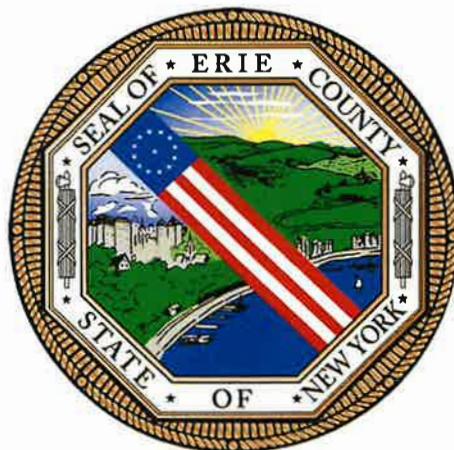


December 2025

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**Erie County Cultural Funding Grant Monitoring Program**  
**O'Connell & Company Productions, Inc.**  
**January 1, 2020 through December 31, 2022**



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

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



December 19, 2025

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, 2025.

#### **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                        | VENIOR NUMBER | TAX YEAR 2021 | TAX YEAR 2022 | TAX YEAR 2023 |
|--------------------------------------|--------------------------------------|---------------|---------------|---------------|---------------|
| Entertainment Literary Arts Center & |                                      |               |               |               |               |
| 517125                               | Dog Earz Bookstore                   | 152183        | \$ 28,600.00  | \$ 36,600.00  | \$ 35,000.00  |
| 518004                               | African American Cultural Center     | 112604        | \$ 275,450.00 | \$ 311,950.00 | \$ 200,000.00 |
| 520017                               | Alleyway Theatre                     | 105310        | \$ 8,500.00   | \$ 8,500.00   | \$ 11,000.00  |
| 520018                               | American Legion Band of              | 100379        | \$ 7,500.00   | \$ 7,500.00   | \$ 45,000.00  |
| 516017                               | Anhierst Symphony Orchestra          | 100474        | \$ 26,700.00  | \$ 26,700.00  | \$ 28,740.00  |
| 520019                               | Arts Services Initiative of WNY Inc  | 147159        | \$ 25,050.00  | \$ 26,050.00  | \$ 30,000.00  |
| 530028                               | Ballet Artists Of WNY (Hegira)       | 100794        | \$ 24,000.00  | \$ 24,000.00  | \$ 30,000.00  |
| Buffalo Arts Studio (Arts Studio of  |                                      |               |               |               |               |
| 518040                               | Western New York, Inc.               | 101744        | \$ 98,000.00  | \$ 45,500.00  | \$ 33,000.00  |
| 518044                               | Buffalo Inner City Ballet Co. Inc    | 105591        | \$ 27,000.00  | \$ 27,000.00  | \$ 27,000.00  |
| 518053                               | 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  |
| 520074                               | Okunzini Musicians Club              | 130177        | \$ 3,000.00   | \$ 3,000.00   | \$ 12,500.00  |
| 518054                               | El Museo Gallery                     | 109816        | \$ 12,255.00  | \$ 8,245.00   | \$ 11,000.00  |
| 518004                               | Graycliff Conservancy                | 103197        | \$ 59,200.00  | \$ 99,200.00  | \$ 60,000.00  |
| 511118                               | Hull House Foundation                | 144743        | \$ 15,315.00  | \$ 3,375.00   | \$ 7,500.00   |
| Jewish Community Center Cultural     |                                      |               |               |               |               |
| 516129                               | Jewish Ctr of Greater Buff           | 111229        | \$ 15,500.00  | \$ 8,750.00   | \$ 15,500.00  |
