements and disclosures included in the financial statements.

## **Information Provided**

- We have provided you with:
  - Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements of the various opinion units referred to above, such as records, documentation, meeting minutes, and other matters;
  - Additional information that you have requested from us for the purpose of the audit; and
  - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- All transactions have been recorded in the accounting records and are reflected in the financial statements.
- We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
  - Management;
  - Employees who have significant roles in internal control; or
  - Others where the fraud could have a material effect on the financial statements.

## AUDIT COMMITTEE FOR ERIE COUNTY

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- We have no knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, vendors, regulators, or others.
- We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
- We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
- There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in accounting, internal control, or financial reporting practices.
- The County has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
- We have disclosed to you all guarantees, whether written or oral, under which the County is contingently liable.
- We have disclosed to you all nonexchange financial guarantees, under which we are obligated and have declared liabilities and disclosed properly in accordance with GASB Statement No. 70, *Accounting and Financial Reporting for Nonexchange Financial Guarantees*, for those guarantees where it is more likely than not that the entity will make a payment on any guarantee.
- For nonexchange financial guarantees where we have declared liabilities, the amount of the liability recognized is the discounted present value of the best estimate of the future outflows expected to be incurred as a result of the guarantee. Where there was no best estimate but a range of estimated future outflows has been established, we have recognized the minimum amount within the range.
- We have disclosed to you all significant estimates and material concentrations known to management that are required to be disclosed in accordance with GASB Statement No. 62 (GASB-62), *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.
- We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.
- There are no:
  - Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.
  - Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62.
  - Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62.

# AUDIT COMMITTEE FOR ERIE COUNTY

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- Continuing disclosure consent decree agreements or filings with the Securities and Exchange Commission and we have filed updates on a timely basis in accordance with the agreements (Rule 240, 15c2-12).
- The County has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset or future revenue been pledged as collateral, except as disclosed to you.
- We have complied with all aspects of grant agreements and other contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
- The County has not completed the process of evaluating the impact that will result from adopting GASB Statements No. 83, *Certain Asset Retirement Obligations*; No. 84, *Fiduciary Activities*; No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*; and No. 90, *Majority Equity Interests—an amendment of GASB Statements No. 14 and No. 61*, effective for the year ending December 31, 2020, No. 87, *Leases*; and No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*, effective for the year ending December 31, 2021, No. 91, *Conduit Debt Obligations*; No. 92, *Omnibus 2020*; and No. 93, *Replacement of Interbank Offered Rates*, effective for the year ending December 31, 2022, and No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, effective for the year ending December 31, 2023. The County is, therefore, unable to disclose the impact that adopting GASB Statements No. 83, 84, 87, 88, 89, 90, 91, 92, 93, and 94 will have on its financial position and results of operations when such statements are adopted.

## **Required Supplementary Information**

With respect to the required supplementary information accompanying the financial statements, including Management's Discussion and Analysis:

- We acknowledge our responsibility for the presentation of the required supplementary information in accordance with U.S. GAAP.
- We believe the required supplementary information, including its form and content, is measured and fairly presented in accordance with U.S. GAAP.
- The methods of measurement or presentation have not changed from those used in the prior period and the basis for our assumptions and interpretations, underlying those measurements or presentations, are reasonable and appropriate in the circumstances.

## **Supplementary Information in Relation to the Financial Statements as a Whole**

With respect to the supplementary information accompanying the financial statements:

- We acknowledge our responsibility for the presentation of the supplementary information in accordance with U.S. GAAP.
- We believe that the supplementary information, including its form and content, is fairly presented in accordance with U.S. GAAP.
- The methods of measurement or presentation have not changed from those used in the prior period and the basis for our assumptions and interpretations, underlying those measurements or presentations, are reasonable and appropriate in the circumstances.

# AUDIT COMMITTEE FOR ERIE COUNTY

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- We acknowledge our responsibility to include the auditor's report on the supplementary information in any document containing the supplementary information and that indicates the auditor reported on such supplementary information.
- We acknowledge our responsibility to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by the entity of the supplementary information and the auditor's report thereon.

## **Other Specific Representations**

- The County is responsible for determining and maintaining the adequacy of the allowance for doubtful notes, loans, interfund receivables, and accounts receivables, as well as estimates used to determine such amounts. Management believes the allowances are adequate to absorb currently estimated bad debts in the account balances.
- No department or agency of the County has reported a material instance of noncompliance to us.
- We agree with the work of specialists in evaluating the liabilities for workers' compensation, judgments and claims, other postemployment benefits and the net pension liability, and have adequately considered the qualifications of the specialists in determining amounts and disclosures used in the financial statements and underlying accounting records. We did not give any instructions, nor cause any instructions to be given, to specialists with respect to values or amounts derived in an attempt to bias their work, and we are not aware of any matters that have impacted the independence or objectivity of the specialists.
- We have no intention of withdrawing from multi-employer pension plans, or taking any other action that could result in an effective termination or reportable events for any of the plans. We are not aware of any occurrences that could result in the termination of any of our multi-employer pension plans to which we contribute. We believe the actuarial assumptions and methods used to measure pension liabilities and costs for financial accounting purpose are appropriate in the circumstances.
- We are unable to determine the possibility of a withdrawal liability in a multi-employer benefit plan.
- The New York State Association of Counties ("NYSAC") and the State Division of the Budget agreed upon a methodology to bring additional federal revenues to county nursing facilities. This methodology, known as the Intergovernmental Transfer Program ("IGT"), provides for certain Medicaid rate enhancements to non-state operated, publicly sponsored nursing facilities, excluding public nursing facilities operated by a town or city within a county.

Under this methodology known as IGT, counties are required to advance a percentage of the total Intergovernmental Transfer payments, which is determined by the Federal Matching Rate approved by the Centers for Medicare & Medicaid Services ("CMS"). The qualifying nursing homes are entitled to 100% of the share amount which was allocated based upon the ratio of each facility's reported Medicaid days divided by the total reported Medicaid days for all eligible facilities.

Due to the uncertainty of timing of the IGT payments on an annual basis, any revenues or expenditures related to IGT made by the County are recorded in the fiscal year in which they are received and expended.

- The County's labor agreements provide for sick leave, vacations, and miscellaneous other paid absences. The County's policy is to pay employees for unused vacation, compensatory time, and

## AUDIT COMMITTEE FOR ERIE COUNTY

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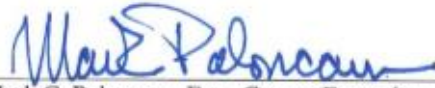
sick time based on the union agreements when there is separation from service. For governmental activities, the amount is accrued in the government-wide statement of net position as long-term liabilities. For business-type activities, the full liability is recognized in both the government-wide statement of net position and the proprietary fund financial statements. Estimated sick leave and compensatory time accumulated by governmental fund type employees has been recorded. Payment of sick leave and compensatory time is dependent upon many factors; therefore, timing of future payments is not readily determinable. The value recorded in the government-wide financial statements at December 31, 2019 for governmental activities is \$25,472,655 classified as a long-term liability in the financial statements, which includes \$14,452,000 due within one year. Compensated absences of \$4,457,000 have been reported for business-type activities which includes \$325,000 due within one year. Management believes that sufficient resources will be made available for the payments of sick leave and compensatory time when such payments become due.

- The governmental activities reported a total net position deficit of approximately \$883,409,000 at December 31, 2019 resulting primarily from the effect of GASB required recognition of other postemployment benefits annually as well as from ETASC's net deficit of \$299,660,255 that is caused by its recognition of bonds payable with no offsetting capital assets. This deficit is planned to be remedied through scheduled payments on the outstanding debt. Tobacco settlement bonds are payable only from the assets of ETASC and are not legal obligations of the County.
- The County considers items identified as discounts and cost of issuance reported within Due from Erie County on the ECFSA financial statements as issuance costs and, accordingly, expenses these items at the time of the respective debt issuance.
- Although the Buffalo and Erie County Industrial Land Development Corporation, Inc. ("ILDC") does not meet the GASB requirements to be presented as a major business-type activity fund, the County has elected to show ILDC as a major fund.
- At December 31, 2019, the County's Utilities Aggregation Fund reports a receivable due from Erie County Medical Center Corporation ("ECMCC") of approximately \$15,219,000. The County does not have a written agreement with ECMCC for the repayment of the remaining balance of approximately \$7,187,068. The County's General Fund reports a receivable due from the Utilities Aggregation Fund for a loan provided for the uncollected receivable from ECMCC. On March 13, 2020, the County received \$8,031,932 from ECMCC. These noncurrent resources of \$6,058,255 are included within General Fund unassigned fund balance at December 31, 2019.
- In addition to audit services, Drescher & Malecki LLP has assisted the County in preparing the County's financial statements for the year ended December 31, 2019. In conjunction with the preparation of the financial statements, the County has performed the following functions:
  - Made all management decisions and performed all management functions.
  - Designated Gregory Gach, Deputy Comptroller, whom we believe has suitable skill, knowledge, and/or experience who has overseen this service.
  - Evaluated the adequacy of the services performed.
  - Evaluated and accepted responsibility for the results of the services performed.
  - Established and maintained internal controls, including monitoring ongoing activities.
- County management understands that Drescher & Malecki, LLP has not performed any management functions or made management decisions on behalf of the County. Any nonattest