| 516120                               | Just Buffalo Literacy Center         | 105577        | \$ 78,100.00  | \$ 78,100.00  | \$ 83,500.00  |
| 518132                               | Locust St Neighborhood Art Classes   | 107968        | \$ 19,250.00  | \$ 25,250.00  | \$ 26,500.00  |
| 518133                               | Martin House Restoration             | 104851        | \$ 175,300.00 | \$ 175,300.00 | \$ 130,000.00 |
| 518138                               | Music Is Art                         | 139615        | \$ 48,000.00  | \$ 48,000.00  | \$ 39,000.00  |
| 518139                               | Police Arts Club of Buffalo Inc      | 106137        | \$ 7,000.00   | \$ 7,000.00   | \$ 3,800.00   |
| 518147                               | Preservation Buffalo Niagara         | 147509        | \$ 4,615.00   | \$ 4,615.00   | \$ 6,000.00   |
| 516164                               | Springville Center for the Arts      | 113088        | \$ 30,505.00  | \$ 20,605.00  | \$ 36,000.00  |
| 518166                               | Squeaky Wheel                        | 101268        | \$ 20,920.00  | \$ 20,920.00  | \$ 27,000.00  |
| 518172                               | Theodore Roosevelt Inaugural Site    | 105522        | \$ 32,310.00  | \$ 32,310.00  | \$ 37,000.00  |
| 518176                               | Ujima Company                        | 101047        | \$ 83,000.00  | \$ 83,000.00  | \$ 57,714.00  |
| 518140                               | Western New York Artists Group       | 108295        | \$ 8,275.00   | \$ 8,275.00   | \$ 7,500.00   |
| 518181                               | WNY Book Arts Collaborative, Inc     | 133929        | \$ 4,640.00   | \$ 4,640.00   | \$ 6,000.00   |
| 516134                               | Young Audiences Of WNY               | 109818        | \$ 10,500.00  | \$ 10,500.00  | \$ 14,000.00  |
| 518209                               | Buffalo Niagara Heritage Village     | 151896        | \$ 18,500.00  | \$ 18,500.00  | \$ 24,500.00  |
| 518230                               | Michigan Sur African Amer Heritage   | 152378        | \$ 15,000.00  | \$ 15,000.00  | \$ 22,500.00  |
| 518209                               | General Putski Association           | 103084        | \$ 10,000.00  | \$ 11,000.00  | \$ 12,500.00  |
| 518204                               | Righton Place, Inc                   | 158194        | \$ 10,000.00  | \$ 16,000.00  | \$ 20,000.00  |
| 518201                               | Hispanic Heritage Council of WNY     | 159300        | \$ 12,000.00  | \$ 20,000.00  | \$ 24,500.00  |
| 518216                               | Rock Riverdale Alliance              | 170261        | \$ 22,300.00  | \$ 7,500.00   | \$ 10,000.00  |
| 518233                               | Centro Culturale Italiano di Buffalo | 167501        | \$ 25,000.00  | \$ 20,000.00  | \$ 15,000.00  |
| 518547                               | South Buffalo Irish Fes/Can You Dig  | 113041        | \$ 18,000.00  | \$ 15,000.00  | \$ 15,000.00  |
| 516595                               | Net Positive DBA The Foundry         | 166005        | \$ 5,000.00   | \$ 5,000.00   | \$ 5,000.00   |