# AUDIT COMMITTEE FOR ERIE COUNTY

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services were performed in accordance with the applicable professional standards issued by the American Institute of Certified Public Accountants.



Mark C. Poloncarz, Esq., County Executive



Stefan I. Mychajliw, County Comptroller



Michael A. Siragusa, Esq., County Attorney



Exhibit Two – Management Letter

# AUDIT COMMITTEE FOR ERIE COUNTY

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Drescher & Malecki LLP  
3083 William Street, Suite 5  
Buffalo, New York 14227  
Telephone: 710.505.2200  
Fax: 710.505.2201



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Certified Public Accountants

June 12, 2020

Honorable County Executive  
Honorable County Comptroller  
Honorable Members of the County Legislature and  
Audit Committee  
County of Erie, New York

In planning and performing our audit of the basic financial statements of the County of Erie, New York (the "County") as of and for the year ended December 31, 2019, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, we considered the County's internal control over financial reporting ("internal control") as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we do not express an opinion on the effectiveness of the County's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A reasonable possibility exists when the likelihood of an event occurring is either reasonably possible or probable as defined below:

- *Reasonably possible.* The chance of the future event or events occurring is more than remote but less than likely.
- *Probable.* The future event or events are likely to occur.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

During our audit we identified certain matters involving the internal control, other operational matters, and future reporting requirements that are presented for your consideration. This letter does not affect our report dated June 12, 2020 on the financial statements of the County. We will review the status of these comments during our next audit engagement. Our comments and recommendations, all of which have been discussed with appropriate members of management, are intended to improve the internal control or result in other operating efficiencies. Our comments are summarized in Exhibit I.

## AUDIT COMMITTEE FOR ERIE COUNTY

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The purpose of this communication, which is an integral part of our audit, is to describe for management and those charged with governance, the scope of our testing of internal control and the results of that testing. Accordingly, this communication is not intended to be and should not be used for any other purpose.

*Drescher & Malecki LLP*

June 12, 2020

# AUDIT COMMITTEE FOR ERIE COUNTY

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## EXHIBIT I

### *Loan Repayment Agreement*

At December 31, 2019, the County's Utilities Aggregation Fund reports a receivable due from Erie County Medical Center Corporation ("ECMCC") approximating \$15,219,000, of which \$14,090,187 is due to the County's General Fund. On March 13, 2020, the County received \$8,031,932 from ECMCC reducing the receivable within the County's Aggregation Fund to \$7,187,068 and corresponding amount due to the County's General Fund to \$6,058,255. The General Fund balance, \$6,058,255, is a long-term receivable which governmental generally accepted accounting principles considers nonspendable fund balance, however, it is included within the County's General Fund unassigned fund balance at December 31, 2019. The County and ECMCC have not entered into a written agreement on the repayment terms for the remaining loan outstanding.

We recommend that the County formalize a repayment agreement with ECMCC outlining the terms, including interest and repayment schedule, for interfund loans.

### *Capital Asset Procedures*

The County's procedures regarding capital assets are consistent year-to-year; however, certain practices vary from the existing capital assets policy. For example, it is the County's practice to capitalize all land purchases regardless of the price, while the capital asset policy outlines a minimum dollar threshold for capitalization of land purchases. In addition, the County Library routinely estimates annual shrinkage of 6.5 percent, which has not been quantified on an annual basis.

We recommend that the County review its capital asset policy to ensure it aligns with the current practices that are in place. In addition, we recommend that the Library shrinkage rate be re-evaluated and quantified on an annual basis to ensure that this percentage is appropriate.

### *New Reporting Requirements*

The Governmental Accounting Standards Board ("GASB") has adopted several new pronouncements, which may have a future impact upon the County. These should be evaluated to determine the extent the County will be impacted in future years.

*GASB Statement No. 83*—The County is required to implement GASB Statement No. 83, *Certain Asset Retirement Obligations*, effective for the fiscal year ending December 31, 2020. This Statement establishes criteria for determining the timing and pattern of recognition of a liability and a corresponding deferred outflow of resources for asset retirement obligations (AROs).

*GASB Statement No. 84*—The County is required to implement GASB Statement No. 84, *Fiduciary Activities*, effective for the fiscal year ending December 31, 2020. The objective of this Statement is to improve guidance regarding the identification of fiduciary activities for accounting and financial reporting purposes and how those activities should be reported.

# AUDIT COMMITTEE FOR ERIE COUNTY

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## EXHIBIT I

**GASB Statement No. 87**—The County is required to implement GASB Statement No. 87, *Leases*, effective for the fiscal year ending December 31, 2021. The objective of this Statement is to better meet the needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities.

**GASB Statement No. 88**—The County is required to implement GASB Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*, effective for the fiscal year ending December 31, 2020. The objective of this Statement is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt.

**GASB Statement No. 89**—The County is required to implement GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*, effective for the fiscal year ending December 31, 2021. The objectives of this Statement are to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and to simplify accounting for certain interest costs.

**GASB Statement No. 90**—The County is required to implement GASB Statement No. 90, *Majority Equity Interests—an amendment of GASB Statements No. 14 and No. 61*, effective for the fiscal year ending December 31, 2020. The objectives of this Statement are to improve the consistency and comparability of reporting a government's majority equity interest in a legally separate organization and to improve the relevance of financial statement information for certain component units.

**GASB Statement No. 91**—The County is required to implement GASB Statement No. 91, *Conduit Debt Obligations*, effective for the fiscal year ending December 31, 2022. The objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures.

**GASB Statement No. 92**—The County is required to implement GASB Statement No. 92, *Omnibus 2020*, effective for the fiscal year ending December 31, 2022. The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB statements.

**GASB Statement No. 93**—The County is required to implement GASB Statement No. 93, *Replacement of Interbank Offered Rates*, effective for the fiscal year ending December 31, 2022. The objectives of this Statement are to address those and other accounting and financial reporting implications that result from the replacement of an interbank offered rate ("IBOR").

# AUDIT COMMITTEE FOR ERIE COUNTY

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## EXHIBIT I

**GASB Statement No. 94**—The County is required to implement GASB Statement No. 94, *Public-Public and Public-Private Partnerships and Availability Payment Arrangements*, effective for the fiscal year ending December 31, 2023. The objectives of this Statement are to improve financial reporting by addressing issues related to public-private and public-public partnerships arrangements (“PPPs”).

**GASB Statement No. 96**—The County is required to implement GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*, effective for the fiscal year ending December 31, 2023. The objective of this Statement is to provide guidance on the accounting and financial reporting for subscription-based information technology arrangements (“SBITAs”) for government end users.

**GASB Statement No. 97**—The County is required to implement GASB Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans—an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32*, effective for the fiscal year ending December 31, 2022. The objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.

Exhibit Three – Audit Contract

# AUDIT COMMITTEE FOR ERIE COUNTY

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**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 2016, by and between

**THE COUNTY OF ERIE**, a municipal corporation of the State of New York, having its offices and principal place of business at 95 Franklin Street, Buffalo, New York 14202

(hereinafter referred to as the "County"),

and

**DRESCHER & MALECKI LLP.**, a New York limited liability partnership, having its offices and principal place of business at 3083 William Street, Suite 5, Cheektowaga, New York 14227.