## Monitoring Program – Phase II

| ACT #                                | APPROPRIATION  | VENIOR NUMBER | TAX YEAR 2021   | TAX YEAR 2022   | TAX YEAR 2023   |
|--------------------------------------|--|---------------|-----------------|-----------------|-----------------|
| Entertainment Literary Arts Center & |  |               |                 |                 |                 |
| 517532                               | Buffalo Olmsted Parks Conservancy                        | 140237        | \$ 25,910.00    | \$ 35,910.00    | \$ 35,000.00    |
| 518008                               | Albright-Knox Art Gallery                                | 108792        | \$ 375,000.00   | \$ 375,000.00   | \$ 375,000.00   |
| 518009                               | Albright-Knox Art Curator                                | 142124        | \$ 68,250.00    | \$ 68,250.00    | \$ -            |
| 518025                               | Assembly House, 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   | \$ 467,000.00   | \$ 127,000.00   |
| 518052                               | Park   | 169339        | \$ 35,000.00    | \$ 35,000.00    | \$ 50,000.00    |
| 518060                               | Buffalo Philharmonic Orch Society                        | 101012        | \$ 916,000.00   | \$ 916,000.00   | \$ 940,000.00   |
| 518061                               | Buffalo Philharmonic Chorus                              | 109796        | \$ 14,520.00    | \$ 34,500.00    | \$ 35,000.00    |
| 518064                               | Buffalo Society Natural Sciences                         | 109767        | \$ 955,000.00   | \$ 955,000.00   | \$ 955,000.00   |
| 518065                               | Zufallo String Works, Inc.                               | 167833        | \$ 3,350.00     | \$ 3,300.00     | \$ 3,355.00     |
| 518068                               | Burchfield Penney Art Cent                               | 101004        | \$ 155,000.00   | \$ 155,000.00   | \$ 160,000.00   |
| 518072                               | Center for Exploratory and Percepu                       | 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                         | 102756        | \$ 42,000.00    | \$ 42,000.00    | \$ 78,000.00    |
| 518109                               | Hallwalls Contemporary Arts Center                       | 108598        | \$ 57,000.00    | \$ 57,000.00    | \$ 60,000.00    |
| 518112                               | Hamberg Nat Hist Soc/Sci/Penn-Oakle                      | 101821        | \$ 39,314.00    | \$ 56,314.00    | \$ 96,314.00    |
| 518116                               | Irish Classical Theatre Company                          | 103727        | \$ 83,500.00    | \$ 83,500.00    | \$ 93,500.00    |
| 518124                               | D'Youville College Kavner/Teather                        | 109341        | \$ 11,710.00    | \$ -            | \$ 9,500.00     |
| 518128                               | Lancaster Opera House                                    | 111681        | \$ 45,300.00    | \$ 30,300.00    | \$ 35,000.00    |
| 518140                               | Musicalatre Theatre                                      | 103168        | \$ 61,515.00    | \$ 61,515.00    | \$ 66,000.00    |
| 518143                               | New Phoenix Theatre                                      | 109342        | \$ 7,500.00     | \$ 7,500.00     | \$ -            |
| 518148                               | Road Less Traveled Productions                           | 112043        | \$ 63,500.00    | \$ 63,500.00    | \$ 67,000.00    |
| 518152                               | Riverton Campus Corporation                              | 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   | 109883        | \$ 69,400.00    | \$ 69,400.00    | \$ 74,000.00    |
| 518173                               | Town Square Theatre                                      | 143672        | \$ 10,460.00    | \$ 15,460.00    | \$ 29,500.00    |
| 518188                               | Zoological Society Of Buffalo                            | 106832        | \$ 1,500,000.00 | \$ 1,500,000.00 | \$ 1,700,000.00 |
| 518195                               | Orchard Park Symphony Orchestra                          | 147347        | \$ 4,615.00     | \$ 4,615.00     | \$ 6,000.00     |
| 518202                               | Buffalo Opera Unlimited Incorporated                     | 159793        | \$ 2,300.00     | \$ 2,300.00     | \$ 10,000.00    |
| 518203                               | Buffalo-Toronto Public Media WNET/WBFO                   | 172509        | \$ 3,750.00     | \$ -            | \$ 3,000.00     |
| 518205                               | Cheektowaga Comm Symphony Orchestra                      | 109177        | \$ -            | \$ 7,500.00     | \$ -            |
| 518206                               | Newcastle 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    |
| 518219                               | Amherst Male Glee Club dba Red Blazer Men's Chorus       | 167015        | \$ 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                               | Chestwauwa Historical Society                            | 165121        | \$ 3,250.00     | \$ 6,250.00     | \$ 6,100.00     |
| 518229                               | Second Generation Theatre Company                        | 164957        | \$ 7,020.00     | \$ 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     |
| 518515                               | Clarence Museum (Historical Soc of the 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 sees no reason that organizations receiving taxpayer funds should be treated differently.