(hereinafter referred to as the "Accountant")

WHEREAS, the County desires to engage an Accountant for the independent audit of its Basic Financial Statements for its fiscal years ending December 31, 2016, 2017 and 2018, with an option to extend the contract for its fiscal years 2019 and 2020;

WHEREAS, the County Legislature, based on the recommendations of the Erie County Audit Committee ("Audit Committee"), has authorized the Erie County Executive to engage the Accountant by resolution dated July 28, 2016 (attached hereto as Schedule "A");

**NOW, THEREFORE**, the County and the Accountant, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**FIRST:** (a) The Accountant shall perform an audit of all funds for the County's fiscal years ending December 31, 2016, 2017 and 2018 as outlined in the Audit Committee's RFP (attached hereto as Schedule "B") and the outline of the general work to be performed as set forth in Section Four of the Accountant Proposal dated June 30, 2016 (attached hereto as Schedule "C"). The County, in its sole discretion may extend the agreement beyond its initial term for its fiscal years 2019 and 2020 with consistent and corresponding price adjustments and



## AUDIT COMMITTEE FOR ERIE COUNTY

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upon the same conditions. The Accountant will perform the Services related to the audits of financial statements as specified in Schedule C and the annual Engagement Letter, an example of which is attached hereto as Schedule D of this Agreement. The Services will be conducted in accordance with the standards set forth in Schedule D. Subject to the Accountant's professional standards, as well as the cooperation of the County, the Accountant will endeavor to complete each annual audit covered by this Agreement by June 30<sup>th</sup> of the following year. Annually, in December, or earlier if mutually agreed, of the year being audited, the County Comptroller ("Comptroller"), and the Accountant, will meet to plan the ensuing audit and outline a specific list of supporting schedules and year end closing events.

(b) The Accountant shall perform interim fieldwork for each year of this Agreement. This interim fieldwork will assist the County in its preparation for closing. All such fieldwork should include testing the County's existing internal control procedures to the extent deemed necessary by the Accountant to render an opinion on the County's financial statements.

(c) The Accountant shall audit the County in accordance with both generally accepted auditing standards (GAAS) and *Government Auditing Standards* issued by the Comptroller General of the United States, where applicable, and render an opinion as to whether the financial statements are presented in conformity with generally accepted accounting principles (GAAP).

(d) The Accountant acknowledges that the County may seek to obtain a Certificate of Achievement for Excellence in Financial Reporting by the issuance of a Comprehensive Annual Financial Report (CAFR) and a Distinguished Budget Presentation Award from the Government Finance Officers Association, should the County decide to participate in these programs. Such additional procedures to be performed by the Accountant as it relates to the CAFR, included within the proposed audit fee, include the review of the introductory and statistical sections,

## AUDIT COMMITTEE FOR ERIE COUNTY

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issuance of an audit opinion specific to the CAFR, and the audit of the combining and individual fund financial statements.

(e) The Accountant shall prepare a management letter in conjunction with its audit of the fiscal years ending December 31, 2016 through 2020 in accordance with Schedule D. The management letter shall be provided in letter form, as well as electronically or on computer diskette, and shall describe reportable conditions or material weaknesses in internal control, if any, and will also contain recommendations for financial and program management improvement. The Accountant shall, prior to release, review a draft of the management letter with the Comptroller and the County Budget Director (“Budget Director”).

(f) The Accountant shall furnish all adjusting entries to the Comptroller during the period allowed for completion of fieldwork and discuss all proposed audit adjustments that the Accountant may consider to be material either individually or in the aggregate, with the Comptroller and Budget Director. The County may submit additional information to the Accountant when there is less than full agreement with any proposed adjustment. Any disagreement that cannot be resolved will be discussed with the Audit Committee. The Accountant will work with the County to facilitate line item level posting of all proposed adjusting entries. The Comptroller is responsible for ensuring that all adjusting entries are processed.

(g) After posting adjusting journal entries, the Comptroller will provide the Accountant with financial statements and schedules which include any and all audit adjustment and reclassification entries.

(h) The Accountant is responsible for reproduction of the Basic Financial Statements, and the Comptroller’s Office is responsible for its distribution.

## AUDIT COMMITTEE FOR ERIE COUNTY

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If the County decides to issue a CAFR for any or all of the fiscal years, the Comptroller's Office will be responsible for its reproduction and distribution.

(i) The Accountant shall maintain a relationship with the County's Audit Committee as outlined in Statement of Auditing Standards 114 (SAS 114 supersedes SAS 61). A SAS 114 letter is to be provided to the Audit Committee at the conclusion of the County audit, with a copy of this letter to the Comptroller. The Accountant shall, at the request of the Audit Committee, meet to review and discuss the final financial statements and independent auditors' report, management letter, and SAS 114 letter.

(j) The Accountant will perform the required certifications of various Health Department and Mental Health Department fiscal reports that have to be filed with New York State.

(k) The Accountant shall, to the extent practicable, make relevant local training seminars sponsored by the firm available to Comptroller's Office personnel.

(l) The Accountant shall provide an additional audit service pertaining to federal grant requirements pursuant to the provisions of the Single Audit Act of 1984, as amended and in accordance with applicable publications of the federal Office of Management and Budget. The Accountant shall review the draft of this report with the Comptroller, and shall provide all required copies of the final report (approximately 20 copies) by on or about the September 30<sup>th</sup> due date following each year-end.

**SECOND:** (a) The County agrees to pay the Accountant the amount not to exceed the fees set forth in Schedule "A" for the annual audits, to include the Single Audit and Management Letter, as set forth on page 21 of the Accountant Proposal dated June 30, 2016 (attached hereto as Schedule "C") and specified in the annual engagement letter.

## AUDIT COMMITTEE FOR ERIE COUNTY

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(b) In conjunction with County bond or note sales, the Accountant will minimally be required to perform various procedures to evaluate whether it shall provide its consent for inclusion of the audited financial statements for the 2016 to 2020 fiscal years in the related official statement. Charges shall be for each review as shown in Schedule A.

(c) Charges for certification of Health Department, Mental Health Department and Other Department reports shall be at a per report cost as shown in Schedule A. Such fees will also apply in the event New York State assigns special reporting requirements to other County departments.

(d) Billings by the Accountant for services rendered in conjunction with out of scope and other negotiated services shall be based on hourly rates as specified in Schedule C and specified in the annual engagement letter.

(e) The payments by the County shall be due and payable to the Accountant within thirty (30) days of interim and final billings.

(f) This Agreement shall commence upon execution and shall continue until the audit and work described in paragraph 1 is completed and accepted by the County.

**THIRD:** The Accountant's opinion letter on the County's audited financial statements shall be addressed to the Erie County Executive, the Comptroller, and the Erie County Legislature.

**FOURTH:** The County agrees to cooperate with and assist the Accountant in carrying out its obligations under this Agreement by providing necessary information and reasonable cooperation and assistance from County personnel during the period of the fieldwork each year.

**FIFTH:** The Accountant and the County agree that the Accountant and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors

## AUDIT COMMITTEE FOR ERIE COUNTY

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and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Accountant covenants and agrees that neither the Accountant nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**SIXTH:** The Comptroller shall have the right, on ten (10) days written notice to Accountant to review any non-proprietary records of payments for invoices or other expenses made by the County to the Accountant under this Agreement to ascertain that they are consistent with the terms of this Agreement provided that, any such records available to the County under this section may be redacted by the Accountant to the extent necessary to protect its proprietary and confidential information and to avoid any invasion of personal privacy.

**SEVENTH:** The Accountant will forward all invoices to the Comptroller for certification.

**EIGHTH:** The Accountant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Accountant shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the Work hereunder.

**NINTH:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due

## AUDIT COMMITTEE FOR ERIE COUNTY

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hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

**TENTH:** The Accountant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Accountant shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subconsultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Accountant that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Accountant and the Accountant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

**ELEVENTH:** This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

**TWELFTH:** The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by the Erie County Legislature. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties

## AUDIT COMMITTEE FOR ERIE COUNTY

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understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by the County Legislature during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Accountant, then the Accountant shall have the right to terminate this Agreement upon reasonable prior written notice.

**THIRTEENTH:** (a) The County Executive and Comptroller may jointly terminate this Agreement without cause at any time by giving written notice to the Accountant of its intention to terminate. Termination without cause shall be effective fourteen (14) calendar days from the date of such notice. In the event of termination without cause, the County and the Accountant shall be released of all liability under this Agreement except that the County shall pay the Accountant for all work performed prior to the termination date. The Accountant shall comply with professional standards as it relates to successor auditor working paper review.