### Debit Cards

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

### Alternate Funding Sources and Segregation of Accounts

Organizations may have several sources of governmental or philanthropic funding. One way to ensure that CGF funds go farthest is to tailor awards to the needs of the organization. Such an assessment would require applicants to provide certain financial documents covering prior years and a disclosure of current year funding applications. Furthermore, accounts received from Erie County should not be comingled with the other funds of the organization. Having source information upfront and requiring the segregation of accounts substantially decreases the likelihood of wasted CGF funds.

## O'CONNELL & COMPANY PRODUCTIONS, INC.

### BACKGROUND

O'Connell & Company Productions, Inc. (OCC) is a 501(c)(3) non-profit organization established in 1995. OCC is a local professional theater company whose mission is to entertain audiences while educating, inspiring, and strengthening community engagement through the performing arts.

OCC received \$23,100 in Cultural Grant Funding (CGF) for calendar years 2020 and 2021 and \$31,500 for calendar year 2022.

### AUDITOR'S OBSERVATIONS

OCC presents a broad range of theatrical productions, including premieres, musicals, and classic plays. The organization originally emphasized productions featuring female characters, directors, and playwrights to support the empowerment of women and promote gender parity in the arts.

While maintaining this focus, OCC has expanded its programming to engage a more diverse and inclusive audience by offering a wider variety of performances in multiple venues throughout Western New York.

In addition to theatrical offerings, OCC provides educational programming, including "Rising Stars," a youth theater camp for students ages 8–12, which has become one of the organization's most established educational initiatives.

During the years under review, programming services constituted the organization's primary source of revenue, except in 2020 when Covid-19 restrictions significantly reduced in-person programming. Grants, contributions, and donations comprised the second-largest source of revenue. The Auditor did not identify additional significant revenue sources such as investment income or major fundraising events.

OCC operates a theater concession stand that provides snacks and beverages to patrons and generates additional revenue.

The Covid-19 pandemic resulted in the cancellation of all in-person performances and scheduled events. OCC implemented virtual programming, including online productions and weekly play readings, which allowed the organization to maintain audience engagement and generate limited operating revenue. At the onset of the pandemic, OCC engaged one independent contractor to perform administrative duties remotely. OCC did not receive federal pandemic-relief assistance such as Paycheck Protection Program (PPP) funding or federal disaster loans, in part because it had no wage-earning employees on payroll.

For each of the years reviewed, OCC reported no salary or wage expenses. Instead, the organization relied entirely on independent contractors, and primary operating expenses consisted of 1099 payments, occupancy costs, production-related expenses, and contracted services. Under the County grant agreement, Cultural Grant Funding (CGF) was intended to support staffing and technical upgrades.

### AUDITOR'S CONCLUSION

During the grant review process, OCC provided most of the requested documentation to substantiate its use of County Cultural Grant Funding (CGF). Documentation submitted included IRS Forms 990, bank statements, general ledgers, and information returns. However, other essential records such as certain payroll or independent contractor reconciliations, a complete set of board meeting records, and electronic payment statements were not provided by the conclusion of the review. As a result, OCC's submission was incomplete

and only partially compliant with the documentation requirements outlined in the County's cultural grant agreement.

The Auditor also identified several instances in which expenditures and activities did not appear to comply with the stipulations of the cultural grant service contract or applicable federal and state regulations. These issues included the misclassification of employees as independent contractors, the use of CGF for ineligible expenses, and the distribution of alcoholic beverages without the required liquor license.

The Auditor determined that CGF funds awarded in 2020 were not fully utilized, with the remaining balance carried forward into 2021. Based on the organization's grant request, CGF funds were intended to support the creation of an office support position. Due to the COVID-19 pandemic, the hiring of administrative support staff did not occur. OCC indicated that funds were used to pay custodial staff and actors for virtual productions; however, the organization's documentation reflects that CGF funds were not expended during 2020 and were instead rolled over to the subsequent calendar year. This carryover practice is inconsistent with Section 10 of the Erie County contract, which requires the return of any unused or unencumbered County funds and explicitly prohibits the carryover of unexpended grant funds.