(b) The County Executive and Comptroller may jointly terminate this Agreement for cause by serving written notice of its intention to do so. Said notices shall be effective upon

## AUDIT COMMITTEE FOR ERIE COUNTY

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receipt. Should this Agreement be terminated for cause, the County shall have no further liability to the Accountant except that the County shall pay the Accountant for all work performed in accordance with this Agreement and the applicable Schedule prior to the termination date. Such termination shall be without limitation of any cause of action, right or remedy the County may otherwise have.

For purpose of this Agreement, cause shall include, but not be limited to: (1) any breach by the Accountant of any term, condition or provision of this Agreement which is curable or remediable and which is not cured or remedied by the Accountant within a reasonable time after written notice thereof, or (2) any substantial breach by the Accountant of this Agreement which is not curable or remediable or any breach which, in light of any prior breaches by the Accountant, established a course of conduct of willful or negligent disregard by the Accountant of its obligations under this Agreement.

(c) The Accountant may terminate this Agreement for cause by serving written notice of its intention to do so. For the purpose of this section, cause shall include, but not be limited to: (1) any substantial breach by the County of any term, condition or provision of this Agreement which is not cured or remedied in a reasonable time after notice to the County, or (2) any breach by the County of any term, condition, or provision of this Agreement which in light of prior breaches by the County, establishes a course of conduct of willful or negligent disregard by the County of its material obligation under this Agreement.

(d) Notwithstanding any other provision in this Agreement, the Accountant may resign as the County's auditor at any time in accordance with the laws, regulations and professional standards applicable to the Services provided under this Agreement and any Schedule.



## AUDIT COMMITTEE FOR ERIE COUNTY

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**FOURTEENTH:** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

Drescher & Malecki LLP  
3083 William Street, Suite 5  
Cheektowaga, NY 14227

Erie County Comptroller  
95 Franklin Street, Room 1100  
Buffalo, New York 14202

A copy of any such notice will also be forwarded to:

Erie County Executive  
95 Franklin Street, 16<sup>th</sup> Floor  
Buffalo, New York 14202

Erie County Attorney  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

**FIFTEENTH:** This Agreement, including the schedules referred to and made a part hereof, contains the entire agreement between the County and the Accountant. Wherever the provisions of this Agreement and its schedules may be in conflict, the parties acknowledge and agree that the order of precedence shall be the Agreement, Schedule B, Schedule C, and Schedule D (as issued annually). This Agreement shall be interpreted under the laws of the State of New York, without regard to its conflict of laws principles. Any judicial action or proceeding with respect to this Agreement shall have its venue in New York State Supreme Court for the County of Erie.

## AUDIT COMMITTEE FOR ERIE COUNTY

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**SIXTEENTH:** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

**SEVENTEENTH:** The Accountant agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "E", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "E", the Accountant agrees: that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, (a) the Accountant shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Accountant or third parties under the direction or control of the Accountant; and (b) to provide defense for and defend, at its sole expense, any and all

## AUDIT COMMITTEE FOR ERIE COUNTY

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claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

**EIGHTEENTH:** The Accountant shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as Schedule "F" and made a part hereof. The Accountant shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Accountant, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Accountant's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014) , may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Accountant is not qualified to participate in future County contracts.

**NINETEENTH:** The Accountant expressly agrees that neither it nor any consultant, subconsultant, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status or any other status protected by New York State or Federal laws during the term of or in connection with this Agreement.

**TWENTIETH:** The Accountant shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of

# AUDIT COMMITTEE FOR ERIE COUNTY

interest. The Accountant shall also use all reasonable means to avoid any appearance of impropriety.

**TWENTY-FIRST:** This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

COUNTY OF ERIE

DRESCHER & MALECKI LLP

By: M. Whyte 12/22/16  
Mark C. Polonczak/Maria R. Whyte  
County Executive/Deputy County Executive

By: Thomas P. Malecki  
Thomas P. Malecki  
Partner

APPROVED AS TO CONTENT

(electronically approved)  
Stefan I. Mychajliw  
Erie County Comptroller

APPROVED AS TO FORM

(electronically approved)  
Martin A. Polowy  
Assistant County Attorney  
Document No. \_\_\_\_\_  
Date: \_\_\_\_\_

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