Additionally, OCC's records indicated that approximately \$33,000, primarily consisting of CGF funds, was carried over into 2022. OCC transitioned to a fiscal year ending June 30 and further reported that 2022 funding was carried into the subsequent fiscal year. However, during discussions with the Auditor, OCC stated that 2022 funding was allocated toward payments for support staff, including actors and custodial staff, which conflicts with the records provided for review.

As part of OCC's CGF scope of work for 2021 and 2022, the organization indicated that funds would be used to hire support staff and to purchase theater lighting as part of technical upgrades. However, lighting equipment, even when portable, is classified as a capital asset under Modified Accelerated Cost Recovery System (MACRS) rules. Portable or freestanding stage lighting is treated as a five- or seven-year capital asset and is therefore an ineligible expenditure under the County's CGF program. The inclusion of this ineligible item reflects deficiencies in OCC's compliance as well as in the County's grant review process. The grant agreement prohibits capital expenditures, and County vetting procedures should have identified and addressed this issue prior to approval.

During the review of OCC's records, the Auditor identified multiple purchases of alcoholic beverages from local retail outlets. These purchases appeared to be for concession inventory. Under New York State Alcoholic Beverage Control (ABC) Law, alcohol may only be sold or served on premises licensed for on-premise consumption. OCC has not obtained a New York State Liquor Authority (NYSLA) license to sell or provide alcohol.

The Auditor also identified the misclassification of certain staff as independent contractors rather than employees. Although OCC met the necessary reporting requirements, certain positions such as directors and support staff should have been classified as employees under Internal Revenue Code (IRC) §3121, as OCC exercises control over both the work performed and the manner in which it is performed. Performers who worked for multiple theaters were appropriately classified as independent contractors. Additionally, a fuel allowance paid to a staff member classified as an independent contractor was not included in the reported amount on the individual's Form 1099, resulting in a discrepancy in tax reporting.

Based on a review of OCC's records, the Auditor identified discrepancies between reportable payments listed on Forms 1099 and the total payments recorded in the organization's financial records. The Auditor identified payments exceeding \$600 made to individuals qualifying as independent contractors for which IRS Forms 1099-NEC and/or 1099-MISC were not issued. Pursuant to IRC §6041, persons engaged in a trade or business who make payments of \$600 or more in a taxable year for rents, salaries, wages, premiums, annuities, compensation,

or other fixed or determinable income are required to file accurate information returns with the IRS. Additionally, IRC §6071 requires that Forms W-2, W-3, and 1099 be filed on or before January 31 following the calendar year to which the returns relate.

OCC's governance structure includes a 13-member Board of Directors and a five-member Executive Team. The organization reported that the Board is actively involved in internal controls, including the review of policies, compensation, and financial disclosures. However, based on the documentation reviewed, the Board appeared more focused on fundraising and occupancy matters than on operational oversight. OCC also lacks formal procurement and reimbursement policies, and its internal controls were determined to be weak.

At the conclusion of the review, the organization was in compliance with federal and state tax-filing requirements but was not in compliance with certain licensing and permit requirements under local and state laws.

#### **AUDITOR'S RECOMMENDATION**

The Auditor recommends that O'Connell & Company Productions, Inc. strengthen its compliance with County Cultural Grant requirements and applicable federal and state regulations by implementing formal financial and governance controls. Specifically, OCC should ensure timely and complete submission of required grant documentation; prohibit the carryover of unexpended grant funds in accordance with County contract provisions; remit any portion of Cultural Grant Funding that was not utilized; and provide adequate substantiation demonstrating that all grant expenditures were allowable, eligible, and incurred in accordance with the grant agreement